(2011) 10 MAD CK 0178

In the Madras High Court

Case No : T. C. (Revision) No. 1279 of 2006

State of Tamil Nadu — APPELLANT

Vs

Durai Traders — RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 12(3)(b)

Citation : (2013) 57 VST 535

Hon'ble Judges : P.P.S. Janarthanaraja, J;P. Jyothimani, J

Bench : Division Bench

Advocate : R. Sivaraman, Special Government Pleader Taxes, for the Appellant; S. Ramanathan, for the Respondent

Judgement

P. Jyothimani, J.—The tax case revision is filed by the Revenue against the order of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated March 13, 2000 passed in Appeal No. 101 of 1998 raising the following substantial question of law:

Whether the Tribunal has legally erred in having applied Explanation to section 12(3) of the Tamil Nadu General Sales Tax Act, 1959, which provision came into force only from April 1, 1996 whereas the assessment year is 1995-96 ?

The tax case revision relates to the assessment year 1995-96. The asses-see is a dealer in pulses and grams and reported a total and taxable turnover of Rs. 12,91,262 respectively in their monthly returns in form A1 for the year 1995-96. The place of business was inspected by the Enforcement Wing Officer on April 9, 1996 and found the following defects:

Ledger accounts were not kept for 1995-96 and produced for inspection. The verification of accounts for 1995-96 revealed that the inter-State purchases of 200 bags of lobo flat gram purchased through form XX have not been accounted for in the accounts of the dealer.

2. Accordingly, the assessing officer estimated the sales of inter-State purchase

at Rs. 1,09,956 and equal time addition was made for estimated suppression. Penalty u/s 12(3) (b) was also levied, thus resulted in the best of judgment assessment.

3. Aggrieved by the same, the assessee filed appeal before the Appellate Assistant Commissioner, who, rejected the appeal pointing out that there was a clear-cut suppression and justified the assessing authority''s view in making equal addition and not discussed anything regarding penalty. Aggrieved by the same, the assessee filed further appeal before the Sales Tax Appellate Tribunal.

4. The Tribunal held that there could have been no dispute with regard to the suppression pointed out by the assessing authority in the assessment order. Therefore, with regard to the equal additions estimated by the assessing authority, the Sales Tax Appellate Tribunal justified in making the further additions and confirmed the levy of tax on the turnover of Rs. 2,19,912.

5. With regard to levy of penalty u/s 12(3) (b) of the Tamil Nadu General Sales Tax Act, 1959, the Tribunal pointed out as follows:

For the purpose of levy of penalty--the estimates suppression resorted to could not be taken into consideration. The actual suppression resorted to by the appellants alone could be taken as being subjected to penalty u/s 12(3) (b) of the Act. If the tax paid as per the return fell short of on the turnover which was not disclosed, then the assessing authority was justified in levying penalty to that extent of turnover. However, for purpose of refixation of penalty, the assessing authority is directed to levy penalty, on the actually suppressed turnover of Rs. 1,09,956. For the purpose of refixation of penalty, we direct the assessing authority to refix the penalty on the suppressed value of Rs. 1,09,956."

6. Aggrieved by the same, the Revenue is on present revision before this court.

7. The learned Special Government Pleader (Taxes) appearing for the Revenue contended that penalty should be imposed on the estimated value also on the basis of equal time addition.

8. On a perusal of the order of the Sales Tax Appellate Tribunal, it is seen that the Tribunal considered the Explanation clause inserted to section 12(3) (b) of the TNGST Act, 1959 which excludes certain kinds of turnover, viz.

(i) turnover representing addition to the turnover;

(ii) turnover estimated by the assessing authority with reference to any specific concealment of any turnover from the accounts; and

(iii) any turnover on which tax is paid at the concessional rate subject to the condition of furnishing any declaration.

9. Thus, the Tribunal directed the assessing authority to levy penalty on the actually suppressed turnover of Rs. 1,09,956 and deleted the penalty levied on the turnover estimated by the assessing authority on further additions. We find

no reason to interfere with the order of the Sales Tax Appellate Tribunal. Accordingly, the tax case revision stands dismissed. The substantial question of law is answered against the Revenue. No costs.

