

(2009) 04 MAD CK 0031

In the Madras High Court

Case No : Tax Case (R) No. 2096 of 2006

State of Tamil Nadu

APPELLANT

Vs

I.Q. Systems

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 12(3), 12(5), 16, 2

Citation : (2009) 26 VST 491

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Haja Nazirudeen, Special Government Pleader T, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—By framing the following question of law, the Revenue is on appeal against the order of the Appellate Tribunal

deleting the penalty imposed on the assessee u/s 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959.

Whether, in the facts and circumstances, the Tribunal is right in having deleted the penalty levied u/s 12(5)(iii) of the Tamil Nadu General Sales Tax

Act, 1959, for the assessment year 1992-93 when this honourable court in the case of P.S. Apparels v. Deputy Commercial Tax Officer [1994]

94 STC 139 has upheld levy of penalty in respect of REP licence from the assessment year 1992-93 onwards?

2. The penalty was deleted by the Tribunal observing as follows:

For the same dealer and for the year 1995-96, the penalty levied by the assessing officer has been deleted by this bench in T.A. No. 395/1998,

dated January 5, 2000. The following observations are made by us in that order.

The case of the assessee from the beginning is that they were under the bona fide impression and belief that they are not liable to include the sale amount of REP licences in the taxable turnover. The honourable Supreme Court, in the case of Hindustan Steel Ltd. v. State of Orissa reported in [1970] 25 STC 211, held that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. It further held that the penalty will not also be imposed merely because it is lawful to do so, and it is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Further, the honourable High Court of Kerala, in the case of Seven Seas Distillery Ltd. v. Assistant Commissioner of Sales Tax (Assessment) II, Special Circle [1999] 113 STC 322 held that if an assessee does not include the particular item in the taxable turnover under a bona fide belief that he is not liable so to include it, it will not be possible to condemn the return as a false return inviting imposition of penalty. Applying these principles to the facts and circumstances of the case, it would be just and proper to hold that the penalty imposed on the appellants is not warranted, since they have acted under only a bona fide belief that they were not liable to include the sales turnover of REP licence. Under such circumstances, the appellants are entitled to the benefit of bona fides.

3. It is a case in which penalty has been levied on the ground that the turnover in respect of sale of REP licence has not been offered for taxation.

The issue as to whether the sale proceeds of REP licence are liable for taxation has been decided ultimately by this Court in the case of P.S.

Apparels v. Deputy Commercial Tax Officer, T. Nagar East Assessment Circle, Madras reported in [1994] 94 STC 139. Till such time, there was

a considerable debate as to the possibility of levying sales tax on the turnover of sale of REP licence. That is the reason, the Division Bench while

upholding the levy of tax on sales of REP licences, summarised their conclusions that REP licences/exim scrips are ""goods"" in the etymological

sense and in common parlance as also within the meaning of Section 2(j) of the

Tamil Nadu General Sales Tax Act, 1959, and Section 2(d) of the Central Sales Tax Act, 1956. While summarising their conclusion in Clause "e", the Division Bench has held that levy of penalty u/s 12 or 16 of the Tamil Nadu General Sales Tax Act, 1959, shall be available to the assessing authorities in these categories of cases on and from assessment years 1992-93 onwards, and the authorities shall be at liberty to do so having regard to the facts and circumstances of each case on its own merits.

4. Now, taking advantage of this observation to the effect that the levy of penalty u/s 12 would be available to the assessee on and from the year 1992-93 onwards, the learned Special Government Pleader contended that the deletion of penalty is not correct. We are not able to approve the contention of the learned Special Government Pleader, as it is not an absolute proposition that as and when any sale of REP licence is made and the amount has not been offered for taxation, in all those cases, the penalty u/s 12 or 16 must be imposed upon the assessee. The sentence after the conclusion has to be given its full effect. It provides that the authorities shall be at liberty to do so, having regard to the facts and circumstances of each case, on its own merits.

5. Here in this case on the merits, it was observed by the assessing officer that all along the assessee has considered bona fide that the sale proceeds of REP licences cannot be regarded as turnover liable to tax, so as to offer the sales turnover for taxation, which factum has also been accepted by the Tribunal itself in the earlier assessment order by following its earlier order. Hence, we conclude that non-offering of the sales turnover of REP licence is a bona fide act. We do not find any illegality or irregularity in the deletion of the penalty by the Tribunal and we are not able to approve the way in which the learned Special Government Pleader projected the summary of the conclusion for levy of penalty.

6. For all these reasons, the revision is dismissed.