(1995) 09 MAD CK 0043

In the Madras High Court

Case No : Tax Case (Revision) No. 1395 of 1984

State of Tamil Nadu APPELLANT

Vs

Lakshmi Dhall Mill RESPONDENT

Date of Decision : 21-09-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (1995) 09 MAD CK 0043

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The department is the petitioner herein. M/s. Lakshmi Dhall Mill is the assessee. The assessee is a dealer in grams and

dhall. The assessee disputed before the Tribunal against the levy of tax on a turnover of Rs. 3,92,463 representing the estimated first sales of gram

and dhall omitted to be assessed at the time of final assessment. The total and taxable turnover of the assessee were finally determined at Rs.

14,80,149 and Rs. 62,307 respectively by the assessing authority for the assessment year 1978-79. Later on it was found that the exemption

allowed towards the second sales of dhalls and grams was not in order and the first sales turnover escaped assessment. Accordingly the escaped

turnover was worked at Rs. 4,92,657. It was noted that no separate sales account for the local or inter-State purchase of goods have been

maintained by the dealers. It was presumed that the first sales turnover of dhalls and grams have been wrongly included under second sales of

goods. Therefore, the assessing authority brought the above turnover of Rs. 4,92,657 to assessment at the rate of 4 per cent u/s 16(12) of the

Tamil Nadu General Sales Tax Act, 1959. As against this order the assessee took the matter in appeal before the Appellate Assistant

Commissioner. The Appellate Assistant Commissioner reduced and refixed the taxable turnover under first sales at Rs. 3,92,463. Not satisfied

with the relief granted by the Appellate Assistant Commissioner the assessee filed an appeal before the Appellate Tribunal. The Tribunal on

considering the records and on finding that there was no wrong classification, reduced the quantum of escaped turnover to Rs. 98,116 by taking a

lenient view of the fact that the dealers had incurred loss. As against this order the department is in revision before this Court. According to the

department, the Tribunal ought not to have refixed the escaped turnover at Rs. 98,116 from Rs. 3,92,463 as fixed by the Appellate Assistant

Commissioner without assigning any reason. According to the department, the Appellate Assistant Commissioner estimated the escaped turnover

of first sales of gram and dhall correctly and granted relief to the assessee. Without assigning any reason the Appellate Tribunal refixed the escaped

turnover to the extent of one-fourth of the amount determined by the Appellate Assistant Commissioner. We have heard learned Additional

Government Pleader (Taxes) and perused the records carefully. The tribunal in its order pointed out that the assessee had incurred heavy loss in

the business and especially in the consignment sales effected to Kerala parties. The Appellate Assistant Commissioner failed to consider this

aspect. The Tribunal has also pointed out that the department has not shown any one single instance of misclassification of the first sales goods in

the second sales goods. The Appellate Assistant Commissioner has sustained the addition by adopting the purchase value after adding the gross

profit. The Appellate Assistant Commissioner in the subsequent year accepted the reasons given by the assessee for reducing the turnover relating

to first sales. It is not disputed that the first sales turnover is not consistent with the net purchase of the first sale goods. In view of these facts the

Tribunal considered that escaped turnover can be redetermined at Rs. 98,116, i.e., one-fourth of the escaped turnover sustained by the Appellate

Assistant Commissioner. The reasons given by the Tribunal in sustaining the one-fourth of the addition made by the Appellate Assistant

Commissioner appears to be in order. No further evidence was produced before us to deviate from the order passed by the Tribunal in reducing the escaped turnover to one-fourth of the escaped turnover determined by the Appellate Assistant Commissioner. Accordingly we are not inclined

to interfere with the order passed by the Tribunal on this aspect.

2. In the result, this revision is dismissed. No costs.

3. Petition dismissed.