(2009) 12 MAD CK 0242

In the Madras High Court

Case No : Tax Case (Revision) No. 2317 of 2008

State of Tamil Nadu — APPELLANT

Vs

Lingam and Company — RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 16(2)

Citation : (2010) 29 VST 622

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

Bench : Division Bench

Advocate : Haja Nazirudeen, Special Government Pleader, for the Appellant; V. Sundareswaran, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The revision is filed at the instance of the Revenue against the order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai in Madurai Tribunal Miscellaneous Petition No. 248/93 in Madurai Tribunal Appeal No. 242/93 dated December 21, 1993 relating to the assessment year 1990-91.

2. The respondent/assessee is a dealer in oil-seeds, oil and oil cakes. The regular assessment in respect of the assessment year 1990-91 was completed by the assessing officer on December 12, 1991. Prior to the completion of the assessment as above referred to, it appears that there was inspection in the place of business of the assessee on July 6, 1990 by the enforcement officers and they have formulated a D3 proposal and sent to the assessing officer. On the basis of the report of the enforcement wing officers, the assessing officer sought to revise the assessment already made and after hearing objections filed by the assessee, revised assessment was made on April 30, 1992 on the basis that there was certain deficiency of physical stock available during the date of inspection to that of the stock reported in the books of account. The stock deficiency has been quantified in a sum of Rs. 2,37,205 taxable at different rate of tax. In addition to that, an equal addition in a sum of Rs. 2,37,205 has been

made for probable omission. Penalty was also levied at 150 times in a sum of Rs. 28,183. The assessee on appeal got the relief of deletion of penalty as well as the equal addition. In respect of the tax component confirmed on appeal, the assessee filed an appeal before the Tribunal. The Department also filed enhancement petition for restoration of the order of the assessing officer. The Tribunal dismissed the appeal of the assessee as well as the enhancement petition of the Revenue. The Revenue filed the present revision in respect of the portion of order of deletion of penalty.

3. We heard the argument of the learned Counsel on either side and perused the materials on record.

4. For deletion of the penalty, the first appellate authority was of the opinion that the stock difference itself was an estimation and the explanation offered by the assessee for the difference in stock having been rejected tax to that effect has been imposed. There was no incriminating material to suggest that there were other violations. There was also no finding recorded by the assessing officer that the assessee has conducted its business in a blameworthy nature, which requires invocation of the penal provision. The Tribunal also confirmed the deletion of penalty on the same as stated by the Appellate Assistant Commissioner.

5. On a cumulative reading of all the orders, we are of the view that the appellate authority as well as the Tribunal have correctly approached the levy of penalty in deleting the penalty as the imposition of penalty u/s 16(2) of the Tamil Nadu General Sales Tax Act, 1959, requires mens rea or at the best blameworthy conduct on the part of the assessee. Even then certain discretion has been given to the authorities under the Act for imposition of penalty. In the present case, no finding has been recorded by the authorities below that there involves mens rea in the conduct of the assessee which caused certain income from escapement of assessment. The discretion vested with the authorities has been rightly exercised by them. In the given set of facts, i.e., except the stock variation, no other material is unearthed during the inspection and there is also no imputation against the assessee that the assessee wilfully caused the escapement of levy of tax in deleting the penalty. The penalty can be imposed only if the assessing officer is satisfied on the basis of material records that because of the wilful non-disclosure of taxable turnover there is escapement of tax leviable and recorded such finding. In the absence of any wilful non-disclosure of taxable turnover on the part of the assessee we find that the deletion of the penalty is in consonance with the requirement of the provision u/s 16(2) of the Tamil Nadu General Sales Tax Act, 1959. Therefore the appeal is dismissed.