
(2009) 07 MAD CK 0458
In the Madras High Court
Case No : T.C. (R) No. 1994 of 2006

State of Tamil Nadu

APPELLANT

Vs

M. Kulandaivelu Oil Mill

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Citation : (2010) 29 VST 611

Hon'ble Judges : F.M. Ibrahim Kalifulla, J;B. Rajendran, J

Bench : Division Bench

Advocate : Haja Nazarudeen, Special Government Pleader Tax, for the Appellant; A. Thiagarajan for Balamurugan, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—The Revenue has come forward with this revision raising the following substantial questions of law:

1. Whether, in the facts and circumstances of the case, the Tribunal is legally right in setting aside the estimation which was made on the basis of electricity consumption, survey test and non-maintenance of any record ?
2. Whether, on the facts and in the circumstances, the Tribunal is right in deleting the consequent levy of penalty?
2. The assessee, in this case, is an oil mill. The assessee submitted its tax return for the assessment year 1992-93 and also produced its accounts. Subsequent to the submission of return, there was an inspection by the officials of the enforcement wing on February 4, 1993. At the time of inspection of the mill, actual stock of goods was checked and compared with the book stock, which revealed some shortage in the stock of groundnut, groundnut kernel, groundnut oil and groundnut oil cake. There was shortage in the groundnut and groundnut kernel in the order of 40 and 160 kgs. There was surplus noted in the groundnut oil and groundnut oil cake to the extent of 20 and 79 kgs. respectively. There was also stock of 23 bags of groundnut in the place of business, which the

assessee claimed to have received from its own agricultural lands for drying purpose. In respect of the said claim, a certificate from the village administrative officer, Singampuneri South was also obtained and produced by the assessee. There was a common electricity connection and common consumer card, both in respect of the assessee-mill as well as its sisters concern called Jothi Muthiah Sons. The said consumption card revealed a total consumption of 52361 units between April 1992 and December 1992. A sample survey was conducted as to the consumption of electricity vis-a-vis production of oil, oil cakes for crushing 320 kgs of groundnut kernel. In the said survey, it was found that it required consumption of 13 units of electricity for crushing 320 kgs of groundnut. Out of 52361 units of electricity energy consumed, since the assessee contended that it used to crush kernel and also do decortication of groundnut in its mill for others on coolie basis, the assessing authority provided 40 per cent of total consumption on that ground and proceeded to work out the turnover based on the remaining 60 per cent of electricity consumption namely for 31417 units. On that basis, the assessing authority reached the conclusion that it would have resulted in crushing of 7,73,342 kgs. turnover. Based on the said calculation, the assessing authority concluded that the quantum of oil and oil cakes produced would have been in the order of 2,97,254 kgs. and 4,49,692 kgs. respectively. The tax due was therefore worked out in a sum of Rs. 7,12,191 to which surcharge and additional sales tax were added up and the liability of the assessee was arrived at Rs. 10,66,503. The assessing authority also imposed another 150 per cent penalty which worked out to a sum of Rs. 15,99,755.

3. On appeal before the Appellate Assistant Commissioner by the assessee, the Appellate Assistant Commissioner felt that the energy consumed was taken only up to December 1992 and the consumption for the remaining period of the assessing year was not taken into account, that a comparison of the production details of oil of the year with reference to the consumption of energy, only up to December 1992, cannot be a correct calculation and therefore, it requires a re-examination. The Appellate Assistant Commissioner also considered the contention of the assessee that consumption of energy for decorticating groundnut, for coolie as well as crushing for the mill, would have far exceeded 40 per cent of the total consumption if the correct particulars had been taken into account and held that on that aspect also, re-examination was called for. One other reason which weighed with the Appellate Assistant Commissioner was that the assessing officer estimated the suppression of groundnut kernel at Rs. 1,14,32,850 and the resultant oil and oil cakes at Rs. 74,31,350 and 17,98,768, respectively, but in that process, the estimation on produce of raw materials was shown at a higher value and the selling price of the resultant finished products estimated at a very lower value resulted in loss, which was erroneous. The Appellate Assistant Commissioner, therefore, held that the estimation of the suppression was not calculated on a reasonable basis and consequently, while allowing the appeal, the Appellate Assistant Commissioner remanded the matter back to the assessing authority for further verification. Consequently, the

imposition of penalty was also set aside.

4. When the matter was taken up on further appeal before the Tribunal, at the instance of the assessee, the Tribunal dealt with the appeal filed by the assessee along with other appeals and by its common order dated October 13, 1997 took the view that consumption of electricity alone cannot be a ground for estimation of groundnut kernel. It was also held that the records reveal that the output extract by the mill was not compared with other mills dealing with crushing. The Tribunal further held that when such a comparison was not made, the data obtained by the lower authority cannot be said to be real and accurate. For the said reasons and for certain other reasons, the Tribunal set aside the order of the Appellate Assistant Commissioner as well as the assessing authority and allowed the appeal in toto.

5. Assailing the order of the Tribunal in so far as it relates to the present respondent/assessee, the State has come forward with this revision.

6. We have heard the learned Special Government Pleader appearing for the petitioner and the learned senior counsel for the respondent-assessee.

7. The learned Special Government Pleader appearing for the petitioner placed reliance on the decision reported in *Shanmuga Oil Mills Vs. Commissioner of Commercial Taxes in Karnataka*, and *Kalyani Oil Mills Vs. The State of Madras*. While the former was a decision rendered by the Division Bench of the Karnataka High Court, the latter is by our High Court. In both the decisions, the estimation, based on energy consumed, has been held to be one of the methods, which can be validly adopted by the assessing authority in the event of any serious discrepancy found out in the material particulars submitted by the assessee in its return.

8. In the decision of the Karnataka High Court, the Division Bench tacitly held that when a machinery is run by electricity to achieve the end product, consumption of the electricity energy certainly has a good relationship to the output of the end product and if the consumption is more, and product must also increase correspondingly and vice versa. It was also held that in the absence of other materials, such an analysis would form a sound basis for fixing the turnover.

9. In the decision of the Division Bench of our High Court mentioned supra, it was held that in the absence of any other method, to find out the actual production of oil, etc., the calculation of the turnover, on the basis of the consumption of electricity can also be adopted. It was also held that without an actual test check or comparable data from other similar oil mills, adoption of a particular rate of consumption will be somewhat an arbitrary basis and a best judgment assessment based on such an arbitrary figure will be illegal.

10. Applying the ratio laid down in the abovesaid decisions, we are convinced that in the present case on hand, when the assessing authority noted an exorbitant consumption of electricity energy for a period of about nine months in

an assessment year, which prima facie did not tally with the production of oil and oil cakes reported in the turnover, apart from the shortages noticed in the stocks held by the assessee, there was every justification for the assessing authority to adopt the estimation, based on consumption of electricity energy. However, as pointed out by the Appellate Assistant Commissioner, while making such an estimation, certain vital factors, relating to the crushing of oil and decortication carried out by the assessee on coolie basis were not properly considered. In other words, the assessing authority adopted a rough and ready method of providing 40 per cent of consumption of electricity energy for other activities and straightaway took 60 per cent of such consumption for crushing of oil and oil cakes. In fact, the assessee was using power not only for crushing purpose alone but was also using such power for decortication, both for its own purpose as well as on coolie basis for others. The said factors were not taken into account by the assessing authority while giving the estimation based on the power consumption. That apart, as rightly pointed out by the Appellate Assistant Commissioner, there was a wrong valuation made with reference to the estimated purchase value and sale price. In such circumstance, the best course could have been, as held by the Appellate Assistant Commissioner, who has directed the assessing authority to re-examine the exercise of best judgment assessment based on power consumption of units with exact value noted in the book stock instead of adopting a rough and ready method by considering each and every factor, which would have been relevant and relatable to such consumption of electrical energy by the assessee. In that respect, the order of the Tribunal in merely setting aside the order of the Appellate Assistant Commissioner as well as that of the assessing authority without providing any scope for such re-examination cannot be sustained. We say so because, as rightly pointed out by the assessing authority, the exorbitant consumption of electricity energy, as compared to an extent of turnover reported with the discrepancies noted in the stock position at the time of inspection did call for re-examination of the taxable turnover based on the consumption of electricity energy. We are therefore convinced that the remittal order passed by the Appellate Assistant Commissioner was well justified and the Tribunal ought not to have interfered with the same. Therefore, while setting aside the order of the Tribunal, we restore the order of the Appellate Assistant Commissioner dated February 17, 1995 and remand the matter back to the file of the assessing authority for carrying out re-examination, as directed by the Appellate Assistant Commissioner, in the said order. Inasmuch as the assessment relates to the year 1992-93, we only direct the assessing authority to carry out the exercise of re-examination expeditiously, preferably within a period of three months from the date of receipt of a copy of this order, after giving due opportunity to the respondent-assessee.

11. The appeal stand allowed. No costs.