(1995) 09 MAD CK 0042

In the Madras High Court

Case No : Tax Case Revision Petition No. 1725 of 1984 (Revision No. 444 of 1984)

State of Tamil Nadu APPELLANT

Vs

M. Periasamy Pillai and Sons RESPONDENT

Date of Decision : 21-09-1995

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12

Citation : (1995) 09 MAD CK 0042

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

Bench : Division Bench

Advocate : Chitra Venkataraman, Additional Government Pleader Taxes, for the Appellant; M.S. Ganapathy, for the Respondent

Judgement

Thanikkachalam, J.—State is the petitioner. The assessee is one M. Periasamy Pillai and Sons, dealers in cane jaggery, Madurai. The

assessing Officer checked the accounts of the respondent for the year and finally fixed the taxable turnover at Rs. 5,38,905 to the best of his

judgment for the defects noted in the accounts. He also levied penalty of Rs. 2,985 based on the actual suppressions noticed. In the first appeal,

the Appellate Assistant Commissioner sustained only an ad hoc addition of Rs. 20,000 and refixed the taxable turnover at Rs. 3,01,591.94. He set

aside the penalty of Rs. 2,985. Not satisfied with the relief granted by the Appellate Assistant Commissioner, the assessee filed an appeal before

the Tribunal disputing a turnover of Rs. 20,000 taxable at 3 per cent.

2. The department filed an enhancement petition to restore the penalty levied by the Appellate Assistant Commissioner. The Tribunal refused to

entertain the enhancement petition on the ground that no enhancement petition will lie against the order of the Appellate Assistant Commissioner

deleting the penalty in its entirety. It is against that order, the present revision has been preferred by the department.

3. We have heard the learned Additional Government Pleader (Taxes) and perused the records carefully. The Tribunal''s view that no

enhancement petition would lie against an order passed by the Appellate Assistant Commissioner in cancelling the penalty in its entirely is not

correct. In T.C. No. 18 of 1984, this Court by an order dated February 27, 1995 (State of Tamil Nadu v. K. M. Sultan Mohideen 1997 107

STC 610 held that even against an order passed by the Appellate Assistant Commissioner in cancelling the penalty in its entirely, an appeal will lie

before the Tribunal. Therefore, the findings given by the Tribunal that no enhancement petition will lie stand set aside.

However, on merits, we have seen that the assessing authority levies a penalty of Rs. 2,985 u/s 12(3) of the Act. The Appellate Assistant

Commissioner pointed out that the records secured during inspection are not adequate for imposing any penalty. By following the earlier order of

the Tribunal in M.T.A. No. 409 of 1980, the Appellate Assistant Commissioner deleted the penalty in its entirety. The Appellate Assistant

Commissioner, on perusal of the records came to the conclusion that the records secured are not sufficient for levy of penalty u/s 12(3) of the Act.

No further evidence was produced to show that there are sufficient records for levy of penalty u/s 12(3) of the Act. Under such circumstances, the

order passed by the Appellate Assistant Commissioner in deleting the penalty is in order. Accordingly we are not inclined to interface with the

same.

4. In the result, while upholding the contention put forward by the department that an appeal will lie against the Order passed by the Appellate

Assistant Commissioner deleting the penalty in its entirely, the revision filed by the department is dismissed.

5. Petition dismissed.

