

(2009) 04 MAD CK 0501

In the Madras High Court

Case No : Tax Case (Revision) No. 1915 of 2009

State of Tamil Nadu

APPELLANT

Vs

Maharaja Readymade

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3)
Tamil Nadu General Sales Tax Rules, 1959 — Rule 26

Citation : (2009) 26 VST 316

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

Bench : Division Bench

**Advocate : Haja Naziruddin, Special Government Pleader, for the Appellant;
Venkataraman for A. Arivazhagan, for the Respondent**

Judgement

K. Raviraja Pandian, J.—The correctness of the order of the Sales Tax Appellate Tribunal dated November 12, 1998 made in MTA No. 206 of 1997 is canvassed in this revision.

2. The assessee, a dealer in ready-made garments, reported a total and taxable turnover in a sum of Rs. 14,87,719.45 and Rs. 11,29,826, respectively after claiming exemption on the turnover of Rs. 3,57,893.45 in the return filed by the assessee for the assessment year 1994-95. The accounts were called for and checked. The assessing officer found certain defects, such as gross profit working out to 36 per cent, which he regarded as very high. No separate stock account for the taxable goods, i.e., ready-made garments purchased from other States, was maintained. Ready-made goods purchased from Asoka Dresses were not supported by bill or delivery note. In view of the above defects found, the accounts of the assessee were rejected as incomplete and incorrect and best judgment assessment was made and penalty was levied u/s 12(3)(b)(i) of the Tamil Nadu General Sales Tax Act, 1959, by the assessing officer. The Appellate Assistant Commissioner dismissed the appeal filed by the assessee. As against that order, a further appeal has been filed before the Appellate Tribunal. Two

points were raised, argued and adjudicated, before the Tribunal, and they are (1) whether, the Appellate Assistant Commissioner's order is factually and legally sustainable? (2) Whether the penalty is sustainable?

3. The Tribunal sustained an addition of a sum of Rs. 10,000 as lump sum and reduced the penalty proportionate to the amount sustained by it. The correctness of the same is put in issue in this revision. It could be seen from the order of the authorities that on the filing of the accounts by the assessee, the assessing officer observed that 36 per cent of the gross profit obtained by the assessee was very high and the assessee did not maintain separate account for taxable purposes and non-taxable purposes. The above defects, in the view of the Tribunal, were not termed as major defects and an addition made in a sum of Rs. 2,42,104 is totally unwarranted. As far as the gross profit of 36 per cent is concerned, the Tribunal was of the view that such a profit ratio was quite normal in the line of ready-made business when comparing the gross profit of the assessee with that of the other dealers, who are dealing in the same line of business and by the rule of thumb the assessing officer has decided the issue. The Tribunal further found from the records that the assessing officer had only pointed out the material defect of non-maintenance of certain registers as required under Rule 26(a) of the Tamil Nadu General Sales Tax Rules, 1959, and the transport of ready-made garment from Bombay to Madras was not supported by bill of sale or delivery note, which was exhibited by the Check-post Officer at Ponmani check-post and for the violation, the offence has been compounded and the compounding fee has been paid along with the advance tax on February 19, 1995. It was further found as a fact that in the absence of any inspection and in the absence of stock variation or recovery of any records, the levy adopted by the assessing officer taking into consideration the entire inter-State purchases turnover on ready-made garments and the gross profit of 36 per cent as per the accounts and the lump sum addition of Rs. 10,000 for the defects in arriving the taxable turnover of Rs. 13,91,930 against the reported turnover of Rs. 11,29,826 was not a proper method. Further, for the defects pointed out, the Tribunal has sustained the lumpsum addition of Rs. 10,000 and penalty in respect of the lumpsum addition. The rest of the penalty is directed to be deleted. As we are of the view that the view taken by the Tribunal is in consonance with the statutory provisions, no question of law, much less, a substantial question of law is involved in this revision so as to have an entertainment. The revision is dismissed. No costs.