(2011) 04 MAD CK 0354

In the Madras High Court

Case No : TC (R) No''s. 515 and 536 of 2006

State of Tamil Nadu APPELLANT

Vs

Nippon Enterprises RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : (2012) 47 VST 56

Hon'ble Judges : P.P.S. Janarathana Raja, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : K. Radhakrishnan, Government Advocate, for the Appellant; S. Ramanadhan, for the Respondent

Judgement

Mrs. Chitra Venkataraman J.

1. The Revenue is on appeal as against the common order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai passed in STA. Nos. 1397 of 2001 and 1563 of 2001 dated March 21, 2002, relating to the assessment years 1987-88 and 1988-99. The assessee is a dealer in photography goods. In respect of the claim of second sales exemption, the assessment was made based on D7 records. Aggrieved by the assessment, the assessee went on appeal before the Appellate Assistant Commissioner. As far as the assessment year 1987-88 is concerned, the Appellate Assistant Commissioner considered the disallowance of the claim of exemption on sales return, levy of tax on works contract receipts. In so considering the same, the appellate authority verified the claim with reference to the connected account books produced by the assessee. It was found that the vendor of the assessee was under the same assessment circle of the assessing authority. Thus, on verifying the records, the Appellate Assistant Commissioner allowed the claim of second sales exemption. As regards the levy of tax on works contract receipt, turnover of works contract of sale, the Appellate Assistant Commissioner pointed out that after the 46th Constitution Amendment, the division of works contract under the amended law can be made only if the contract involved a dominant intention to transfer the property in goods. Hence,

the Appellate Assistant Commissioner directed the assessing authority to find out the nature of contract and pass fresh orders. The Appellate Assistant Commissioner also remanded the matter to the assessing officer to find out that portion of the turnover relating to Rs. 52,27,882 and also to grant the assessee an opportunity to place its materials. In the above circumstances, the Appellate Assistant Commissioner cancelled the levy of penalty also. Aggrieved by the said order, the Revenue filed the appeal before the Tamil Nadu Sales Tax Appellate Tribunal.

2. In respect of the assessment year 1988-89, the Appellate Assistant Commissioner passed similar orders granting second sales exemption. However, for the assessment year 1987-88, as regards the sales return to the tune of Rs. 2,00,000, the Appellate Assistant Commissioner remanded that portion to the assessing officer with a direction to the assessing authority to consider and pass fresh orders after verifying the relevant records. Aggrieved by that, the Revenue went on appeal before the Sales Tax Appellate Tribunal. The Sales Tax Appellate Tribunal rejected the appeal of the Revenue. In considering the contention of the Revenue, the Tribunal pointed out that it was no doubt true that the Appellate Assistant Commissioner directed the assessing officer to pass fresh orders after verifying the relevant records, viz., books of accounts and the assessee had agreed to produce the account, but he did not do so, hence, on the basis of total non-co-operation of the assessee in not producing the books of account as directed by the Appellate Assistant Commissioner, the assessing officer passed his order dated February 25, 2000, stating that since the assessee had failed to comply with the summons issued on July 15, 1998, in the absence of proof of any materials, the assessment was completed. In the second round of appeal before the Appellate Assistant Commissioner, details of accounts were filed before the Appellate Assistant Commissioner. After finding that the seller was also an assessee on the same circle, who had large turnover and had been assessed and verifying all these aspects, the Appellate Assistant Commissioner granted exemption to the assessee on account of tax suffered at the hands of the seller. The Appellate Tribunal further held that when the exemption was granted after verifying all materials available before the Appellate Assistant Commissioner, the question of remanding the matter again before the assessing officer to recheck the same was not necessary. Thus, as regards the assessment year 1987-88, the Tribunal held that the question of setting aside the order of the Tribunal is not warranted and remanded only the portion relating to sales returns of Rs. 2,00,000. Being pure question of fact, we do not find any ground to interfere with the order of the Tribunal. Accordingly, the tax case (revision) stands dismissed. No costs.