

(2009) 11 MAD CK 0225

In the Madras High Court

Case No : Writ petition No's. 3707 and 4117 of 2003

State of Tamil Nadu

APPELLANT

Vs

Parry Agro Industries Limited and Another

RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A, 9(2A)
Tamil Nadu General Sales Tax Act, 1959 — Section 16(2)

Citation : (2011) 42 VST 362

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

Bench : Division Bench

Advocate : Haja Nazirudeen, Special Government Pleader, for the Appellant; S. Ramanathan, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian

1. These writ petitions have been filed challenging the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal, dated November 12, 2001 mad in C. T. A. Nos. 265 and 266 of 2000.

2. As the issue and facts are common in both the writ petitions, the writ petition in W. P. No. 3707 of 2003 is taken up as a typical case for discussion and the material facts, which are required to be stated are as follows :

(i) The assessee is a dealer of tea and was finally assessed on a total and taxable turnover of Rs. 5,79,07,937 and Rs. 2,04,889, respectively, for the year 1993-94 under the Central Sales Tax Act. The assessing officer, by his proceedings dated January 20, 1995, disallowed the claim of exemption on Rs. 17,40,860 as consignment sales and brought to tax as outright inter-State sales assessable to tax at 10 per cent and also levied a penalty of Rs. 2,61,129 u/s 9(2A) of the Central Sales Tax Act, 1956 read with section 16(2) of the Tamil Nadu General Sales Tax Act, 1959.

(ii) On appeal, the Appellate Assistant Commissioner by order dated November 30, 1999 dismissed the appeal.

(iii) The second appeal filed by the assessee was allowed on November 12, 2001. The tax levied was set aside and consequently penalty was also set aside.

(iv) The correctness of the said order is now canvassed by the Revenue in this writ petition.

3. We have heard the argument of the learned counsel on either side and perused the materials available on record.

4. It is an admitted case that the assessment of the assessee was completed originally by proceedings dated February 6, 1995 (February 20, 1995) in respect of the assessment year 1993-94 and March 12, 1997 in respect of the assessment year 1995-96 by accepting form F furnished by the assessee by considering the turnover in a sum of Rs. 2,32,78,970 and Rs. 1,71,802, respectively. However, on the basis of the inspection report filed by the Enforcement Wing Officers, the assessing officer revised the assessment on the ground that the records of the assessee were verified with reference to documents and found that the particulars contained in form F declaration are found to be incorrect and untrue for the reason that the assessee received exactly the same value as per the pro forma invoice from the agent and nothing more and nothing less.

5. In order to have clarity, we are of the view that it is better to extract that portion of the order of the Deputy Commercial Tax Officer, dated March 5, 1999, in respect of assessment year 1993-94, which proceeds as follows :

In support of their claim of exemption u/s 6A of the CST Act, 1956, they have produced the despatch details, statement of accounts obtained from the agents, form F declarations copies for verification.

The records produced were verified with reference to books of accounts and found that the particulars contained in form F declaration are found to be incorrect and untrue for the following reasons. The following data clearly prove that the assessee received exactly the same value as per the pro forma invoice from the agent and nothing more and nothing less

and thereafter, the name of the consignment agent and other particulars are given.

6. It is now settled by the Supreme Court that once form F has been accepted and an assessment has been made on the basis of form F declaration filed by the assessee, revision of assessment cannot be made unless or otherwise the assessing authority has recorded a finding that assessment has been completed by fraud, misrepresentation or collusion.

7. Useful reference can be had to the judgment of the Supreme Court in the case of Ashok Leyland Ltd. v. State of Tamil Nadu reported in [2004] 134 STC 473,

wherein the power of the authority to revise the assessment which has been made on the basis of accepting form F has been very elaborately considered by the Supreme Court and the said decision squarely covers the issue.

8. Hence, following the Supreme Court judgment referred to above, the writ petitions are dismissed as the reason stated for reopening is not coming within the purview of the reasoning stated in the abovesaid judgment. No costs.