(2011) 06 MAD CK 0486

In the Madras High Court

Case No : Tax Case (Revision) No. 1053 of 2006

State of Tamil Nadu APPELLANT

Vs

Polifine India Limited RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3)(b)

Citation : (2012) 54 VST 150

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

Bench : Division Bench

Advocate : R. Sivaraman, Special Government Pleader Taxes, for the Appellant; S. Ramanathan, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—The Revenue is on revision as against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, in CTA No. 335 of 1998 dated November 14, 2000. The revision was admitted on the following substantial questions of law:

1. Whether, in the facts and circumstances, the Tribunal is right in deleting the turnover of Rs. 8,87,830 estimated on the basis of survey report and for reasons not legally sustainable?

2. Whether, in the facts and circumstances, the Tribunal is right in deleting the consequential penalty levied u/s 12(3)(b) of the TNGST Act?

2. The assessee herein is engaged in the manufacture of PVC pipes. A survey was conducted in the business premises. Based on the survey report, an experimental study was conducted on July 17, 1996 and December 20, 1996 by the Officer of Statistics and Research Cell, Coimbatore. The Revenue noted certain discrepancies with reference to the input and output treating the same as suppression of turnover from the books of accounts. Consequently, the assessing officer made estimation of turnover, apart from levy of penalty. The estimation

was made both on purchase of the raw materials used as well as on the sales of finished products. Aggrieved by the same, the assessee went on appeal before the Appellate Assistant Commissioner, who rejected the appeal. Consequently, the assessee went on further appeal before the Tamil Nadu Sales Tax Appellate Tribunal. The assessee contended that the entire assessment was made based on statistical survey report of one variety, whereas, the assessee had been manufacturing different hose pipes of various width. The failure to consider the other varieties, while making the survey made the statistical report totally unreliable. Consequently, the best judgment assessment was unsustainable. The Tamil Nadu Sales Tax Appellate Tribunal, accepted the plea of the assessee and ultimately allowed the appeal and cancelled the levy of penalty. Hence, the present revision by the Revenue. It is seen from the order of the Tamil Nadu Sales Tax Appellate Tribunal and the other authorities that the statistical survey was confined to only one inch of PVC hose pipes, which are of superior grade named Rani Flex. The appellant-assessee is manufacturing PVC pipes in three grades, viz., (a) Shilpa Flex; (b) Rani Flex of ordinary grade and (c) Rani Flex of superior grade. Admittedly, the survey was conducted with reference to the superior grade only and not with reference to the other two types. The survey took note of input and output ratio in respect of Rani Flex superior grade by mixing the resin and PVC granule to get the outturn in respect of the abovesaid superior variety. The Tribunal pointed out that except for the survey, there was no inspection to find out as to whether there was any excess or deficit stock of raw materials or manufactured goods to reject the books of accounts of the assessee. Thus, the assessment was passed working out the suppression both on the raw materials as well as on the outturn by adding gross profit. On verification of the facts and on the admitted fact that the assessee had been manufacturing three items of PVC hose pipes, the Tribunal agreed with the assessee''s contention that the statistical survey report could not be the basis for making the assessment. The Tamil Nadu Sales Tax Appellate Tribunal referred to the decision of this court reported in Kalyani Oil Mills Vs. The State of Madras, wherein this court held that high consumption of the electricity alone could not be held to be material justifying the rejection of accounts as defective and held that in the light of the series of decisions of this court, in the absence of any materials discovered, the assessment made suffer a serious infirmity and that there was no reasonable material available for estimating the turnover. The Tamil Nadu Sales Tax Appellate Tribunal pointed out that the assessee had maintained all the records required in the course of business and had complied with rule 26; that there were no materials to discrediting the accounts maintained in accordance with the statutory provisions, In these circumstances, the best judgment assessment made as well as levy of penalty was cancelled. Even though learned standing counsel appearing for the Revenue strenuously supported the order of the assessing officer as well as the Appellate Assistant Commissioner, nothing was placed on record to show that the survey was done as regards the different types of products. The admitted fact is that the survey was conducted taking into account one type of superior grade alone. Except for the survey, there was no inspection or recovery of materials, to substantiate the survey findings to estimate suppression of raw materials used and the out-turn. In the absence of any of these materials and having regard to the fact that survey was done in respect of only one type of PVC hose pipe, which is of superior grade named Rani Flex, the Tamil Nadu Sales Tax Appellate Tribunal came to the conclusion that the estimation was unsustainable. The issue being a pure question of fact, the order of the Tamil Nadu Sales Tax Appellate Tribunal does not warrant any interference. Consequently, the revision is dismissed. No costs.

