(2009) 04 MAD CK 0497

In the Madras High Court

Case No : Tax Case (Revision) No. 1722 of 2008

State of Tamil Nadu APPELLANT

Vs

P.R. Thirugnanam RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 16(2)

Citation : (2010) 33 VST 79

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

Bench : Division Bench

Advocate : Haja Nazirudeen, Special Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—This tax case revision is filed by the Sales Tax Department against the order of the Sales Tax Appellate Tribunal (Addl. Bench), Chennai passed in TMP No. 83 of 1992 in TA No. 993 of 1991 dated April 2, 1992.

2. The only dispute in this revision is whether the deletion of penalty in a sum of Rs. 33,315 by the first appellate authority and confirmed by the Tribunal is correct or not?

3. On perusing the material, it is clear that in respect of the disputed turnover, the assessee has claimed second sales exemption on the basis of the record, i.e., books of account and return. Originally the second sales exemption has been granted, however, subsequently it was reversed by the assessing officer. When the materials are made available and claimed exemption by the assessee, we are of the view that invocation of Section 16(2) is impermissible in law, because as per the statute, only when there is suppression in the books of account, and returns are rejected as incomplete and incorrect, a best judgment has been made, and then only Section 16(2) can be invoked. When the materials were placed by the assessee and the same is very much available before the assessing officer, the levy of penalty by the assessing officer is not as per the statute.

Hence, we do not find any ground to interfere with the order impugned in this revision. The appeal is dismissed.