(2012) 10 MAD CK 0018

In the Madras High Court

Case No : Tax Case (MD) No. 285 of 2011

State of Tamil Nadu — APPELLANT

Vs

Senthamarai Crusher, Melakunnapatty — RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3)(b), 38

Citation : (2013) 2 MLJ 269

Hon'ble Judges : P.P.S. Janarthana Raja, J;M. Duraiswamy, J

Bench : Division Bench

Advocate : R. Anand Raj, for the Appellant;

Judgement

P.P.S. Janarthana Raja, J.—The above Revision is filed by the revenue u/s 38 of the TNGST Act, 1959 praying to revise the order of the

Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai, passed in M.T.A. No. 563 of 2002 dated 12.11.2002 on the following questions of

law:

1. Whether the action of the Tribunal setting aside the order of the first Appellate Authority, which upheld the assessment made by the Assessing

Authority based on electricity consumption, without justifying the electricity consumption made by the dealer is proper before law?

2. Whether the deletion of penalty u/s 12(3)(b) of the TNGST Act, by the Tribunal is justifiable?

The relevant assessment year is 1995-96. The assessee is a registered dealer in Crusher jelly, registered under the Tamilnadu General Sales Tax

Act. The assessing officer determined the total and taxable turnover of the assessee at Rs. 6,96,100/- as against the reported total and taxable turnover of nil, subsequent to the inspection-cum-statistical production survey conducted by the Deputy Commercial Tax Officer (Central

Enforcement Wing), Trichy along with other Commercial Tax Officers. While completing the revised assessment, the Assessing Officer made

addition and also levied penalty. Aggrieved by that the assessee filed an appeal before the Appellate Assistant Commissioner. The Appellate

Assistant Commissioner dismissed the appeal holding that the impugned order was based on materials on record and not arbitrary and therefore,

there was no error of law. Aggrieved against that, the assessee preferred an appeal before the Appellate Tribunal. The Tribunal allowed the appeal

by deleting the turnover as well as penalty. Aggrieved by that, the revenue filed the above revision raising the above questions of law.

2. Learned Government Advocate appearing for the revenue contended that the Tribunal ought to have appreciated that the commodity dealt with

by the assessee is an evasion prone commodity and hence, the inspection by the Enforcement Wing and Survey by the Statistical Inspector were

conducted. On the basis of difference in consumption of electricity, it is necessary to make the addition. Therefore, the Tribunal is wrong in

rejecting the contention of the revenue by setting aside the order of the Appellate Assistant Commissioner and also deleting the penalty. Therefore,

the order passed by the Tribunal is not in accordance with law and the same has to be set aside.

3. Heard the learned counsel and perused the documents available on record. A factual finding is given by the Tribunal that the Assessing Officer

had considered only the electricity consumption to estimate the sale value in respect of jelly, and no material was relied on by the Assessing Officer

to arrive at such a conclusion. Therefore, the Tribunal held that the method adopted by the revenue is not correct and proper and it is a well known

fact that the electricity consumption for processing of goods may depend upon the quality of machine, age of machine and nature of granite blocks.

Further, it is pertinent to note that no further investigation was done by the Assessing Officer to ascertain whether there was an unaccounted sales

by way of cross verification and no instances have been noticed that the assessee had transported the goods without any records. Electricity

consumption alone will not be a determining factor for making any addition. The consumption of electricity may be used as corroborative evidence.

Therefore, the Tribunal is justified in coming to the conclusion that the consumption of electricity without any supporting circumstances will not

justify making addition. It is also the specific finding given by the Tribunal that the lower authorities have not given any specific finding that there are

transactions outside the accounts. Therefore, making addition on the basis of disparity in electricity consumption cannot be sustained. Under these

circumstances, the Tribunal has correctly set aside the orders of the authorities below by deleting the turnover and consequently, deleting the

penalty. Under these circumstances, we do not find any error, illegality or infirmity in the order of the Tribunal so as to warrant our interference.

The order passed by the Tribunal is based on valid materials and evidence. It is a question of fact and it is not a perverse order. The order passed

by the Tribunal is in conformity with law and no questions of law arise for our consideration. Hence, the order of the Tribunal is confirmed. The

Tax Case Revision is devoid of merits and the same is dismissed. No costs.

