(2008) 11 MAD CK 0034

In the Madras High Court

Case No : Tax Case (Revision) No. 1329 of 2006

State of Tamil Nadu APPELLANT

Vs

Shamanmal Laxmichand RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:

Citation : (2009) 24 VST 446

Hon'ble Judges : Prabha Sridevan, J;K.K. Sasidharan, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The following substantial questions of law arise for consideration:

(i) Whether in the facts and circumstances, the Tribunal has erred in not considering that the assessee cannot approbate or reprobate the statement

made during inspection as held in the case of Yousuff Radio Vs. The Board of Revenue, Commercial Taxes, ?

(ii) Whether the order of the Tribunal is erroneous inasmuch as the reconciliation statement relied on by it included sales made during subsequent

year 1995-96 also?

(iii) Whether the Tribunal has erred in having accepted the claim of the respondent for the first time that goods had been sent to other State sellers

for the purpose of replacement when it was not stated so before the inspecting officers?

(iv) Whether the order of the Tribunal is unsustainable inasmuch as it has deleted the turnover without discussing the findings of the first appellate authority in this regard?

2. But when we see the orders of the Additional Appellate Assistant Commissioner (CT) and the Tamil Nadu Sales Tax Appellate Tribunal

(Additional Bench), Coimbatore, it is clear that the matter has been gone into in detail and the only question that has to be decided is only the

question of fact. The Commercial Tax Officer was not inclined to accept the explanation given by the assessee with regard to the stock variation.

As regards the inter-State purchase which was not accounted for, the Commercial Tax Officer is of the opinion that, ""But for the inspection, the

transaction are bound to go unaccounted"". Similarly, with regard to the estimation based on the D7 records, the objections raised by the assessee

were not accepted. Against this, an appeal was filed.

3. The appellate authority partly modified the assessment order and deleted the equal addition made with regard to stock variation and while

confirming the addition with regard to inter-State purchases, equal addition was deleted on the ground that it might amount to double addition.

Consequently, the order was modified and addition to the tune of 50 per cent of the actual suppression would be proper. The liability of surcharge

and the total liability was also modified. Against that, the assessee preferred the appeal. The Tribunal dealt with each issue in detail. Against that,

the Revenue went before the Tribunal.

4. We find that the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) has considered each issue in great detail. As regards the

discrepancy in stock which was treated as suppressed turnover, the Tribunal found on fact that the reconciliation statement produced by the

assessee which was supported by other relevant records cannot be ignored and was of the opinion that the appellants have explained the stock

variation with regard to mixer grinder (78 Nos.), table fan (66 Nos.) and ceiling fan (56 Nos.) and have not explained the difference relating to

chokes (104 Nos.).

5. With regard to issue No. 2 regarding non-accounting of the transactions in inter-State sales, the Tribunal confirmed the finding of the Additional

Appellate Assistant Commissioner (CT).

6. With regard to the levy of turnover of Rs. 1,18,191 culled out from the D7 records, the Tribunal held that, ""having regard to the facts that the

entire transactions have been accounted for in the regular accounts, it cannot be added to the book turnover once again"". Thereagain, a lump sum

addition of Rs. 20,000 was added to the book turnover towards probable omissions and commissions to ""meet the ends of justice"". Since the levy

of tax have been refixed, they deleted the omission of Rs. 59,095 and therefore, the appellate authority was directed to give effect to the directions

of the Tribunal and suitably modify the turnover.

7. We do not think this order requires any interference when the Tribunal has considered in great detail all the facts involved in the reconciliation of

records and had dealt with the details carefully. The tax case (revision) is dismissed.

