(2015) 03 MAD CK 0464

In the Madras High Court

Case No : Tax Case (Revision) No. 21 of 2015

State of Tamil Nadu APPELLANT

Vs

Tvl. Olympic Cards Ltd. RESPONDENT

Date of Decision : 25-03-2015

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

Citation : (2015) 03 MAD CK 0464

Hon'ble Judges : R. Sudhakar, J;T. Raja, J

Bench : Division Bench

Advocate : Manoharan Sundaram, Additional Government Pleader, for the Appellant

Judgement

R. Sudhakar, J.

1. This Tax Case (Revision) is filed by the Revenue as against the order dated 24.11.2011 made in S.T.A. No. 157 of 2005 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai raising the following substantial questions of law:

"i) Whether in the facts and circumstances of the case, the Appellate Tribunal is correct in not following the decision of its coordinate Bench in STA 269/2004 dated 11.11.2011 insofar as it relates to appeal filed by the State wherein the very same Tribunal sustained the actual suppression and equal addition?

ii) Whether in the facts and circumstances of the case, the Appellate Tribunal is correct in modifying the penalty levied by the Assessing Authority under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959?"

2. The brief facts of the case are as follows:

"The respondent/assessee is dealers in wedding cards, greeting cards, visiting cards, screen printing inks etc. The assessee was assessed by the Assessing Officer on a total and taxable turnover of Rs. 11,30,63,703/- and Rs.

3,96,94,110/- respectively as against the reported total and taxable turnover of Rs. 9,01,62,365/- and 1,62,36,964 for the assessment year 2000-01 under the TNGST Act, 1959. The business place of the assessee and the branch offices located in Chennai and Coimbatore were inspected by the Enforcement Wing Officers on 7.5.2001. At the time of inspection, the inspecting officials had recovered bundles containing slips marked as A, B, C, D, E, G and recovered a bundle marked F from their sister concern of the assessee and the inspecting officials had also recovered an unmarked file from their branch office at Coimbatore and thereby the Assessing Officer arrived the actual sales suppression in the following manner:

Suppression taxable 8% Rs. 1,13,66,462/-

Suppression taxable 11% Rs. 99,206/-"

As a result, the taxable turnover of the assessee was determined including that of the suppressed turnover and the tax due after giving credit to whatever tax has been paid, as has been set out in the assessment order, in the following manner:

"The Taxable turnover determined is assessed at the following rates:

In addition to the above, he also levied penalty under Section 12(3)(b) of the TNGST Act, 1959 by taking into consideration the tax assessed and tax paid (Rs. 21,98,673/- - Rs. 12,78,402/-) and the difference of Rs. 9,20,271/- forms the basis for levy of penalty at 100%.

3. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Appellate Assistant Commissioner, who sustained the actual sales suppression to the tune of Rs. 8,51,582/- and deleted the remaining sales suppression to the tune of Rs. 1,06,06,086/- holding that most of the transactions found in the slips were accounted for in the accounts subsequent to inspection and the transactions contained in certain slips were related to exempted commodity. The Appellant Assistant Commissioner also deleted the equal time addition to the tune of Rs. 1,06,06,086/-, however, sustained the remaining equal time addition. Consequently, he modified the penalty to the extent of 50% of the tax due on the actual suppression sustained.

4. As against the order of the Appellate Assistant Commissioner, the assessee preferred an appeal before the Tribunal. The Tribunal after taking into consideration the slips recovered, deleted the entire equal time addition holding that there were no materials on record warranting equal addition for probable omission and there was no willful suppression to evade tax, however, the Tribunal sustained the order of the First Appellate Authority with regard to the levy of penalty at 50% holding as follows:

"As far as the order of the learned Appellate Assistant Commissioner (CT) in remaining the levy of penalty of Rs. 9,20,271/- under section 12(3)(b) of the TNGST Act 1959 with a specific direction to the assessing authority, we are of the considered view that if the relief granted portion as well as Explanatory clauses provided under section 12(3)(b) of the Act is considered, the difference between the tax assessed and tax paid by the respondents is well below 10% and thereby, the Appellate Assistant Commissioner (CT) had rightly directed the assessing authority to levy 50% on the balance of tax to be payable by the respondents and so, we find no reason to interfere with the order of the Appellate Assistant Commissioner (CT) in this regard also. In other words, the order of the appellate authority is upheld."

5. Aggrieved by the order of the Tribunal, the State is before us on the questions of law stated supra.

6. Learned Additional Government Pleader appearing for the Petitioner submits that the petitioner is not pressing the first question of law. Hence, the only question of law that requires to be considered in this revision is with regard to the modification of levy of penalty under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act by the Appellate Assistant Commissioner and confirmed by the Tribunal.

7. There is no dispute on facts by the Department. It is not the case of the Department that the suppression as determined by the Appellate Assistant Commissioner and confirmed by the Tribunal is erroneous. In such view of the matter, the penalty has to be automatically be modified to the percentage as has been provided under Section 12(3)(b) of the TNGST Act.

8. For better clarity, we extract below Section 12(3)(b) of the Tamil Nadu General Sales Tax Act:

"12. Procedure to be followed by the assessing authority -

(1)......

(2).....

(3) In addition to the tax assessed under Sub-section (1) or (2), the assessing authority shall, in the same order of assessment passed under Sub-section (1) or (2) or by a separate order, direct the dealer to pay by way of penalty, a sum -

(a).....

(b) which shall be, in the case of submission of incorrect or incomplete return -

(i) twenty-five per cent of the difference of the tax assessed and the tax paid as per the return, if the tax paid as per the return falls short of the tax assessed on final assessment by nor more than five per cent;

(i-a) fifty per cent of the difference of the tax assessed and the tax paid as per return, if the tax paid as per the return, falls short of the tax assessed on final assessment by more than five per cent but nor more than fifteen per cent;

(ii) seventy-five per cent of the difference of the tax assessed and the tax paid as per return, if the tax paid as per the return, falls short of the tax assessed on final assessment by more than fifteen per cent but nor more than twenty-five per cent;

(iii) one hundred per cent of the difference of the tax assessed and the tax paid as per return, if the tax paid as per the return, falls short of the tax assessed on final assessment by more than twenty-five per cent but nor more than fifty per cent;

(iv)....

(v)...."

9. In the instant case, we find that the difference tax assessed and the tax paid as per the return filed falls within the parameters of Section 12(3)(b) of the TNGST Act as has been determined by the Appellate Assistant Commissioner at less than 10%. Therefore, the reduction of penalty at 50% is in accordance with the said provision and the Tribunal has rightly confirmed the said levy.

10. In the light of the above, we find no reason to modify the order of the Tribunal. We find no question of law much less any question of law arises for consideration in this revision. Accordingly, this Tax Case (Revision) stands dismissed. No costs.