
(2009) 06 MAD CK 0257

In the Madras High Court

Case No : Tax Case (Revision) No. 21 of 2009

State of Tamil Nadu

APPELLANT

Vs

Vinayaka Engineering Works

RESPONDENT

Date of Decision : 11-06-2009

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(1), 12(2), 12(3)

Citation : (2011) 40 VST 502

Hon'ble Judges : F.M. Ibrahim Kalifulla, J;B. Rajendran, J

Bench : Division Bench

Advocate : Haja Naziruddin, Special Government Pleader T, for the Appellant;

Judgement

F.M. Ibrahim Kalifulla, J.—The State has come forward with this revision. Learned Special Government Pleader, in his submissions, contended that the order of the Tribunal is not sustainable on the legal position that it was not correct in having deleted the penalty levied u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as, "the Act") when turnover was available in the books of accounts. Learned Special Government Pleader also submitted that the levy of penalty up to the year 1992-93 was held valid in law in the light of the decision reported in the case of Appollo Saline Pharmaceuticals (P) Ltd. Vs. Commercial Tax Officer (FAC) and Others, .

2. Having considered the contention raised by the learned Special Government Pleader, we are not able to accept the same and we are not inclined to entertain this revision as we do not find any question of law to be determined. The assessment year with which we are concerned relates to 1992-93. The Respondent is a dealer in rolling shutters. The assessment for the said year was finally made on the total taxable turnover of Rs. 25,35,277. Before the assessing authority, the Respondent took the stand that its activity of supply of rolling shutters to its customers does not attract payment of tax inasmuch as the materials used for the rolling shutters at the site of the customers already suffered tax, though such goods had been moved to the site as rolling shutters.

It is however not in dispute that the Respondent reported its turnover for the relevant year without any default.

3. In the abovesaid background, the original authority while passing the impugned order of penalty dated December 29, 2000 assessed the tax liability and also proceeded to impose a penalty on the footing that the said assessment came to be made by treating the assessment as one of best judgment assessment. The Appellate Assistant Commissioner, before whom the appeal was taken by the Respondent having become unsuccessful, the Respondent approached the Tribunal and the Tribunal, by the order impugned in this revision dated March 4, 2004, has partly allowed the appeal by setting aside that part of the order levying penalty u/s 12(3) (b) of the TNG ST Act, which reads as follows:

12. (3) In addition to the tax assessed under Sub-Section (2), the assessing authority shall, in the same order of assessment passed under Sub-Section (2) 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 return, if the tax paid as per the return falls short of the tax assessed on final assessment by not more than five per cent;

(ia) 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 not more than fifteen per cent.

(ii) seventy-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 more than fifteen per cent but not 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 the final assessment by more than twenty-five per cent but not more than fifty per cent ;

(iv) one hundred and 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 the final assessment by more than fifty per cent, but not more than seventy-five per cent ;

(v) one hundred and fifty per cent of the difference of the assessed and the tax paid as per the return, if the tax paid as per the return, falls short of the tax assessed on the final assessment by more than seventy-five per cent.

4. By relying upon the decision in Appollo Saline Pharmaceuticals (P) Ltd. Vs. Commercial Tax Officer (FAC) and Others, to the effect that except for the period

between December 3, 1979 and May 27, 1993, TNGST could be levied only in a case where the assessment is either best judgment assessment or one u/s 12(1) of the Act, we would only hasten to add that the assessing authority is bound to specify that levy of penalty was warranted, as stipulated u/s 12(3) of the Act. When we refer to Section 12(3)(b) of the Act, we find that under the said Section the set of expression contained in Section 12(3) (b) makes it amply clear that only in the case of submission of incorrect or incomplete returns, the question of any assessment being made at the instance of the assessing authority for levying penalty would arise.

5. In the case on hand, a perusal of the order of the assessing authority dated December 29, 2000 does not disclose in any part of the order that the account particulars furnished by the Respondent were either incorrect or incomplete. On the other hand, the assessment of tax came to be made by accepting the accounts particulars furnished by the Respondent, while rejecting the stand of the Respondent that the business activities of the Respondent do not call for levy of any tax liability.

6. In such circumstances, we are convinced that the levy of penalty as imposed by the assessing authority and as confirmed by the first appellate authority was wholly improper and was not in conformity with the stipulations contained in Section 12(3)(b) of the Act. Consequently, the order of the Tribunal in having interfered with the same is perfectly justified. Therefore, there being no question of law involved in this revision the same is dismissed.