(2011) 11 MAD CK 0209

In the Madras High Court

Case No : Tax Case Revision No. 150 of 2011

State of Tamil Nadu APPELLANT

Vs

V.S.S. and Company RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Citation : (2013) 60 VST 289

Hon'ble Judges : P.P.S. Janarthanaraja, J;P. Jyothimani, J

Bench : Division Bench

Advocate : S. Kanmani Annamalai, Government Advocate Tax, for the Appellant; V.S. Kesavan, for the Respondent

Judgement

P. Jyothimani, J.—The Revenue has filed the present revision against the order of the Sales Tax Appellate Tribunal dated June 11, 2002 in CTSA No. 377 of 2001 raising the following questions of law:

(1) Whether, in the facts and circumstances of the case, the Appellate Tribunal is right in law in deleting the estimation based upon the electricity consumption even though the assessee has not proved with date for the reasons for excess consumption?

(2) Whether, in the facts and circumstances of the case, the Appellate Tribunal is right in law in disallowing the local commission on the sale of oil?

(3) Whether, in the facts and circumstances of the case, the Appellate Tribunal had independently arrived at any finding with regard to estimation based on electricity consumption and disallowance of the local commission as sales?

The assessee, manufacture of groundnut oil and oil-cake, has declared a total and taxable turnover of Rs. 85,80,333.54 and Rs. 53,99,689.30, respectively, in the monthly returns for the year 1994-95 under the TNGST Act. On finding that there has been incorrect maintenance of accounts and there has been a shortage of groundnut kernel, which according to the assessing officer indicates that the dealer crushed kernel without recording in the accounts and sold resultant oil and oil-cake outside the accounts and therefore, the claim of exemption made by the assessee on account of consignment sales, was disallowed. The tax was assessed based on the estimate, purely on the electricity consumption made by the assessee. A reference to the assessment order passed by the assessing officer shows that the assessing officer has taken into account the electricity consumption in S.C. No. 425 and on the basis of the statistical data and consumption of electricity, had arrived at the conclusion that there has been suppression and imposed tax and penalty. The reason assigned by the assessing officer is as follows:

The mill and machinery is in the name of V.S. Subramani, who is the managing partner of this concern. In this concern entire crushing is done with the above mills by paying cooly charges. As no other persons are crushing in the above mill, the entire power consumption is taken as their own consumption for manufacturing of oil and oil cake. S.C. Number is 425. Normally as per standard statistical data consumption of electricity is 5.8 units for crushing of 100 kgs. of kernel. As per number card the dealers have consumed 16056 units as under:

For the above consumption of electricity, the crushing would be 2,76,828 kgs. of kernel.

2. It was against the said order of the assessing officer, the assessee had filed an appeal before the Appellate Assistant Commissioner (CT) and the same was allowed by the Appellate Assistant Commissioner on the ground that the decision, which was solely based on the electricity consumption, cannot be sustained for the reason that the consumption can be for supply of water for agricultural purposes as well as drinking purposes and there cannot be any uniformity in making such assessment. It is in that view of the matter, the appellate authority has allowed the appeal setting aside the order of the assessing officer. It was against the said order, the Revenue has filed an appeal before the Tribunal. The Tribunal has dismissed the appeal confirming the order of the Appellate Assistant Commissioner upholding the abovesaid reason, against which, the Revenue has filed the present revision on the abovesaid questions of law. On factual assertion as stated above, inasmuch as the assessing officer has taken into consideration only the electricity consumption charges for imposing of tax as well as penalty, we are of the view that the impugned order passed by the Tribunal required no interference. It is seen that the appellate authority has in fact gone into the factual matrix and found that the assessing authority has rejected the said local commission on the ground that the agreement was not produced at the time of inspection. However, on verifying the file, which shows the particulars relating to the opening stock and the dispatch, reversed the order of the assessing officer, inasmuch as this is also a factual finding, all the issues in this appeal relate to factual aspects and no question of law arises for consideration by this court in this revision. Accordingly, the revision stands dismissed. No costs.

