(2013) 06 MAD CK 0025

In the Madras High Court

Case No : Tax Case (Revision) No. 292 of 2011

Swarna Steels APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12A

Citation : (2013) 06 MAD CK 0025

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : K. Soundararajan, for the Appellant; V. Haribabu Addl. Govt. Pleader (Tax), for the Respondent

Judgement

Chitra Venkataraman, J.—The assessee is on revision as against the order of the Sales Tax Appellate Tribunal relating to the assessment

year 2001-02 raising the following questions of law:-

1. Whether the Appellate Tribunal discussed the issue in detail rather than reproducing the D3 inspection report proposal inspite of the fact that the

Appellate Tribunal is the final fact finding authority?

2. Whether the findings of the Appellate Tribunal in following the extracting the D3 proposal is in accordance with the principles laid down by this

Court in the judgment reported in Madras Granites (P) Ltd. Vs. Commercial Tax Officer and Another, ?

3. Whether the Appellate Tribunal had considered the provisions of Section 12-A of the TNGST Act and the corresponding Rule 18-C of the

Rules which prescribes various factors to be considered by the authorities while making assessment u/s 12-A of the TNGST Act ?

The assessee herein is a manufacturer of Electrical Water Heater. The place of business of the assessee was inspected on 08.01.2002. They

verified the gross profit, at which the assessee had sold the manufactured Water Heaters to the sister concern. The sister concern''s place of

business was also inspected on the very same day. The comparison of the gross profit charged show that the sister concern had 145% gross profit

on its sales, which was much more than the gross profit charged by the assessee. In other words, the price of the item sold by the sister concern

being the second sale, thus exempted from liability was far more than the price on the first sale, thereby the assessee showed less taxable turnover

for the purpose of assessment; in the circumstances, adding gross profit at 25% and thus, sales suppression was estimated at Rs. 8,05,303/-. In

the context of this, penalty was also proposed. After hearing the assessee, the assessment was confirmed.

2. Aggrieved by this, the assessee went on appeal before the First Appellate Authority, wherein, the Appellate Assistant Commissioner, pointed

out to the decision of this Court reported in the case of K. Ramalingam and company reported in 86 STC 475 and held that for making revision of

assessment u/s 12-A of the Tamil Nadu General Sales Tax Act, the Revenue has to conduct certain concrete enquiry so as to establish sales

suppression by resorting to under invoicing as stipulated under Rule 18-C of the TNGST Rules. The Assessing Officer also was to examine to find

out whether there is difference in the price charged on the sales of the same goods to different customers and the price prevailing in the market.

After granting necessary allowances towards the variation in prices and normal profit margin, the assessing authority was to arrive at the market

price that should have been charged by the dealer and levy tax on the taxable turnover. The First Appellate Authority further pointed out that the

Assessing Officer simply revised the assessment based on the inspection report and the Assessing Officer had not conducted any investigation to

find out whether there was any attempt on the part of the assessee to evade payment of tax. In the absence of such materials, on the mere score

that the second sale was at a profit of 145% more than the first sale, the assessment could not be made u/s 12-A of the Act.

3. It is a matter of relevance to point out that the assessee refuted the allegation that the second seller charged profit at more than 145% on the first

sale. The case of the assessee is that its sister concern earned 20.79% of gross profit as per the Trading Account for the year ended 31.03.2002.

4. Leaving aside this, the First Appellate Authority held that in the absence of any enquiry made as stipulated under Rule 18-C of the TNGST

Rules, there was no material, by which the Assessing authority could make any addition to the extent of Rs. 8,05,303/-.

5. As regards the penalty, the First Appellate Authority sustained the penalty of Rs. 33,394/-, with which we are not concerned for the present

case.

6. Aggrieved by the order of the First Appellate Authority, the assessee went on appeal before the Sales Tax Appellate Tribunal, which confirmed

the assessment, thereby, set aside the order of the Appellate Assistant Commissioner.

7. The Sales Tax Appellate Tribunal pointed out that reading of the D3 proposal prepared by the Enforcement Wing Authorities would reveal that

the Enforcement Wing Authorities had determined the sale suppression of Rs. 8,05,303/-, in the circumstances, the order of the Assessing Officer

has to be sustained. Aggrieved by this, the present Tax Case Revision. We do not agree with the line of reasoning of the order of the Sales Tax

Appellate Tribunal. As seen from the order of assessment, the addition of Rs. 8,05,303/- came for consideration only on account of the Inspection

Wing Official noting huge Gross Profit difference between the first sale and the second sale. It is no doubt true that the sister concern had effected

second sales making high gross profit. Whatever be the merits or demerits on the higher profit, as rightly observed by the First Appellate Authority,

for the purpose of assessment u/s 12-A of the Act, the Assessing Officer has to cause enquiry by following the procedures prescribed under Rule

18-C of the Rules. In the absence of any such enquiry, the mere ground that the sister concern had charged higher gross profit by itself could not

be a legal ground for making addition of Rs. 8,05,303/-. One can see that there is absolutely no exercise on this aspect and that the Assessing

Officer had merely adopted the inspection results. In the absence of any enquiry done by the Assessing Officer as required under Rule 18-C of the

Rules, we have no hesitation in accepting the case of the assessee that a mere difference in profit between the second sale and the first sale would lead to a statutory best judgment u/s 12-A of the Act. Accordingly, the order of the Sales Tax Appellate Tribunal is set aside. The Tax Case

Revision stands allowed. No costs.

