(2009) 11 MAD CK 0021

In the Madras High Court

Case No : Tax Case (Revision) No. 2053 of 2006

T.S. Metals APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Citation : (2010) 28 VST 381

Hon'ble Judges : R. Banumathi, J;P.P.S. Janarthana Raja, J

Bench : Division Bench

Advocate : V. Srikanth, for the Appellant;

Judgement

R. Banumathi, J.—Being aggrieved by the order of the Sales Tax Appellate Tribunal (STAT) in TMP. No. 558 of 1995 in TA. 385 of

1995, the assessee is before us. The petitioners had reported a total and taxable turnover of Rs. 29,32,208 claiming the entire turnover as exempt

by way of second sales in the returns filed for the year 1992-93. During the course of inspection on February 1, 1993, a stock variation of Rs.

6,176 was noticed. Besides 3 slips were recovered. The actual suppression was fixed at Rs. 2,57,478 and he made an equal addition towards

probable omission and arrived at the estimated suppression of Rs. 5,14,956. During the course of pendency of the abovesaid proceedings, the

assessing authority had issued a revised notice on November 8, 1993 pointing out that the petitioners had purchased goods from Kalaivani Metals

of Madurai for Rs. 4,36,344.80 and was of the view that no such dealer was in existence and consequently proposed to disallow the claim of

exemption. The petitioners had filed their objections. The assessing authority confirmed the proposals stated in the show-cause notice.

2. On appeal, the Appellate Assistant Commissioner (AAC) had modified the order. As regards slip No. 1, the Appellate Assistant Commissioner

had held that while the actual suppression of Rs. 1,440 was found to be in existence and duly admitted there are no grounds to estimate a further

addition of 96 times. He sustained the suppression by way of slip No. 2. As regards slip No. 3, the AAC relied on the various documentary

evidence filed by the petitioners to conclude that a sum of Rs. 1,00,000 was only a loan. He had also deleted the stock discrepancy of Rs. 6,176.

As regards the alleged purchases from Kalaivani Metals, the Appellate Assistant Commissioner having regard to the various documentary evidence

filed before him held that the Kalaivani Metals was only an existing dealer. The assessee went in appeal before the STAT. In the appeal, the

Revenue filed the enhancement petition praying for restoration of the order of the assessing authority.

3. In the appeal, with regard to slip No. 1, the STAT confirmed the finding of the assessing authority. Insofar as the estimated addition of Rs.

1,38,240, the Tribunal held that 50 per cent thereof amounting to Rs. 69,140 could be apportioned as relatable to taxable goods and the balance

of Rs. 69,140 treated as non-taxable sales. The Tribunal had also made an equal addition to the actual suppression of Rs. 1,440.

4. Insofar as slip No. 3, the Tribunal set aside order of the AAC and restored the actual suppression of Rs. 1,10,000. Penalty at 50 per cent of the

taxes was also ordered to be restored to the extent of Rs. 3,300. Insofar as purchase from Kalaivani Metals, the Tribunal remitted the matter back

to the assessing authority for denovo consideration.

5. Challenging the order of the STAT, the assessee has filed this revision. In this revision, the following substantial questions of law are raised for

consideration:

1. Whether, in the facts and circumstances of the case and in law, the Sales Tax Tribunal was justified in setting aside the order of the Appellate

Assistant Commissioner without finding any illegality in the order of the Appellate Assistant Commissioner partly allowing the appeal ?

2. Whether, in the facts and circumstances of the case and in law, the Sales Tax Tribunal was justified in treating the loan transaction as a sale also

on the ground that the petitioners are not financiers ?

3. Whether, in the facts and circumstances of the case and in law, the Sales Tax Tribunal ought to have held that the levy of penalty was unjustified

and illegal ?

6. Question No. 1-Slip No. 1 : The AAC held that there was only actual suppression of Rs. 1,440 contained in serial No. 97 dated January 29,

1993 with the name of the party as M/s. Lakshmi Steels. The total value of the slip was Rs. 1,440. The assessee has explained that it related to

Vinoth, ex-worker of the assessee and that it was not connected with their business transaction. The assessing officer assumed that the slip related

to the business of the appellants and estimated the transactions for bill Nos. 1 to 96 and estimated the turnover at Rs. 1,39,680. As the estimation

for the alleged bills from Serial Nos. 1 to 96 to the tune of Rs. 1,39,680 was only guesswork, the AAC set aside the assessment of the turnover.

But the AAC sustained the assessment on Rs. 1,440 being the value noted in Slip No. 97. In a best judgment assessment, guesswork is inevitable

but it should be a reasonable one. The AAC was justified in finding that the estimated assessment from serial Nos. 1 to 96 was unreasonable. In

our considered view, the Tribunal was not justified in interfering with the order of the AAC in respect of slip No. 1 insofar as the estimated

assessment.

7. Question No. 4-Slip No. 3 : A bank challan for Rs. 1,00,000 was given as loan to M/s. Reliance Electricals, Coimbatore. Even though a

number of documents were produced to show that it was only a loan transaction, the assessing officer held that the demand draft related to

business transactions and treated as purchase suppression. Before the AAC, number of documents were produced- (i) Letter from M/s. Reliance

Electricals dated January 24, 1993 for a loan of Rs. 1,00,000, (ii) bank challan dated January 29, 1993 for taking demand draft for Rs. 1,00,000

by the assessee noting the payee name as Reliance Electricals, (iii) copy of form No. 16B filed by M/s. Reliance Electricals before TDS circle,

Coimbatore showing payment of interest to the assessee T. S. Metals, (iv) statement of accounts of M/s. Reliance Electricals for 1992-93 wherein

loan amount of Rs. 1,00,000 received from the assessee was reflected.

8. Upon analysis of the above documents, the AAC held that the transaction was not related to a business transaction, but slip No. 3 relates to

only a loan transaction. In the appeal, the Tribunal did not keep in view the number of documents filed by the assessee. But the STAT raised

doubts about the documents and observed that money was advanced from the working capital of the business of the assessee. The STAT has also

expressed its doubts about the transaction on the ground that the assessee had got a demand draft and not a bank''s pay order from its bank,

Union Bank of India.

9. In our considered view, the Tribunal did not keep in view the documents produced by the assessee. The Tribunal was not right in saying that the

amount could not have been taken from business. The assessee is a dealer in buying and selling of utensils having daily collections. Therefore, it

cannot be said that the amount so paid to M/s. Reliance Electricals was a colourable device to evade purchase transaction. When the findings of

the AAC were based on documents, the STAT was not justified in raising doubts and interfering with the findings of the AAC. In such view of the

matter, the order of the STAT in respect of slip No. 3 cannot be sustained.

10. Insofar as the purchase from M/s. Kalaivani Metals, the dispute as to addition of Rs. 4,95,816 was remitted back to the assessing authority for

de novo disposal. While deleting the addition, the AAC observed that M/s. Kalaivani Metals has renewed its registration from time to time and

therefore, it cannot be said to be a bogus dealer. Before the STAT, in his written arguments the State Representative raised number of points

contending that door No. 26D was a residential house and there was no business activity and M/s. Kalaivani Metals had no connection to that

place. In the written arguments the State Representative had also raised various points to substantiate the contention of the Revenue that M/s.

Kalaivani Metals is a bogus dealer. Having regard to the various points raised before the STAT to substantiate the plea that M/s. Kalaivani

Traders is non-existent, the Tribunal remitted the matter back to the assessing authority. Having regard to the various contentions raised by the

State Representative, we do not find any reason to interfere with the finding of the Tribunal on this score.

11. In the result, this tax revision is partly allowed. Insofar as slip Nos. 1 and 3, the order of the STAT is set aside. Insofar as addition of Rs.

4,95,816 in respect of transaction with M/s. Kalaivani Metals, the order of the

STAT remitting the matter back to the assessing authority is

confirmed. The assessing authority shall consider the matter afresh after affording sufficient opportunity to the assessee and also to the Revenue and

pass orders in accordance with law within a period of three months from the date of receipt of copy of this order.