(2009) 03 MAD CK 0074

In the Madras High Court

Case No : T.C. (A) . No. 1750 of 2006

Tvl. R.K.P. Traders APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 24(3)

Citation : (2010) 28 VST 346

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : S. Sridharan, for the Appellant; Haja Nasiruddin, Spl. Govt. Pleader (Tax), for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—This is a tax case appeal filed by the assessee against the order of the Joint Commissioner dated 06.09.2001,

made in Suo Motu Revision No. 604 of 1996.

2. The assessee was assessed on a total and taxable turnover of Rs. 9,71,182/- and Rs. 1,37,777/- respectively for the assessment year 1994-95

under the Tamil Nadu General Sales Tax Act, 1959. The Assessing Officer while checking the accounts of the assessee found that there was an

inspection on 24.11.1994 and in that inspection, it was found that there were stock differences and certain silk cotton purchases, which are

taxable, were not reported as a taxable turnover. Further, the dealer did not maintain separate accounts for purchases and sales and stock

accounts in respect of second sales and subsequent sales in respect of steel almirahs and plastic furniture. In view of the above defects, the

Assessing Officer rejected the accounts of the assessee and resorted to a best judgment and determined the taxable turnover at Rs. 1,37,777/-

besides he had also levied a penalty of Rs. 17,001/- u/s 12(3)(b) of the Act. Aggrieved by that order, the assessee preferred an appeal before the

Appellate Assistant Commissioner, Thanjavur, who modified the assessment order by observing that there was no reason for making further two

times addition as there was no omission of purchases or sales were found. He also deleted the penalty imposed by the Assessing Officer. This

order was regarded as illegal and prejudicial to the interest of the Revenue by the Joint commissioner, who issued a show cause notice and taken

up the matter on Suo Motu Revision.

3. With regard to the levy of penalty, the Joint Commissioner held that if there is any difference between the tax assessed and tax paid, penalty has

to be paid as per the provisions of the Act and the reasoning of the Appellate Assistant Commissioner that it is sufficient to levy penal interest u/s

24(3) of the Act is not correct, as Section 24(3) penal interest cannot be equated with Section 12(3)(b) penalty. In respect of equal addition, the

Joint Commissioner held that at the time of inspection on 24.11.1994, there were stock differences and the goods, which are taxable, were not

brought on record and tax has not been paid and the estimated sales suppression was arrived at Rs. 27,126/- in respect of furniture and Rs.

17,820/- in respect of cotton beds, which factum has been lost sight of by the Appellate Assistant Commissioner. On the face of the defects

pointed out as above and for not maintaining the proper books of accounts, the Assessing Officer had rightly rejected the accounts and he had

estimated the sales suppression by two times. If two times addition is unwarranted, at least by equal addition would have been sustained by the

Appellate Assistant Commissioner. On that ground, equal addition has been sustained.

4. Learned Counsel appearing for the assessee submitted that the assessee had paid tax even before the assessment was completed. That was not

taken note of by the Joint Commissioner, who held that the penalty u/s 12(3)(b) is warranted in this case. In respect of equal addition, learned

Counsel appearing for the assessee submitted that equal addition cannot be disputed before this Court.

5. In respect of penalty u/s 12(3)(b) of the Act, it is clear from the assessment

order that the tax due is Rs. 12,604/-, surcharge due is Rs. 1,787/-

and the total tax is Rs. 14,391/-. The tax paid as per the returns is Rs. 3,057/- and the difference is Rs. 11,334/-, which is over and above 50% of

the tax determined and tax paid. The statute provided imposition of penalty at 150% if the difference is more than 75%. That is what the Assessing

Officer has done, which has been confirmed by the Joint Commissioner in Suo Motu Revision.

6. There is no illegality in the order of the Joint Commissioner in restoring the order of the Assessing Officer, which is as per the requirement of the

statutory provision u/s 12(3)(b), which provides that if the difference of the tax assessed and tax paid as per the return falls short of the tax

assessed on the final assessment by more than 75%, the penalty imposable shall be 150%. In this case also, the difference between the tax

assessed and the tax paid falls short of 75% and as such, the imposition of penalty at 150% is the statutory requirement. Hence, the appeal is

dismissed, as devoid of merits. No costs.