

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Tax Case (Revision) No.2255 of 2008

The State of Tamil Nadu
represented by the Deputy Commissioner
of Commercial Taxes, Madurai Division,
Madurai - 625 020. .. Petitioner

versus

Tvl. P.S.Thangapandian
159/7, Kamarajar Salai,
Madurai - 625 009. .. Respondent

PRAYER: PETITION filed under Section 38 of the Tamil Nadu General Sales Tax Act before the Tamil Nadu Taxation Special Tribunal as against the order dated 16.08.1991 made in Madurai Tribunal Miscellaneous Petition No.85 of 1991 in Madurai Tribunal Appeal No.649 of 1990 on the file of the Sales Tax Appellate Tribunal (Additional Bench), Madurai. After the abolition of the Tribunal, the matter has been transferred to this Court and renumbered against the order of the Commercial Tax Officer, Kamarajar Salai, Circle Madurai, dated 18.11.89 made in Assessment No.452113/88-89 against the order of the Appellate Assistant Commissioner (CT), Madurai (South), dated 13.7.1990 made in Appeal No. and year 693/89.

For Petitioner : Mr.Manoharan Sundram, AGP (T)

For Respondent : No appearance

O R D E R

(Made by R.SUDHAKAR, J.)

This Tax Case (Revision) is filed by the State as against the order dated 16.08.1991 made in Madurai Tribunal Miscellaneous Petition No.85 of 1991 in Madurai Tribunal Appeal No.649 of 1990 on the file of the Sales Tax Appellate Tribunal (Additional Bench), Madurai.

2. The brief facts of the case are as follows:

The assessment in this case relates to the assessment year 1988-89. The assessee is a dealer in stainless steel vessels. During inspection of the business place of the assessee by the Enforcement Wing, Madurai on 17.11.1988, it was found that the assessee had no production-cum-stock account in Form XXX. Hence on verification of the actual stock, it was found that the assessee had excess stock of stainless steel semi-finished, finished and scraps. Hence, the Assessing Officer came to the conclusion that the assessee had purchases of sheets from unidentifiable sources and evaluated the suppression on the basis of excess stock of vessels and levied tax under Section 7A of the Tamil Nadu General Sales Tax Act. Consequently, the Assessing Officer also made additions and levied penalty. Aggrieved by the same, the assessee preferred an appeal before the Appellate Assistant Commissioner, who granted partial relief with regard to the turnover as well as to the penalty. As against the said order of the first Appellate Authority, the assessee as well as the State filed an appeal and enhancement petition respectively before the Tribunal. The Tribunal after perusing the records and examining the contentions raised on both sides, granted partial relief to the assessee, thereby dismissed the enhancement petition filed by the State holding as follows:

"8. Point No.ii. We find from the returns filed by the appellant that he has been disclosing the turnover of stainless steel vessels only. We therefore consider that the stock variations of sheets fixed by the Assessing Officer at 4% based on the excess stock of stainless steel sheets is not called for as we consider that the excess stock was due to various reasons and 7-A liability will attract only if there are purchases from unregistered sources. We find from the assessment records at page:122 of the assessment file where the check notes of accounts has been filed. The Assessing Officer has clearly recorded purchases of stainless steel sheets sircles, wires have been effected from the registered dealer within the State of Tamil Nadu and all the purchases are supported by Bills. We therefore consider the existence of excess stock cannot be a basis to conclude that there were purchases without bills from unregistered dealers. We therefore consider that the excess stock cannot be utilised to levy tax under Section :7-A. We are unable to sustain the levy of tax on a turnover of Rs.19,438/- at 4%. Therefore we delete the turnover of Rs.19,438/- at 4%.

9. Point No:iii. Penalty is leviable on proved suppressions. The inspection on 17.11.88 have revealed only stock variations which by themselves do not establish proved suppressions. Imposition of penalty is not automatic in view of 52 STC 279 (Thangadurai). Proved

suppression is required to impose penalty in view of 42 STC 121 (Kathiran Yarn stores). Besides penalty is not leviable on stock variations in view of TC:1191/79 (K.N.Viswanathan Chettiar and Son, Karur). We therefore cancel the penalty of Rs.1,929/- sustained by the Appellate Assistant Commissioner. "

3. Aggrieved by the said order of the Tribunal, the Revenue is before this Court.

4. Heard learned Additional Government Pleader appearing for the petitioner and perused the materials placed before this Court. None appears for the respondent.

5. It is seen from the order of the Tribunal that the Tribunal on examination of assessment records, wherein it was stated that the assessee had purchased the goods from the registered dealer within the State of Tamil Nadu, came to the conclusion that the existence of the excess stock could not be the basis to levy tax under Section 7-A of the Tamil Nadu General Sales Tax Act. The Tribunal also held that since the Department had not proved the suppression, penalty should not be automatic and hence cancelled the penalty.

6. Being pure question of fact, we are not inclined to interfere with the order of the Tribunal. Accordingly, this Tax Case (Revision) stands dismissed. No costs.

sl

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai.
2. The Commercial Tax Officer, Kamarajar Salai, Circle Madurai.
3. The Appellate Assistant Commissioner (CT) Madurai (South)

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