BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.10.2019
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI
T.C.[MD]No.35 of 2019

The State of Tamil Nadu,
Represented by the
Deputy Commissioner (CT),
Madurai Division,
Madurai. : Petitioner

Vs.

Tvl. Kamuthi Chemicals,
Kamuthi. : Respondent

PRAYER: Tax Case Revision is filed under Section 38 of the TNGST Act, 1959, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (AB) Madurai, dated 15.12.2003, in Madurai Tribunal Appeal M.T.A.Nos.220, 221 & 222/2001.

For Petitioner : Mr.A.K.Baskara Pandian
Special Government Pleader
For Respondent : No Appearance

O R D E R
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[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing on behalf of the petitioner.

2.This Tax case revision filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959, [hereinafter referred to as 'the Act'] is directed against the order dated 15.12.2003, passed by the Tamil Nadu Sales Tax Appellate Tribunal (AB) Madurai, in M.T.A.Nos.220, 221 & 222/2001.

3.The respondent dealer filed the appeal before the Tribunal challenging the order passed by the First Appellate authority confirming the revision of assessment made by the assessing officer under the provisions of the the Act. The Tribunal framed two questions for consideration which are as follows:

(i) Whether the revision of assessment made on the turn over for the assessment years 1989 - 1990, 1990 - 19991, 1991 - 1992, is sustainable or not?

(ii) Whether the penalty imposed is correct?

4.After going through the entire records, the Tribunal on facts found that everything has been concluded only on assumption and presumption. Further, the Tribunal pointed out that even though, there is no proof for the quality of finished goods, at the same time the Tribunal found that there is no recorded evidence to the fact that the dealer has manufactured paraffin wax and sold outside the accounts. Further, the Tribunal pointed out that lower authorities failed to establish that the dealer had incurred manufacturing expenses as per the records. No detailed enquiry has been conducted to prove that the dealer has manufactured paraffin wax outside the accounts. Therefore, it was held that the revision of assessment was without any record and not sustainable. Further, with regard to the levy of penalty, it was pointed out that to reopen an assessment under Section 16(1) of the Act, there should be clear proof for escapement of turnover which is being absent in the dealer's case. The levy of penalty was held to be not sustainable.

5.We find that the order passed by the Tribunal is a well reasoned order and the entire matter revolves on facts and no question of law arises for consideration in this tax case.

6.Accordingly, this Tax Case Revision is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (writ)

// True Copy //

Sub Assistant Registrar(CS)

MR

To

The Deputy Commissioner (CT),
State of Tamil Nadu,
Madurai Division,
Madurai.

ORDER MADE IN
T.C.[MD]No.35 of 2019
25.10.2019

VB(04.12.2019) 2P 2C