

(2009) 12 MAD CK 0126**Madras High Court****Case No:** Tax Case (Appeal) No. 1870 of 2008

Tvl. Growell Pharmaceuticals

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision: Dec. 16, 2009**Acts Referred:**

- Tamil Nadu General Sales Tax Act, 1959 - Section 12, 12(1), 12(2), 12(3), 12(3)(A)

Hon'ble Judges: M.M. Sundresh, J; K. Raviraja Pandian, J**Bench:** Division Bench**Advocate:** K. Ramagopal, for the Appellant; Haja Nazirudeen, Spl. G.P., for the Respondent**Final Decision:** Allowed

Judgement

K. Raviraja Pandian, J.

This is an appeal filed against the order of the Joint Commissioner (Commercial Taxes) suo motu revision, Office of the Special Commissioner and Commissioner of Commercial Taxes, Chepauk, Chennai- 5 dated 22.6.1999 and passed in S.M.R. No. 619 of 1998, whereby the Joint Commissioner levied penalty u/s 12(3) of the Tamilnadu General Sales Tax Act in respect of assessment made u/s 12(2).

2. For the assessment year 1993-94, the petitioner was assessed to tax on a taxable turnover of Rs. 2,33,063/- under T.N.G.S.T. Act. The books of accounts of the appellant were verified and accepted by the assessing officer, however levied penalty in a sum of Rs. 20,976/- u/s 12(3)(A) of the Act on the tax, surcharge and additional surcharge due of the taxable turnover of Rs. 2,33,063/- which has not been declared to the Department. The appellant preferred an appeal before the Appellate Assistant Commissioner, who, while confirming the levy of tax, deleted the penalty on the premise that the turnover reflected in the books of accounts has been accepted by the assessing officer and there was no best judgment assessment. The Joint Commissioner by exercising power u/s 34 of the Act has taken up the

matter suo motu and set aside the order of the Appellate Assistant Commissioner in respect of deletion of the levy of penalty and restored the order of assessment. The correctness of the same is now put in issue in this appeal before us.

3. We have heard the argument of the learned Counsel on either side and perused the materials on record.

4. Learned Counsel appearing on either side on consensus submitted that the issue involved in this appeal is covered by a Division Bench judgment of this Court in the case of Appollo Saline Pharmaceuticals (P) Ltd. v. Commercial Tax Officer (FAC) and Ors. reported in (2002) 125 STC 505, wherein it was held thus:

...7. Though other Sub-sections of Section 12 were amended by the State Legislature subsequent to the date of the judgment in the case of [The State of Madras Vs. S.G. Jayaraj Nadar and Sons](#), Sections 12(1) and 12(2) have remained in the same form. The legislative intention therefore, except during the period December 3, 1979 to May 27, 1993 and on and after April 1, 1996 must be taken to be to, permit the levy of penalty only in case where the assessment is a best judgement assessment made on an estimate and not by relying solely on the accounts furnished by the assessee in the prescribed return. On and after April 1, 1996 an explanation has been added below Section 12(3) which requires the turnover relating to the tax assessed on the basis of the accounts of the assessee, to be disregarded, while determining the turnover on which the penalty is to be levied u/s 12(3).

8. The assessments for the assessment years 1993-94 and 1994-95 which were assessments made on the basis of the accounts, and not based on any other material and were not estimates, have therefore, to be regarded as assessments made u/s 12(1) to which the penal provisions of Section 12(3) are not attracted. The levy of penalty for those two assessment years is set aside....

5. In the light of the above judgment, the order of the Joint Commissioner restoring the penalty cannot be legally sustainable and it has to be set aside and the same is set aside and the appeal is allowed.