

**(2009) 12 MAD CK 0185**

**Madras High Court**

**Case No:** Writ Petition No. 20333 of 2000

Bengal Chemicolour Co.

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

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**Date of Decision:** Dec. 3, 2009

**Acts Referred:**

- Central Sales Tax Act, 1956 - Section 9(2A)
- Tamil Nadu General Sales Tax Act, 1959 - Section 12, 12(1), 12(2), 12(3)

**Citation:** (2010) 28 VST 393

**Hon'ble Judges:** M.M. Sundresh, J; K. Raviraja Pandian, J

**Bench:** Division Bench

**Advocate:** P. Rajkumar, for the Appellant; Raja Nazirudeen, Special Government Pleader, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

K. Raviraja Pandian, J.

The writ petition is filed by the petitioner against the order of the Sales Tax Appellate Tribunal dated in S.T.A. No. 107 of 1999 dated July 10, 2000 restoring penalty u/s 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 read with Section 9(2A) of the Central Sales Tax Act, 1956.

2. When the matter is taken up for orders, the counsel for the Department as well as the counsel for the assessee submitted that the issue has been covered by the Division Bench of this Court in the case of Appollo Saline Pharmaceuticals (P) Limited v. Commercial Tax Officer reported in [2002] 125 STC 505 in favour of the assessee to the effect that the penalty levied u/s 12(3)(b) of the TNGST Act read with Section 9(2) of the CST Act cannot be levied in respect of the assessment made u/s 12(1) of the TNGST Act.

3. In the present case, the penalty has been levied only in respect of the assessment made u/s 12(1) of the TNGST Act against the statutory provision as well as the law

laid down by this Court in the abovesaid judgment, wherein it was held thus (at page 508 of 125 STC):

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 judgment 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.
4. Hence, following the judgment referred to above, we are of the view that the order of the Tribunal levying penalty is not in consonance with the statutory provision as well as the law declared by this Court in the above- said judgment. Hence, the writ petition is allowed. No costs.