

(2010) 01 MAD CK 0159

Madras High Court

Case No: T.C. (R) No. 2057 of 2006

S.R.S. Industries

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision: Jan. 6, 2010**Acts Referred:**

- Tamil Nadu General Sales Tax Act, 1959 - Section 12(3), 16

Citation: (2011) 42 VST 166**Hon'ble Judges:** P.P.S. Janarthana Raja, J; D. Murugesan, J**Bench:** Division Bench**Advocate:** V. Sundareswaran for R.D. Ganesan, for the Appellant; Haja Naziruddin, Special Government Pleader (Taxes), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.P.S. Janarthana Raja, J.

This tax case revision is transferred from the Special Tribunal after its abolition as per Section 3 of the Special Tribunal Repealing Act.

2. The Assessee is a small-scale industry undertaking supply of various items like sanitary goods, cement information board, cement bench, bleaching powder, licence plate, phenyle, electrical goods, hand pumpsets, PVC pipes, etc., to Panchayat Unions and other Government local bodies. The assessment year is 1986-87. The Petitioner has been originally assessed on a total taxable turnover of Rs. 1,90,945. Subsequently, the Petitioner's business place was inspected by the officer of the enforcement wing on August 5, 1989 and the assessing officer revised the order u/s 16 of the TNGST Act and determined the total turnover at Rs. 3,76,211. While completing the assessment, the assessing officer made addition of Rs. 1,85,266 and also levied penalty of Rs. 8,244 u/s 12(3) of the TNGST Act. Aggrieved by that order, the Assessee filed an appeal before the Appellate Assistant Commissioner, Madurai. The Appellate Assistant Commissioner dismissed the

appeal and confirmed the order of assessment. As against the said order, the Assessee has filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal, Madurai and the Tribunal has dismissed the appeal confirming the order of the lower authorities. Aggrieved against the said order, the Petitioner filed an appeal before the Tamil Nadu Taxation Special Tribunal, Madras and after abolition of the same, it has now been transferred to this Court and renumbered as Tax Case Revision No. 2057 of 2006.

3. The revision was admitted on November 12, 2009 on the following substantial questions of law:

(1) Whether the Appellate Tribunal was correct in confirming the assessment relating to undated slip No. 25 which does not involve any sale of goods ?

(2) Whether the Appellate Tribunal was correct in confirming the equal addition towards probable and not in the revision of assessment ?

(3) Whether the Appellate Tribunal was correct in confirming the penalty more particularly in a revision of assessment u/s 16(2) in relation to surcharge ?

4. The learned Counsel appearing for the Petitioner-Assessee submitted that the Tribunal ought not to have confirmed the addition, the equal addition and levied penalty u/s 12(3) of the Act. He further submitted that the Tribunal ought to have appreciated all the transactions reflected in the books of account and slip No. 25 is related to the private transaction and not connected with the business transaction. Therefore, the order passed by the Tribunal is not in accordance with law and the same has to be set aside.

5. The learned Special Government Pleader (Taxes) appearing for the Revenue submitted that the Tribunal has correctly confirmed the addition, the equal addition and penalty levied by the lower authority and the Tribunal is correct in confirming the assessment made by the assessing authority and hence, the order passed by the Tribunal is in accordance with law and the same has to be confirmed.

6. We have heard the learned Counsel appearing on either side and perused the materials available on record. The assessing officer has determined the total taxable turnover in the original assessment by an order dated May 31, 1991 at Rs. 1,90,945 as against reported turnover of Rs. 1,68,582. Subsequently inspection was made by the Enforcement Wing Officer on August 5, 1989 and during the inspection, certain slips were recovered from the Assessee's business place. Slip Nos. 4, 5 and 6 are credit bills of the dealers, which have been raised in the name of the Executive Officer, Town Panchayat of A. Vellalapatti. Those credit bills have not been raised at all on the date of inspection, but shown by the Petitioner as has been accounted for in the accounts even prior to the date of effecting such sales. Therefore, the assessing officer was of the view that the transaction noted in the slips are different from those shown to the inspecting officials. The entries in the slips 4, 5 and 6 are

related to orders received from the Executive Officer, Town Panchayat of A. Vellalapatti and the orders were not materialised. No evidence was produced by the Assessee to substantiate his claim. In the absence of any evidence, the assessing officer has made an addition of Rs. 92,632. The addition made by the assessing officer at Rs. 92,632 (Rs. 72,552 + Rs. 20,081) is based on the slips Nos. 4, 5, 6 and slip No. 25, which is based on valid materials. The appellate authority and the Tribunal had correctly confirmed the said addition and the learned Counsel appearing for the Petitioner/Assessee is not able to furnish other materials to support his case to take a contrary view of the Tribunal. In such circumstances, the additions made on the basis of slip Nos. 4, 5 and 6 are confirmed and we answer the first question of law in favour of the Revenue and as against the Assessee.

7. In respect of equal addition made for probable omission, there is no material available on record for warranting said addition and the assessing officer has not given any reason. The Appellate Assistant Commissioner as well as the Appellate Tribunal have also without assigning any reasons, affirmed the order of the assessing officer. Therefore, the equal addition made by the assessing officer is not in accordance with law and no material is available for making such equal addition and the addition is not warranted and the same is deleted. Accordingly, the second question of law is answered in favour of the Assessee and as against the Revenue.

8. In respect of penalty levied u/s 12(3) of the Act, the assessing officer levied penalty of Rs. 8,244. There is no wilful suppression to evade tax and the same has not been proved by the assessing officer. The Assessee had given explanation, which has been rejected without any reasons. It is pertinent to note that the Assessee has made a specific plea that the transactions reflected in the books of account in respect of slip No. 25, is not related to the business transaction, but relates to mortgage amount. Taking into consideration the explanation and also the transaction reflected in the books of account, the penalty levied u/s 12(3) of the Act is not warranted and the same is deleted. Accordingly, the penalty levied u/s 12(3) is deleted and the third question of law is answered in favour of the Assessee and as against the Revenue.

9. Accordingly, the tax case revision is partly allowed. No costs.