

Madras High Court

Tvl.R.K.P.Traders vs State Of Tamil Nadu on 25 March, 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2009

CORAM

THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.1750 of 2006

Tvl.R.K.P.Traders
14, Palaniappan Street
Pattukkottai.

.. Appellant

Vs.

State of Tamil Nadu, rep. by
the Deputy Commercial Tax Officer
Pattukkottai Assessment Circle-I
Pattukkottai.

.. Respondent

Appeal against the order of the Joint Commissioner (SMR), Office of the Special

For Appellant	:	Mr.S.Sridharan
For Respondent	:	Mr.Haja Nasiruddin Spl. Govt. Pleader (Tax)

J U D G M E N T

(Delivered by K.RAVIRAJA PANDIAN,J.) This is a tax case appeal filed by the assessee against the order of the Joint Commissioner dated 06.09.2001, made in Suo Motu Revision No.604 of 1996.

2. The assessee was assessed on a total and taxable turnover of Rs.9,71,182/- and Rs.1,37,777/- respectively for the assessment year 1994-95 under the Tamil Nadu General Sales Tax Act, 1959. The Assessing Officer while checking the accounts of the assessee found that there was an inspection on 24.11.1994 and in that inspection, it was found that there were stock differences and certain silk cotton purchases, which are taxable, were not reported as a taxable turnover. Further, the dealer did not maintain separate accounts for purchases and sales and stock accounts in respect of second sales and subsequent sales in respect of steel almirahs and plastic furniture. In view of the above defects,

the Assessing Officer rejected the accounts of the assessee and resorted to a best judgment and determined the taxable turnover at Rs.1,37,777/- besides he had also levied a penalty of Rs.17,001/- under Section 12(3)(b) of the Act. Aggrieved by that order, the assessee preferred an appeal before the Appellate Assistant Commissioner, Thanjavur, who modified the assessment order by observing that there was no reason for making further two times addition as there was no omission of purchases or sales were found. He also deleted the penalty imposed by the Assessing Officer. This order was regarded as illegal and prejudicial to the interest of the Revenue by the Joint commissioner, who issued a show cause notice and taken up the matter on Suo Motu Revision.

3. With regard to the levy of penalty, the Joint Commissioner held that if there is any difference between the tax assessed and tax paid, penalty has to be paid as per the provisions of the Act and the reasoning of the Appellate Assistant Commissioner that it is sufficient to levy penal interest under Section 24(3) of the Act is not correct, as Section 24(3) penal interest cannot be equated with Section 12(3)(b) penalty. In respect of equal addition, the Joint Commissioner held that at the time of inspection on 24.11.1994, there were stock differences and the goods, which are taxable, were not brought on record and tax has not been paid and the estimated sales suppression was arrived at Rs.27,126/- in respect of furniture and Rs.17,820/- in respect of cotton beds, which factum has been lost sight of by the Appellate Assistant Commissioner. On the face of the defects pointed out as above and for not maintaining the proper books of accounts, the Assessing Officer had rightly rejected the accounts and he had estimated the sales suppression by two times. If two times addition is unwarranted, at least by equal addition would have been sustained by the Appellate Assistant Commissioner. On that ground, equal addition has been sustained.

4. Learned counsel appearing for the assessee submitted that the assessee had paid tax even before the assessment was completed. That was not taken note of by the Joint Commissioner, who held that the penalty under Section 12(3)(b) is warranted in this case. In respect of equal addition, learned counsel appearing for the assessee submitted that equal addition cannot be disputed before this Court.

5. In respect of penalty under Section 12(3)(b) of the Act, it is clear from the assessment order that the tax due is Rs.12,604/-, surcharge due is Rs.1,787/- and the total tax is Rs.14,391/-. The tax paid as per the returns is Rs.3,057/- and the difference is Rs.11,334/-, which is over and above 50% of the tax determined and tax paid. The statute provided imposition of penalty at 150% if the difference is more than 75%. That is what the Assessing Officer has done, which has been confirmed by the Joint Commissioner in Suo Motu Revision.

6. There is no illegality in the order of the Joint Commissioner in restoring the order of the Assessing Officer, which is as per the requirement of the statutory provision under Section 12(3)(b), which provides that if the difference of the tax assessed and tax paid as per the return falls short of the tax assessed on the final assessment by more than 75%, the penalty imposable shall be 150%. In this case also, the difference between the tax assessed and the tax paid falls short of 75% and as such, the imposition of penalty at 150% is the statutory requirement. Hence, the appeal is dismissed, as devoid of merits. No costs.

Internet : yes

25.03.2009.

ATR

To

1. The Joint Commissioner
Office of the Special Commissioner and
Commissioner of Commercial Taxes
Chepauk, Chennai-5.
2. The Appellate Assistant Commissioner
Commercial Tax
Thanjavur.
3. The Deputy Commercial Tax
Pattukkottai Assessment Circle-I
Pattukkottai.

K.RAVIRAJA PANDIAN, J,

and
P.P.S.JANARTHANA RAJA, J.

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