

(1994) 12 MAD CK 0046

In the Madras High Court

Case No : Tax Case No"s. 399 and 400 of 1987 (Revision No"s. 185 and 186 of 1987)

A.S. Chinnaswami

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 12-12-1994

Acts Referred:

Citation : (1994) 12 MAD CK 0046

Hon'ble Judges : Raju, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : R. Venkataraman, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

Thanikkachalam, J.—These two revisions relate to the assessments under the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956. The assessee is the petitioner herein. Shanmughananda Sago Factory is the partnership concern. They reported a total and taxable turnover of Rs. 3,32,219, in the A-2 returns for the assessment year 1981-82. In spite of several notices issued by the assessing officer, the accounts were not produced by the assessee. Therefore, the assessing officer determined the total and taxable turnover at Rs. 18,83,180 under the Tamil Nadu General Sales Tax Act. Under the Central Sales Tax Act, the turnover was determined at Rs. 6,02,438. Aggrieved, the assessee filed appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner confirmed the assessment made under the Central Sales Tax Act. In respect of the assessment made under the Tamil Nadu General Sales Tax Act the Appellate Assistant Commissioner modified the assessment and granted a relief to the extent of Rs. 15,006. Aggrieved, the petitioner filed appeals before the Tribunal, which also ended against him. Aggrieved, the assessee is in revision before this Court in respect of both the assessments made under the Tamil Nadu General Sales Tax Act and under the Central Sales Tax Act.

2. The learned counsel appearing for the assessee submitted as under :

Due to family enmity the account books were taken away by Thiru A. S. Govindaraju and he failed to produce the same, though the account books are ready. It was also stated that due to property dispute, the parties have developed enmity and closed the business. It was therefore pointed out that the assessing authorities were not correct in making the assessment on the basis of best judgment. The learned counsel further pointed out that the assessment made by the assessing authority in respect of both the assessments is against the actual rates prevalent in the trade in which the partnership firm is concerned. The learned counsel appearing for the assessee submitted that the estimate done by the assessing authority, which was confirmed by the Tribunal has no reasonable basis. For all the reasons, it was submitted that the Tribunal was not correct in confirming the order passed by the Appellate Assistant Commissioner in respect of the assessment made under the Tamil Nadu General Sales Tax Act. In so far as the assessment made under the Central Sales Tax Act is concerned it was submitted that inasmuch as the assessment was made under the Tamil Nadu General Sales Tax Act in respect of the same turnover, no assessment need be made under the Central Sales Tax Act. For these reasons, it was submitted that the order of the Tribunal is unsustainable.

3. On the other hand, the learned Additional Government Pleader (Taxes) while supporting the order passed by the Tribunal on both the assessments submitted that inasmuch as the books of account were not produced the assessing authorities have no other alternative but to make the assessment on the basis of best judgment. It was further submitted that the department was not concerned with the internal dispute between the partners. When the account books were not produced, it is not open to the assessee to state that the best judgment made by the assessing officer was unreasonable. The learned Additional Government Pleader (Taxes) further submitted that the assessee even failed to produce the account books before the Appellate Assistant Commissioner. According to the learned counsel at least the account books could have been produced when the appeals were pending before the Tribunal. In all these stages it was pointed out that the account books were not produced by the assessee and no plausible explanation was also offered for the non-production of the account books. Under such circumstances, it was submitted that the Tribunal was correct in confirming the assessment made by the assessing officer and confirmed by the Appellate Assistant Commissioner. In so far as the assessment made under the Central Sales Tax Act is concerned, the learned Additional Government Pleader submitted that it is not open to the assessee to contend that since the assessment was made under the Tamil Nadu General Sales Tax Act on the same turnover, no assessment can be made under the Central Sales Tax Act, especially in view of the fact that the assessee itself offered the turnover for assessment under the Central Sales Tax Act.

4. We have heard the rival submissions. The facts remain that the assessee is a partnership firm consisting of two partners, Thiru A. S. Chinnaswami and Tmt. G. Gokilam. Tmt. G. Gokilam is the wife of A. S. Govindaraju, who is the brother of

Thiru A. S. Chinnaswami. The return for the assessment year 1981-82 was filed both under the Tamil Nadu General Sales Tax Act and under the Central Sales Tax Act. The assessee disclosed a turnover, which was not accepted by the assessing officer since no account books were filed to support the turnover disclosed by the assessee. The assessing officer, therefore, estimated the turnover on the basis of his best judgment. On appeal with regard to the assessment made under the Tamil Nadu General Sales Tax Act, the Appellate Assistant Commissioner gave a relief of Rs. 15,006. Whereas with regard to the assessment made under the Central Sales Tax Act, the Appellate Assistant Commissioner confirmed the assessment made by the assessing officer. On appeal preferred by the assessee, the Appellate Tribunal confirmed the order passed by the Appellate Assistant Commissioner in respect of both these assessments. The department filed an enhancement petition. That was dismissed by the Tribunal. The case of the assessee was that inasmuch as there is a family dispute, it is not possible for the assessee to produce the account books. It was further submitted that one of the partners took away the account books and kept with him and therefore, it was not possible for the assessee to produce the same. It remains to be seen that there may be several disputes between the partners with regard to the various issues. When return was filed it is the duty of the assessee to produce the account books to support the turnover disclosed by him. In the absence of the account books the assessing officer has no other alternative, but to estimate the turnover on the basis of his best judgment. Accordingly, the assessing officer estimated the sales turnover of sago, starch and thippi to the extent of Rs. 18,83,180 and the turnover for the purpose of the Central Sales Tax Act at Rs. 6,02,438. However, considering certain discrepancies found in the assessment made under the Tamil Nadu General Sales Tax Act, the Appellate Assistant Commissioner gave a relief of Rs. 15,006. Inasmuch as the assessment made under the Central Sales Tax Act is in order, no interference was made by the Appellate Assistant Commissioner. The order passed by the Appellate Assistant Commissioner in both these assessments were confirmed by the Tribunal. If the assessee is aggrieved that the estimate done by the assessing officer is not reasonable it is for the assessee to produce sufficient materials to show that the assessing authorities were not reasonable in estimating the turnover. The assessee neither before the appellate authority nor before the Tribunal produced any accounts to support his turnover disclosed. Even before this Court no evidence was produced to show that the estimate made by the assessing authorities under both these Acts was not in order. Under such circumstances, we have no other alternative, but to accept the order passed by the Appellate Tribunal in confirming the order passed by the Appellate Assistant Commissioner with regard to the assessment made under the Tamil Nadu General Sales Tax Act.

5. In so far as the assessment made under the Central Sales Tax Act is concerned, it is the case of the assessee that inasmuch as the same turnover was assessed under the Tamil Nadu General Sales Tax Act, it cannot be once again assessed under the Central Sales Tax Act. It remains to be seen that the

assessee himself filed a return disclosing the turnover for the purpose of assessing the same under the Central Sales Tax Act. In such a case, it is not open to the assessee to contend that once the turnover was assessed under the Tamil Nadu General Sales Tax Act, the same turnover cannot be assessed under the Central Sales Tax Act. This was the reason given by the Tribunal for accepting the order passed by the Appellate Assistant Commissioner in respect of the assessment made under the Central Sales Tax Act. We consider that there is no infirmity in the order passed by the Tribunal in accepting the order passed by the Appellate Assistant Commissioner in respect of both the assessments under the abovesaid Acts. Accordingly, we are not inclined to interfere with the order passed by the Tribunal.

6. The revisions, therefore, fail and shall stand dismissed. No costs.

7. Petitions dismissed.