

(1983) 07 MAD CK 0063
In the Madras High Court
Case No : T.C. (A) No. 1305 of 1977

A.S.K. Ramasamy Nadar and Sons

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 19-07-1983

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 34

Citation : (1985) 58 STC 148

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramanujam, J.—The assessees in this case are dealers in toor dhal, gram dhal, etc. they filed A-2 returns for 1970-71 for a total and taxable turnover of Rs. 15,50,748.74. On 18th December, 1970 the assessees' places of business were inspected by the Special Staff and they found 27 slips of paper in which transactions of business were noted and they were recovered. The entries found in the slips were compared with the regular accounts. It was found that the transactions noted in the slips were not accounted for in the regular accounts and the total omissions as per the slips were found to be Rs. 73,617.65. The earliest of the slips was dated 14th May, 1970 and the last date found in the slips in 11th December, 1970. Besides, on the day of the inspection, it was found that there was stock variation in the actual stock on hand and the book balance. For the said deficiency in stock, the assessee were levied a compounding fee of Rs. 500. Taking note of the transactions found in the slips as well as the deficiency in the stocks on the date of the inspection, the total suppressions for the year 1970-71 were taken as twice the turnover of actual suppressions found at the time of the inspection. Thus, the total estimated suppressions came to Rs. 1,47,235.30. Therefore, the assessing authority added the said turnover to their book turnover. He also levied a penalty of Rs. 3,312 u/s 12(3) for their wilful suppression of sales. The assessees took the matter in appeal to the Appellate

Assistant Commissioner, who, however, restricted the additions towards possible suppressions to Rs. 10,000. He also set aside the penalty of Rs. 3,312. The appellate authority took the view that the addition made on the basis of the entries found in the 27 slips was not justified and the turnover found in the slips has been accounted for in the regular accounts.

2. Later, the Board of Revenue in exercise of its suo motu powers of revision u/s 34 of the Tamil Nadu General Sales Tax Act, 1959 issued a show cause notice to the assessee to show cause as to why the appellate order of the Appellate Assistant Commissioner, so far as it is prejudicial to the Revenue, should not be set aside. The assessee showed cause. But the Board of Revenue by its order dated 15th July, 1977 modified the order of the Appellate Assistant Commissioner and enhanced the additions from Rs. 10,000 to Rs. 32,000.90 on the ground that Rs. 32,970 is the turnover suppressed during the year 1979-71. The Board of Revenue also sustained the order of penalty to the extent of Rs. 1,454. Aggrieved by the order of the Board of Revenue, the assessee has come up in appeal before us.

3. According to the assessee, the Board of Revenue has not kept in mind the principles laid down in *Velayutha Raja v. Board of Revenue (C.T.)* [1970] 26 STC 176, that the Board of Revenue exercising its revisional power u/s 34 of the Tamil Nadu General Sales Tax Act, 1959 should not have interfered with the factual finding rendered by the appellate authority, that the transactions referred to in the slips have been accounted for by the assessee in their regular accounts, and therefore, no addition towards possible suppressions could be justified, that the burden of proof for escapement of the turnover and the liability is on the Revenue and the Revenue has not discharged that burden, and that the Board of Revenue should have in any event agreed with the view of the appellate authority that all the 27 slips related to the transactions which passed through the accounts and cannot therefore be taken as suppressed items.

4. It is seen from the order of the Board of Revenue dated 15th July, 1977 that the Board of Revenue considered the entries in each and every slip and found that there were actual suppressions to the extent of Rs. 32,970 in respect of the transactions shown in slips Nos. 1, 7 to 11, 13, 16 to 18 and 23 and also with reference to the stock and therefore the addition of Rs. 32,970 being the possible suppressions should have been upheld. Therefore, it is not as if the Board of Revenue blindly estimated the suppressions. The Board of Revenue has in fact held that the Appellate Assistant Commissioner is not justified in accepting the explanation of the assessee so far as the above slips are concerned and therefore, notwithstanding the assessee's explanation, the turnover referred to in the slips should be taken to have been suppressed. Though the Board of Revenue is functioning as a revisional authority u/s 34 of the Tamil Nadu General Sales Tax Act, 1959 it can go through the slips to find out whether the entries in the slips have properly been considered by the appellate authority, and it found that though the appellate authority is right in accepting the assessee's

explanation in regard to the other slips, the assessee's explanation should not be accepted so far as the slips referred to above are concerned. Since the Board has acted on relevant material and after a proper scrutiny of the same material as were before the appellate authority, the addition of the turnover of Rs. 32,970 by the Board toward possible suppressions cannot be said to be illegal. Therefore, no interference is called for with regard to the assessment.

5. However, the levy of penalty at 1 1/2 times the tax due on the actual suppression Rs. 32,970 does not appear to be tenable. It is no doubt true that the Board of Revenue had the power to restore the order of penalty which has been set aside by the appellate authority. But here, in this case, the total suppression has been found by the Board to be Rs. 32,970 as against the turnover of Rs. 1,47,235.30 being the suppressed turnover estimated by the assessing authority. The Board of Revenue has chosen to impose 1 1/2 times the tax due on the amount of turnover suppressed. But the 1 1/2 times is the maximum percentage prescribed under the Act and there is always a discretion on the part of the authority to impose the penalty not exceeding 1 1/2 times. The Board of Revenue has chosen to impose the maximum penalty contemplated by section 12(3) of the Tamil Nadu General Sales Tax Act without exercising its discretionary powers which it admittedly has. Having regard to the circumstances of this case, we are inclined to exercise our discretion as an Appellate Court over the decision of the Board of Revenue and reduce the penalty to 50 per cent of the tax due on the suppressed turnover which comes to Rs. 485. Thus, while the assessment on the suppressed turnover of Rs. 32,970 is upheld, the penalty of Rs. 1,454 imposed by the Board of Revenue is reduced to Rs. 485. The tax case is penalty allowed to the above extent. There will, however, be no order as to costs.