

(1981) 10 MAD CK 0035

In the Madras High Court

Case No : Tax Case No. 995 of 1977 (Appeal No. 77 of 1977)

Avon Plastics

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 15-10-1981

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 31(3), 34

Citation : (1982) 49 STC 268

Hon'ble Judges : Sethuraman, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : N. Inbarajan, for C.S. Chandrasekara Sastri, C. Venkataraman, C. Natarajan and S. Chandrasekharan, for the Appellant; Additional Government Pleader, for the Respondent

Judgement

Sethuraman, J.—This is an appeal against the order of the Board of Revenue dated 11th March, 1977, in a suo motu revision of the order

of the Appellate Assistant Commissioner dated 9th September, 1976. The assessee is a firm consisting of three partners, who are all ladies. The

firm reported total and taxable turnovers of Rs. 6,36,374.34 and Rs. 5,98,609.52 respectively for the year 1974-75 under the Tamil Nadu

General Sales Tax Act. The assessing officer issued summons to the dealers calling upon them to produce their accounts on three occasions, viz.,

19th September, 1975, 17th October, 1975, and 10th December, 1975, respectively fixing the date for the production of the accounts after about

a fortnight. The dealers failed to appear and did not produce the accounts. On 8th January, 1976, the assessing officer issued a notice calling for

production of books on 20th January, 1976, and the communication contained also the usual warning that if they failed to produce the accounts,

the turnover would be determined to the best of judgment. In their letter dated 20th January, 1976, the dealers requested for time up to the second or third week of February, 1976, and further extension was asked for till 20th March, 1976. The assessing officer considered the request that further extension till 20th March, 1976, could not be granted and he issued the pre-assessment notice on 28th February, 1976, proposing to determine the turnover at Rs. 8,27,286.64 by adding 30 per cent to the turnover returned for defects and omissions. The assessee was required to show cause by 16th March, 1976. As there was no response, the assessing officer passed the order determining the turnover as proposed on 17th March, 1976.

2. The assessee appealed to the Appellate Assistant Commissioner, who set aside the assessment on the ground that sufficient opportunity had not been given to the dealers to file the objections and remanded back to the assessing officer for fresh assessment after affording another opportunity to the dealers to produce the accounts. It is this order of the Appellate Assistant Commissioner which was examined by the Board and it was held that the order of the assessing officer assessing the dealers to the best of judgment was proper and legal and that the Appellate Assistant Commissioner was not justified in setting aside the assessment order and remanding the case back to the assessing officer. It is this order of the Board which is now challenged in the present appeal.

3. This order has been passed u/s 34 of the Tamil Nadu General Sales Tax Act. As the marginal note of the provision indicates that the power is conferred on the Board of Revenue to call for the examine of its own motion an order passed by one of the authorities referred to therein and, after making such inquiry or causing such inquiry to be made to pass such order thereon as it thinks fit. It is clear from the marginal note that the power is not intended to be exercised in a routine or casual manner but only on special occasions.

4. The criticism of the Board against the order of the Appellate Assistant Commissioner appears to be that the Appellate Assistant Commissioner had overlooked the fact that as many as three opportunities were given to the assessee to produce the books and that in addition there was also an opportunity to show cause in response to the pre-assessment notice. As the

assessee had not availed of these opportunities, it is considered by the Board that the Appellate Assistant Commissioner should not have set aside the order of the assessing officer.

5. We are not satisfied that the criticism of the Board about what the Appellate Assistant Commissioner did is, in any manner, called for. It is not

as if the Appellate Assistant Commissioner has ignored the number of opportunities given to the assessee to produce the books. In paragraph 3 of

his order the Appellate Assistant Commissioner has pointed out :

In their letter dated 20th February, 1976, the appellants have informed the assessing authority that the accounts could not be produced as the

manager was undergoing treatment for several months from July, 1975, and that time may be granted till 20th March, 1976, for production of

accounts. In support of their request they have also enclosed a medical certificate to the effect that the manager was operated and was under

treatment from July, 1975. The medical certificate now produced by the learned authorised representative also reveals that the manager was

continuously ill and was under continuous long treatment from July, 1975. I find that all the partners of the firm are also ladies who are only

depending upon the manager to look after the affairs of the business. In these circumstances I feel that it is just and necessary that the appellants

should be given another opportunity to produce their accounts and prove the correctness and completeness of the returns.

6. As against this factor of the partners being ladies and their being dependent on the accountant, the Board observed as follows :

It is as though that because the partners were ladies and due to the absence of the accountant and the manager, the business came to a stand still.

When the day to day affairs of the business were carried on there is no reason why the accounts could not be produced by the manager when the

accountant was absent or by the accountant when the manager was absent.

7. It is common knowledge that the proprietor may not always be conversant with the day to day dealings of the business. The entries could be

better explained only by the accountant. If, as shown by the medical certificate, the accountant was ill for a long time and his assistance was

required as we consider it was, nothing would have been lost if another opportunity was given to the assessee to produce the account books. It

was this aspect which was borne in mind by the Appellate Assistant Commissioner and in our opinion rightly and properly. It is significant to note

that the Board does not even refer to the illness of the accountant or the medical certificate produced as regards his illness. We consider that the

exercise of the power by the Board in the present case is absolutely uncalled for.

8. Section 31(3)(a) of the Tamil Nadu General Sales Tax Act defines the power of the Appellate Assistant Commissioner in disposing of an

appeal. He may confirm, reduce, enhance or annul the assessment or the penalty or both. He has also power to set aside the assessment and direct

the assessing officer to make a fresh assessment after such further inquiry as may be directed. The discretion to exercise these powers has been

vested with the Appellate Assistant Commissioner. Unless it is found in any particular case that this discretion was wrongly exercise, it would not

be proper for the Board to interfere with the order of the Appellate Assistant Commissioner. Such interference is likely to simplify the appellate

power. In fact, there is no loss of revenue by the exercise of discretion by the Appellate Assistant Commissioner in this case. If really on

examination of the books, it is found that a higher turnover is liable to be taxed, then certainly the assessing authority can exercise his power and

tax the turnover accordingly. Thus there is no prejudice to or loss of revenue by the manner in which the Appellate Assistant Commissioner had

exercised his power. In our opinion the power of remand was properly exercised by the Appellate Assistant Commissioner and, therefore, the

order of the Board cannot be said to be correct. The order of the Appellate Assistant Commissioner is restored.

9. In the result, the appeal is allowed with costs. Counsel's fee Rs. 250.

10. Appeal allowed.