
(1973) 04 MAD CK 0003

In the Madras High Court

Case No : Tax Case No. 170 of 1969 (Revision No. 108 of 1969)

Badhra Spinning Mills Private Limited

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 23-04-1973

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12

Citation : (1975) 35 STC 189

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : V. Nataraj, King and Partridge, for the Appellant; K. Venkataswami, the First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—The assessee, a spinning mill, had its head office at Bangalore and a branch office at Tiruppur. For the year 1964-65, the

assessee's branch office at Tiruppur filed monthly returns showing an aggregate turnover of Rs. 2,71,505.60 for the whole year representing first

sales of cotton yarn. The assessing officer called for and checked the accounts produced by the assessee in support of its returns. The turnover

shown in the monthly returns was found to be in accord with the entries found in the books of account maintained by the branch office. But the

assessing authority, on verification of the accounts of certain cotton dealers in Tiruppur, found that they had sold cotton to the assessee and given

delivery of the goods at Tiruppur. As the assessing officer felt that the sales of cotton to the assessee-mills had been completed by giving delivery

at Tiruppur, the assessee, as the last purchaser of cotton within the State, was liable to tax under the provisions of the Tamil Nadu General Sales

Tax Act, 1959.

2. In that view he issued a pre-assessment notice proposing assessment to tax on (i) first sales of cotton yarn as per the books (Rs. 2,71,505.60)

and (ii) purchase value of cotton in respect of last purchases effected within Madras State through the Tiruppur branch from various dealers in and

around Tiruppur (Rs. 11,07,495.44). In the pre-assessment notice, the assessing officer also proposed to levy a penalty at one and a half times the

tax on the turnover of Rs. 11,07,495.44, which had not been disclosed, either in the returns or in the books of account kept by the branch office at

Tiruppur, which had been produced before the assessing authority for inspection. In reply to the said pre-assessment notice, the assessee

contended that their sales depot at Tiruppur had been exclusively dealing in cotton yarn, that the branch had incidentally taken delivery of the

cotton at Tiruppur purchased by the head office and that therefore the purchase of cotton could not be said to have been completed at Tiruppur.

They also contended that, in any event, they had given the actual turnover of such purchase of cotton at Rs. 6,84,699.28 soon after the receipt of

the notice proposing assessment and that no penalty was leviable for the nondisclosure of the said turnover. They also urged that they were under

the bona fide impression that the said turnover of cotton related to the head office, and as such would be taxed there and that it was only in that

view that they did not include the said turnover in their monthly returns. The assessing authority, however, overruled the objection of the assessee

that the sales of cotton were not completed by delivery at Tiruppur, and held that the said turnover not having been included either in the monthly

returns or shown in the books of account of the Tiruppur branch, an inference could be drawn that there was a failure on the part of the assessee

to disclose such turnover relating to the purchase of cotton. The assessing authority accepted the figures as the actual turnover relating to the

purchase of cotton, and made a best judgment assessment by adding Rs. 6,84,699.28 to the turnover of Rs. 2,71,505.60 returned by the

assessee.

3. We are not concerned in this case with the validity of the said best judgment assessment. The only question that has been canvassed by the

assessee is whether the levy of penalty of a sum of Rs. 13,694 is justified.

According to the learned counsel for the assessee, the assessment in this case is not a best judgment assessment and, in any event, the assessee had given the turnover of the purchase of cotton "along with their objections to the pre-assessment notice and, therefore, it could not be said that the assessee had suppressed the turnover so as to make them liable for penalty u/s 12(3) of the Act. The Tribunal has specifically found that the turnover of Rs. 6,84,699.28 relating to the purchase of cotton in Madras State by the assessee had neither been included in the monthly returns nor shown in the books of account maintained at Tiruppur and that the assessee had not established their case that the turnover was shown in the books of account maintained by the head office. According to the Tribunal, but for the steps taken by the assessing authority, the turnover would not have come to light and therefore the assessee should be taken to have been guilty of non-disclosure of the turnover. We are of the view that the facts of this case clearly warrant the application of Section 12(3). We do not agree with the contention of the learned counsel for the assessee that the assessment in this case is not a best judgment assessment. Admittedly the monthly returns submitted by the assessee did not include the disputed turnover, nor did the account books kept at Tiruppur and which had been produced before the assessing authority during the assessment proceedings, disclose the disputed turnover. The assessee's contention that the entire turnover had been recorded in the accounts of the head office and that it was only under a mistaken impression that the purchase of cotton was taxable in Mysore State the turnover had not been disclosed in the books of account of the Tiruppur office, has not been established by the assessee showing that the turnover in question has been shown in the account books maintained by the head office. It is seen that it was only after the assessing authority pointed out in the pre-assessment notice that the assessee had purchased cotton from various dealers in the State and taken delivery of the same at Tiruppur, the assessee came forward to disclose the actual turnover of purchases of cotton in the assessment year. In these circumstances, it cannot be said that there has been a true disclosure of the turnover by the assessee.

4. The learned counsel for the assessee drew our attention to the decision of the Supreme Court in *State of Madras v. Jayaraj Nadar & Sons*

[1971] 28 S.T.C. 700 . But we are of the view that that decision has no application to the facts of this case. In that case the penalty came to be levied u/s 12(3) of the Act on the ground that the dealer had submitted incomplete and incorrect returns, but the assessment was made on the turnover disclosed from the assessee's own account books, though the return filed by the assessee was not accepted. Their Lordships of the Supreme Court took the view that, where certain items which had not been included in the return were discovered from the dealer's own account books and the assessing authority included those items in the dealer's return, the assessment could not be regarded as based on best judgment u/s 12(2) and that, therefore, penalty could not be levied in respect of such items u/s 12(3). In that case, though the return was not accepted, the account books were accepted as representing the correct state of affairs and the assessment was made on the basis of such account books. It was for that reason the Supreme Court held that the assessment was not based on best judgment.

5. In this case, however, the returns submitted by the assessee were not accepted as correct and complete, nor did the account books produced before the assessing authority disclose the turnover in question. It was only after the assessing authority made an investigation with the cotton dealers in and around Tiruppur that the fact that the assessee had purchased cotton and taken delivery of the same at Tiruppur came to light and it was only after this transaction was pointed out by the assessing authority, the assessee gave some explanation as to why the turnover had not been included in the monthly returns, or in the books of account maintained at the Tiruppur branch, and gave details of such turnover. In our view, these facts clearly lead to the inference that, but for the investigation made by the assessing authority, the turnover would not have come to light. In our view, Section 12(3) of the Act has properly been invoked in this case. The tax case is therefore dismissed with costs. Counsel's fee Rs. 150.