(1980) 01 MAD CK 0056

In the Madras High Court

Case No : Tax Case No''s. 845 and 846 of 1976 (Revisions No''s. 97 and 98 of 1976)

Bharat Refineries Ltd. APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 24-01-1980

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (1982) 49 STC 134

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

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; P. Suryaprakasam, for Additional Government Pleader, for the Respondent

Judgement

Sethuraman, J.—These two revision petitions have been filed against the order of the Sales Tax Appellate Tribunal (Main Bench), Madras,

relating to the assessment years 1967-68 and 1968-69. For the assessment year 1967-68, the disputed turnover came to Rs. 4,07,875.53 and for

1968-69 it was Rs. 1,88,016.21. During these years, the assessee had effected sales of calendars, novelties, scrap materials and capital assets,

etc. The assessing authority originally excluded the turnover from the assessment relying on a decision of this Court in Burmah Shell Oil Storage

and Distributing Company of India Ltd. v. State of Tamil Nadu 1968 21 STC 227. Subsequently the Supreme Court reversed the decision of this

Court in the said case as reported in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, . The

assessing authority therefore sought to reopen the assessment by taking proceedings u/s 16 of the Tamil Nadu General Sales Tax Act. The assessee objected to the proceedings being reopened under that provision and also took up a point of limitation. The assessing authority overruled

these objections and the Appellate Assistant Commissioner confirmed the order of the assessing authority. The matter was thereafter taken to the

Sales Tax Appellate Tribunal and the Tribunal also rejected the assessee''s claim. That is how the matter is now brought before us in revision.

2. In Yercaud Coffee Curing Works Ltd. v. State of Tamil Nadu 1977 40 STC531 it was held that it was competent for the assessing authority in

a reassessment proceeding u/s 16 to assess an item of turnover which had been omitted to be taxed earlier for any reason whatsoever and that the

authority has power to reassess a turnover which was included in the return but it was considered to be exempt from assessment by the assessing

authority himself. Therefore, the contention that the assessing authority cannot reopen an assessment on a point which was considered and decided

upon cannot be correct. The assessing authority will have jurisdiction to reopen an assessment so long as some turnover had escaped assessment.

The omission to assess the turnover on the earlier occasion for any reason whatsoever would still constitute it to be an escaped turnover so as to

be brought within the scope of section 16. Broadly stated, there are only two possibilities in an assessment and they are : (1) the turnover is

assessable and (2) the turnover is exempt. If the turnover is assessable and is assessed there is no question of any escaped turnover in proceedings

u/s 16. If, however, by taking a wrong view in respect of a particular item of turnover it is exempted from assessment, then to the extent that the

turnover has escaped assessment, it would come within the scope of section 16.

3. The next contention that was urged was that the reassessment orders were passed on 3rd July, 1975, and 30th June, 1975, respectively, for the

two assessment years and that those orders are beyond the period of limitation. Section 16 of the Tamil Nadu General Sales Tax Act gives power

to reopen an assessment within a period of five years from the expiry of the year to which the tax related. According to the learned counsel, the

five years would expire in the present case on 31st March, 1973, and 31st March, 1974, respectively. As the reassessments have been made after

the said dates, the contention was that the items of turnover could not be brought to tax under any valid proceedings taken u/s 16. This contention has to be negatived in view of a decision of this Court in Tax Case No. 89 of 1976 in the case of State of Tamil Nadu v. K. O. Mohamed

Sulaiman & Co. 1980 46 STC 151, in a judgment dated 12th November, 1979. After referring to several decisions, it was pointed out that so

long as the proceedings were initiated and pending within the statutory period, there is no time-limit to the completion of the reassessment. It is not

in dispute that in the present case the proceedings were pending within the statutory period. Therefore there is no bar to the completion of the

proceedings of reassessment within a period of 5 years as referred to in section 16.

4. The result is these two revision cases fail and are dismissed. There will be no order as to costs.

5. Petitions dismissed.

