(1980) 10 MAD CK 0013

In the Madras High Court

Case No : T.C. No. 486 of 1977

Deputy Commissioner (Ct), Coimbatore Division, Coimbatore-2	APPELLANT
Vs	
The Kundah Industrial Co-operative Tea Factory Ltd.	RESPONDENT

Date of Decision : 01-10-1980

Acts Referred:

Citation : (1981) 47 STC 354

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

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant; R. Santhanakrishnan, for the Respondent

Judgement

Ramaswami, J.—The assessee, a dealer in tea, reported a total and taxable turnover of Rs. 18,25,301.23 and Rs. 7,41,308.89,

respectively, for the year 1973-74. In fact he ought to have excluded in the total turnover a sum of Rs. 10,83,992.00 as they relate to outside

sales. While determining the total and taxable turnover, the assessing officer held that in respect of sale of manure which was not shown in the

balance sheet (sic), though second sales, the turnover relating to the same will have to he included in the total turnover of the assessee. He then

proceeded to estimate the turnover of sale of manure and estimated it at Rs. 3,00,000. He also included a sum of Rs. 4,061.34 to the taxable

turnover as miscellaneous income. Ultimately the assessing officer determined the taxable turnover at Rs. 7,44,473.00 as against Rs. 7,41,308.89

as reported by the assessee. The total turnover was determined at Rs. 10,45,370.73 including the estimated sale of manure. Since the total

turnover thus exceeded Rs. 10,00,000, which is the limit prescribed for the purposes of attracting the additional sales tax, in the assessment order

the assessing officer also levied additional sales tax at 5 per cent on the tax due. The assessee preferred two appeals before the Appellate

Assistant Commissioner. In one of them he questioned the inclusion of Rs. 4,062 in the taxable turnover. In the other appeal he questioned the

estimation of the turnover relating to sale of manure at Rs. 3,00,000 and the levy of additional sales tax. The contention of the assessee was that

the actual turnover relating to second sale of manure was only Rs. 1,01,772 and not Rs. 3,00,000. The appeal relating to the sum of Rs. 4.062

was allowed in part giving relief to the extent of a turnover of Rs. 3,861.50 and rejecting it only in respect of a turnover of Rs. 200.50. The appeal

questioning the estimation of the turnover relating to sale of manure was dismissed. The assessee preferred an appeal to the Tribunal questioning

the estimation of the sale of manure at Rs. 3,00,000 and contending that there was only an actual distribution of manure to an extent of Rs.

1,01,772 and that, therefore, the determination of the turnover at more than Rs. 10,00,000 was not correct. The Tribunal held that the audited

balance sheet and profit and loss account for the year 1973-74 showed only a turnover of Rs. 1,01,072 and that, therefore, the estimation of the

sales of manure at Rs. 3,00,000 cannot be sustained. In that view. The Tribunal redetermined the total turnover at Rs. 8,46,245 and since that

turnover did not attract the additional sales tax, the levy of additional sales tax was set aside. It is against this order, the State has filed this revision

petition.

2. The learned Government Pleader contended that the turnover relating to the sale of manure was not the subject-matter of appeal before the

Appellate Assistant Commissioner and that therefore it could not have formed the subject-matter of the appeal before the Tribunal and the

statement of the Tribunal that there were two appeals, one questioning the small portion of the taxable turnover and the other relating to the

addition to the total turnover on account of sale of manure was incorrect. We have verified the records and it is seen from the files that, as stated

earlier, there were two appeals, one relating to the quantum of taxable turnover and the other relating to the determination of the total turnover

itself. Therefore the statement of the Government Pleader in this revision petition that there were no two appeals is not correct.

3. It is then contended by the learned counsel that there were no two appeals before the Tribunal and that therefore the turnover could not have

been redetermined. We are unable to understand this argument of the learned counsel. The assessee was not aggrieved by the order of the

Appellate Assistant Commissioner so far as the taxability of the turnover of Rs. 4,062 is concerned and as referred to above, substantially he got

relief and only in respect of Rs. 200.50 he did not succeed and, therefore, he did not file any appeal. We have seen the grounds of appeal

preferred by the assessee before the Tribunal. In that he had questioned the determination of the total turnover and inclusion of Rs. 3,00,000 on

account of sale of manure in determining such turnover. We are therefore unable to agree with the learned counsel that in such a case the assessee

should also prefer an appeal against the determination of the taxable turnover though be is not aggrieved by the determination of the taxable

turnover actually in order to give jurisdiction to the Tribunal in redetermining the total turnover. Both for the purpose of additional levy and for the

purpose of determination of the sales tax payable, the total turnover is determined under the provisions of the Tamil Nadu General Sales Tax Act

and, therefore, in one appeal preferred, the total turnover could be determined by the Tribunal, though the taxability of any portion of the turnover

was not in question. The appeal before the Tribunal was therefore maintainable and no separate appeal questioning the taxability of any portion of

the turnover need be filed or pending before the Tribunal in order to give jurisdiction to the Tribunal to determine the total turnover for the purpose

of additional sales tax. The appeal before the Tribunal was therefore competent and the Tribunal could have gone into the merits in determining the

total turnover. The Tribunal noticed that the audited balance sheet and profit and loss account and the manure trading account for the year 1973-

74 showed only a turnover of Rs. 1,01,072 and in the face of such clear materials available, the assessing officer went wrong in estimating it at Rs.

3,00,000 merely on the ground that he had not shown that in the original return. It was not the case of the assessing officer or the learned counsel

for the petitioner that the turnover relating to the sale of manure was taxable. In these circumstances, by merely not reporting that turnover at the time of filing the return, the assessee could not be held to be guilty of any contemptuous conduct, nor could the Tribunal reject the subsequent

accounts produced. The Tribunal therefore was right in accepting the records produced and determining the turnover as per the records at Rs.

1,01,072 and redetermining the total turnover at Rs. 8,46,245. The revision accordingly fails and is dismissed with costs. Counsel''s fee Rs. 250.

4. Petition dismissed.

