

**(1983) 07 MAD CK 0062**  
**In the Madras High Court**  
**Case No : T.C. (R) No. 1 of 1978**

Deputy Commissioner (C.T.), Coimbatore Division, Coimbatore      APPELLANT  
Vs  
M. Murugesan and Bros.      RESPONDENT

**Date of Decision :** 15-07-1983

**Acts Referred:**

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 22, 22(2), 3, 3(1)

**Citation :** (1985) 58 STC 143

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

**Bench :** Division Bench

**Advocate :** K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant;

## **Judgement**

Ramanujam, J.—The point that arises for consideration in this case is whether they levy of penalty u/s 22(2) of the Tamil Nadu General Sales Tax Act, 1959, read with section 3(2) of the Tamil Nadu Sales Tax (Surcharge) Act, 1971, could legally be justified. The assessee is a dealer in Tiruchengode. Tiruchengode area is exempted under the provisions of the Tamil Nadu Serial Tax (Surcharged) Act. Notwithstanding the exemption available the assessee has collected a sum of Rs. 320 as surcharge payable u/s 3(2) of the Surcharge Act. Since the assessee collected surcharge in respect of transactions which would not come under the provisions of the Surcharge Act the assessing authority levied a penalty in the sum of Rs. 480 u/s 22(2) of the Tamil Nadu General Sales Tax Act, 1959, read with section 3(2) of the Tamil Nadu Sales Tax (Surcharge) Act, 1971. The said levy of penalty was challenged before the appellate authority, who, while upholding the levy of penalty, reduced the same from Rs. 480 to Rs. 320 equal to the surcharge collected. Thereafter the assessee filed an appeal before the Sales Tax Appellate Tribunal, contending that section 22(2) of the Tamil Nadu General Sales Tax Act, 1959, would not apply in respect of surcharge levied u/s 3(2) of the Surcharge Act. The Tribunal accepted the contention of the assessee, holding that the levy of penalty could not be legally sustained, as section 3(2) of the Surcharge Act and rule 8 of the Surcharge Rules referred only

to the surcharge payable under the provisions of the Surcharge Act and that the provisions of the Tamil Nadu General Sales Tax Act, 1959, relating to the levy of penalty would not apply in respect of the collection of surcharge. In this view, the Tribunal set aside the levy of penalty. Aggrieved by the order of the Tribunal the State has come up in revision before this Court.

2. According to the Revenue, the Tribunal has been properly understood the scope of the provisions of section 3(2) of the Tamil Nadu Sales Tax (Surcharge) Act, 1971, on a proper interpretation of section 3(2) of the said Act, section 22 of the Tamil Nadu General Sales Tax Act, 1959, should be taken to be attracted in respect of the surcharge leviable under the Surcharge Act, 1971, and therefore the levy of penalty u/s 22(2) of the Tamil Nadu General Sales Tax Act, 1959, read with section 3(2) of the Surcharge Act, 1971, is legally valid. According to the Revenue, section 22 of the General Sales Tax Act, 1959, is applicable even in respect of unauthorised collection surcharge under the Surcharge Act, 1971, and as such the penalty levied in respect of the unauthorised collection of surcharge is quite legal and valid.

3. It is seen from the order of the Tribunal that the Tribunal, in support of its view, that section 22 of the Tamil Nadu General Sales Tax Act, 1959, would not apply to surcharge leviable u/s 3 of the Surcharge Act, 1971, has referred to and relied upon the decision of this Court in *Shah & Co. v. State of Madras* [1967] 20 STC 146 and of the Supreme Court in *Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra*, . We are, however, of the opinion that the said decisions have no application to the facts of the present case. Those cases dealt with penalty, leviable under the Central Sales Tax Act, and the question arose whether the levy of penalty could be sustained under the provisions of the Tamil Nadu General Sales Tax Act, without a specific enabling provision in the Central Sales Tax Act for the levy of penalty. We are not concerned with such a situation here. Here both the Tamil Nadu General Sales Tax Act, 1959, and the Surcharge Act came to be passed by the same Legislature and both the statutes supplement each other. The Tribunal therefore, in our view, was in error in applying the decisions referred to above in support of its view in the present case. The question whether section 22 of the Tamil Nadu General Sales Tax Act, 1959 could be applied in respect of surcharge leviable under the Surcharge Act came up for consideration before this Court in *Rajamani v. State of Tamil Nadu* [1980] 46 STC 451 and this Court, on a close scrutiny of the relevant provisions of the Tamil Nadu General Sales Tax Act, 1959 as also the provisions of the Surcharge Act, 1971 came to the conclusion that section 3(2) of the Surcharge Act, 1971 applies every provision of the Tamil Nadu General Sales Tax Act, 1959 as is applicable to sales tax, to surcharge, and, therefore, section 22 of the General Sales Tax Act, 1959 applies to the collection of surcharge as well. The assessee in that case contended that with regard to surcharge, penalty could not be levied invoking section 22 of the Tamil Nadu General Sales Tax Act, 1959 because section 22 would not apply to the collection of surcharge. In support of that contention reliance was placed on the wording of section 3(2) of the Surcharge Act, 1971

and it was contended that the section does not either expressly or by necessary implication make section 22 of the General Sales Tax Act apply to the collection of surcharge. The Bench had no hesitation to reject that contention, as it took the view that what was sought to be levied under the Surcharge Act, 1971 was only surcharge which was dependent upon the liability to pay sales tax and, that, in any event, the language of section 3(2) of the Surcharge Act indicated that the intention of the Legislature was to apply every provision of the Tamil Nadu General Sales Tax Act, 1959 as is applicable to sales tax, to surcharge. Thus the Court held that section 22 of the Tamil Nadu General Sales Tax Act, 1959 was applicable to the levy of surcharge, in view of the wise language used in section 3(2) of the Surcharge Act.

4. In *State of Tamil Nadu v. Mathurai Veerasamy & Co.* [1983] 52 STC 131, an identical question, as arose in *Rajamani v. State of Tamil Nadu* [1980] 46 STC 451, came up for consideration. Without reference to the earlier decision, a Division Bench of this Court took a contrary view and held that section 22 of the Tamil Nadu General Sales Tax Act, 1959 would not apply in the matter of collection of surcharge u/s 3 of the Surcharge Act, 1971. The reason given by the Bench for holding that section 3(2) of the Surcharge Act would not attract section 22 of the General Sales Tax Act, 1959 is that section 3(2) of the Surcharge Act does not say that all the provisions of the Tamil Nadu General Sales Tax Act, 1959 would apply to the levy of surcharge and that therefore section 22 of the Tamil Nadu General Sales Tax Act, 1959 cannot apply to the surcharge levied under the Surcharge Act, 1971. The Court, however, in that case has not indicated as to what are the provisions of the Tamil Nadu General Sales Tax Act, 1959 which are made applicable to the surcharge leviable u/s 3(2) of the Surcharge Act, if the intention of the Legislature was not to apply the entire provisions of the Tamil Nadu General Sales Tax Act.

5. Even a cursory glance of the provisions of section 3(2) of the Surcharge Act, 1971 would show that all the provisions of the Tamil Nadu General Sales Tax Act, 1959 as they apply in relation to sales tax, are made applicable in relation to surcharge payable u/s 3(1) of the Surcharge Act, 1971. When the language of section 3(2) of the Surcharge Act attracts all the provisions of the General Sales Tax Act, 1959 as are applicable to sales tax, we do not see how it is possible to restrict the application of the provisions of the Tamil Nadu General Sales Tax Act, 1959 in so far as it relates to surcharge leviable under the Surcharge Act, 1971. It cannot be disputed that section 22 of the Tamil Nadu General Sales Act, 1959 is a provision applicable in relation to sales tax payable under the Tamil Nadu General Sales Tax Act, 1959. Once that is conceded, then section 3(2) of the Surcharge Act attracts that provision and makes it applicable to surcharge as well. So long as section 3(2) does not exclude the application of any particular provision of the Tamil Nadu General Sales Tax Act, 1959 so far as it is applicable to surcharge, it must be taken that the entire provisions of the Tamil Nadu General Sales Tax Act, 1959 save as otherwise provided under the Surcharge Act, 1971 would apply in relation to surcharge. We do not see how, merely

because the word "all" has not been used in section 3(2) and only "the provisions of the said Act" has been used in the said provision, it should be inferred that the intention of the Legislature was not to make the entire provisions of the Tamil Nadu General Sales Tax Act, 1959 applicable in relation to surcharge. Thus, on a due and proper consideration of the provisions of section 3(2) of the Surcharge Act, and section 22 of the General Sales Tax Act, 1959 we are inclined to take the view that section 22 of the General Sales Tax Act, 1959 stands attracted, by virtue of section 3(2) of the Surcharge Act, 1971 to surcharge payable under the latter Act. Thus we are inclined to agree with the view expressed in *Rajamani v. State of Tamil Nadu* [1980] 46 STC 451 in preference to the view expressed in *State of Tamil Nadu v. Mathurai Veerasamy & Co.* [1983] 52 STC 131. Though, under normal circumstances, when there is a diversity of opinion between two Bench decisions of this Court, this Court will refer the matter to a Fuller Bench for an authoritative ruling, we are relieved of the necessity of making such a reference to a Fuller Bench, in view of a subsequent decision of the Supreme Court in *Ashok Service center and Others Vs. State of Orissa*, which appear to take a view similar to the one taken in *Rajamani v. State of Tamil Nadu* [1980] 46 STC 451. Since the decision of the Supreme Court concludes the issue, in the face of that decision, *State of Tamil Nadu v. Mathurai Veerasamy & Co.* [1983] 52 STC 131 cannot be taken to lay down the law correctly, and there is no necessity for the question being considered by a Fuller Bench.

6. In *Ashok Service center and Others Vs. State of Orissa*, the Supreme Court was considering more or less a similar question. There the original Orissa Sales Tax Act, 1947 was supplemented by the Orissa Additional Sales tax Act, 1975. The said Orissa Additional Sales Tax Act, 1975 was amended by the Orissa Additional Sales Tax (Amendment) Act, 1979. In the Orissa Additional Sales Tax Act, 1975 there was a provision more or less similar to section 3(2) of the Tamil Nadu Sales Tax (Surcharge) Act, 1971. Section 3(1) of the Orissa Additional Sales Tax Act, 1975 enabled the State of levy additional sales tax in addition to the sales tax leviable under the Orissa Sales Tax Act, 1947. Section 3(2) of the Orissa Additional Sales Tax Act provided that the provisions of the Orissa Sales Tax Act would be applicable to the levy of additional sales tax under the Orissa Additional Sales Tax Act, 1975. The question arose whether Section 8 of the Orissa Sales Tax Act, 1947 would be applicable to additional sales tax levied under the Orissa Additional Sales Tax Act. In that case it was contended by the Revenue that section 3(1) of the Orissa Additional Sales Tax Act was a complete and self-contained code on the charge created by the Act, and that therefore section 8 of the Orissa Sales Tax Act could not be invoked on the basis of section 3(2) of the Orissa Additional Sales Tax Act. Thus the contention of the Revenue was that section 8 of the principal Act was applicable only to the levy of sales tax and that it would not stand attracted to the levy of additional tax. The Supreme Court held that section 3(1) of the Orissa Additional Sales Tax Act was not a complete and self-contained code on the charge created by it and that section 3(2) which formed an integral part of the charging section, showed that the

State Legislature intended not to depart substantially from the principal Act, except with regard to matters in respect of which express provisions had been made in the Act, that the additional sales tax was in the nature of a surcharge over and above what was due and payable by the assessee under the principal Act, that it was therefore necessary to read and construe the two Acts together as if the two Acts were one, and by reason of section 3(2) of the Orissa Additional Sales Tax Act, section 8 of the principal Act was applicable to the levy of additional tax also. The Supreme Court further held that section 3(2) of the Orissa Additional Sales Tax Act, which made the provisions of the principal Act, *mutatis mutandis*, applicable to the levy of additional tax, is a part of the charging provisions of the Additional Sales Tax Act and that it did not say that only those provisions of the principal Act, which related to the assessment and collection of tax would be applicable to the provisions of the Additional Sales Tax Act, 1975.

7. Here we have an *a fortiori* case. Section 3(2) of the Surcharge Act, 1971 specifically makes the provisions of the principal Act, as are applicable to the levy of sales tax, applicable to the levy of surcharge. Section 3(2) being part of the charging provision under the Surcharge Act, when it does not say that only those provisions of the principal Act which relate to the assessment and collection of tax will be applicable to the levy of surcharge under the Surcharge Act, all the provisions of the principal Act, including section 22, which apply to the levy of sales tax, will be applicable to the levy of surcharge. As a matter of fact, the Supreme Court has specifically rejected the contention of the Revenue in that case observing, that, if the contention of the State, that all the provisions of the principal Act could not be made applicable to the levy of additional tax was accepted, then the provisions of the principal Act relating to the recovery of tax and the levy of penalty would become unavailable for collecting additional tax and that the provisions of the principal Act, which are necessary for making the levy of additional tax effective, would become inapplicable. The above reasoning of the Supreme Court squarely applies to the present case. If section 3(1) is treated as a complete and self-contained code on the charge created by it, then section 3(2) cannot be relied upon by the State to attract the machinery provisions contained in the principal Act, such as section 12. If section 22 cannot be made applicable to surcharge, on the ground that section 3(2) will not attract section 22, on the same reasoning, it cannot attract section 12 which is the machinery section to enforce levy and collection of surcharge levied u/s 3(1). Therefore, in order to effectuate levy and collection of surcharge imposed u/s 3(1), section 3(2) which forms an integral part of the charging section, should be understood attracting all the provisions of the principal Act, save as otherwise provided in the Surcharge Act, 1971. We find that there is no provision in the Surcharge Act excluding the provision in section 22 of the principal Act. So long as there is no exclusion contemplated by section 3(2) of the Surcharge Act, it must be understood as attracting all the provisions of the principal Act, as are applicable to the levy of sales tax, for the levy of surcharge as well. Following the

decision of the Supreme Court in Ashok Service center and Others Vs. State of Orissa, we hold that the penalty has rightly been levied in this case u/s 22 of the Tamil Nadu General Sales Tax Act, 1959 read with section 3(2) of the Surcharge Act. In view of the decision of the Supreme Court in Ashok Service center and Others Vs. State of Orissa, , the decision rendered by this Court in State of Tamil Nadu v. Mathurai Veerasamy & Co. [1983] 52 STC 131 cannot be taken as laying down the law correctly.

8. The tax case is accordingly allowed, as indicated above. There will be no order as to costs.