
(1983) 02 MAD CK 0010
In the Madras High Court
Case No : Tax Case No. 34 of 1983

Devendran and Company

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 16-02-1983

Acts Referred:

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

Citation : (1983) 53 STC 229

Hon'ble Judges : P. Shanmugam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : A.K. Gopinath, for C. Venkataraman, for the Appellant;

Judgement

Ramanujam, J.—This revision is directed against the order of the Tribunal upholding the penalty of Rs. 7,030 imposed on the assessee u/s

12(5) of the Tamil Nadu General Sales Tax Act, 1959. According to the learned counsel for the assessee, section 12(5) has no application to the

facts of this case, as the assessing authority in this case has not accepted the turnover returned by the assessee, which is a necessary ingredient for

the application of sub-sections (4) and (5) of section 12.

2. What happened in this case was this. The assessee submitted a return showing a taxable turnover of Rs. 95,741.50. The assessing authority,

however, after a check of his accounts, determined the taxable turnover at Rs. 7,83,250. The assessing authority, after a check of the books of

account of the assessee, found that the assessee had failed to disclose a huge turnover in the A-2 returns, though it found its place in the accounts,

with a view to postpone payment of tax legitimately due to the Government. The assessing authority therefore levied a penalty of Rs. 21,242 u/s

12(5) of the Act for the non-disclosure of certain turnover in the A-2 returns, though it was disclosed in the accounts.

3. The matter was taken up in appeal to the Appellate Assistant Commissioner. Before the Appellate Assistant Commissioner the propriety of the

levy of penalty u/s 12(5)(iii), as also the quantum of penalty was challenged by the assessee. The Appellate Assistant Commissioner however held,

that on the facts, the provisions of section 12(5)(iii) stood attracted, but felt that the matter should go back to the assessing authority for

determining the quantum of the turnover suppressed for the period from 3rd December, 1979, to 31st March, 1980, having regard to the fact that

section 12(5) as amended came into force only on 3rd December, 1979.

4. Aggrieved by the order of the Appellate Assistant Commissioner, the assessee filed an appeal before the Sales Tax Appellate Tribunal. The

Tribunal also agreed with the view of the Appellate Assistant Commissioner, that section 12(5) of the Act stood attracted, and that it had rightly

been invoked by the assessing authority. The Tribunal, however, chose to fix the penalty at Rs. 7,030 as against the penalty of Rs. 21,242 levied

by the assessing authority.

5. In this revision, the learned counsel for the assessee contends that section 12(5) cannot be invoked, as that provision will apply only when the

turnover returned by the assessee is accepted as correct, and not when the returns are found to be incorrect and assessment is made on the basis

of best judgment. It is seen that the assessment was completed on the basis of the turnover figures found in the accounts after rejecting the returns.

The assessing authority found that there was discrepancy in the turnover between the book figures and the figures as returned by the assessee.

Thus the assessing authority found the return filed by the assessee to be incorrect and accepted the accounts to be correct and proceeded to make

a best judgment assessment on the basis of the turnover figures found in the accounts. In view of the circumstances that the assessment was based

on the turnover figures found in the accounts, sub-section (4) of section 12 comes into operation. Sub-section (4) of section 12 reads as follows :

(4) Notwithstanding any thing contained in sub-sections (1), (2) and (3), the assessing authority may, if it is satisfied that the accounts maintained

by a dealer are correct, assess such dealer on the basis of such accounts, if such

dealer has -

- (i) failed to submit the prescribed return or
- (ii) failed to submit the prescribed return within such period as may be prescribed or
- (iii) if the return submitted is found to be incorrect or incomplete.

Section 12(4) will stand attracted if the assessing authority is satisfied that the accounts maintained by the dealer are correct. In such a case, the

assessing authority can assess the dealer on the basis of such accounts, if the return submitted is found to be incorrect or incomplete. In this case,

as already stated, the return filed by the assessee was found to be incorrect and the assessment was made on the basis of the figures found in the

accounts which were found to be correct by the assessing authority. It is no doubt true that penalty was levied, while making the best judgment

assessment u/s 12(3) but, since by the time the assessing authority made the assessment, section 12(5) had come into operation on 3rd December,

1979, the assessing authority had to impose penalty as contemplated by section 12(5)(iii), which fixed the minimum penalty at 50 per cent of the

tax due on the turnover. We cannot, therefore, accept the contention of the learned counsel for the assessee that sub-sections (4) and (5) of

section 12 cannot be invoked in this case.

6. On the language of sub-section (4) of section 12, the contention put forward on behalf of the assessee, that once the turnover returned is found

to be incorrect even though the accounts were found to be correct, the said provision will not stand attracted, cannot be accepted. A conjoint

reading of sub-section (2), (3) and (4) of section 12 would indicate that section 12(3) will come into operation when no return is filed within the

prescribed period, or when the return filed is found to be incorrect or incomplete. But sub-section (4) of section 12 will come into play only when

the return filed by the assessee, which is found to be incorrect or incomplete, is inconsistent with the entries found in the accounts which are

accepted as correct. Thus sub-section (4) of section 12 covers a different situation and is intended to apply to a case where there is discrepancy

between the returns submitted, which are found to be incorrect or incomplete, and the entries made in the accounts which are found to be correct.

7. The proviso to sub-section (5) of section 12 would indicate that penalty can be

levied both under sub-section (3) and under sub-section (5) of

section 12 in a given case, if the facts warrant the application of both the sub-sections. In this context, the non obstante clause occurring in sub-

section (4) is also significant.

8. For the reasons stated above, we agree with the view taken by the Tribunal. The tax revision case is therefore dismissed.