

(1995) 09 MAD CK 0068

In the Madras High Court

Case No : Tax Case No. 1625 of 1984 (Revision No. 415 of 1984)

Hindustan Steel Distributors

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 14-09-1995

Acts Referred:

Citation : (1995) 09 MAD CK 0068

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : D. Trilokchand Chopda, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader (Taxes), for the Respondent

Judgement

Thanikkachalam, J.—The assessee is the petitioner. The assessee is Hindustan Steel Distributors, No. 11, Sembudoss Street, Madras-1, dealing in iron and steel. The assessee filed a return, showings turnover of Rs. 37,44,925.56 and claimed second sale exemption for the assessment year 1979-80. There was a raid conducted by the Income Tax Department. The assessing officer on check of accounts found that the place of business of the assessee was inspected by the Income Tax Department officers, who recovered certain records and also verified the stocks and noticed excess stock of 5.229 tonnes of iron and steel and also found undisclosed stock of 36.707 tonnes in the unregistered open-yard. The further investigation of the record recovered by the Income Tax Officer revealed that the assessee have sold 22 items of iron and steel goods, totally weighing 218.243 tonnes for which relevant purchase bills were not available. On the basis of this verification, the assessing officer arrived at the suppressed quantity as 253.346 tonnes and estimated the suppressed sales turnover at Rs. 7,60,038, taxable at 4 per cent and also levied a penalty of Rs. 7,548. On appeal, the Appellate Assistant Commissioner estimated the suppressed quantity as 160 tonnes and arrived at the suppressed turnover at Rs. 4,80,000 and also reduced the penalty to Rs. 5,000. Thus the order passed by the assessing officer was modified by the Appellate Assistant Commissioner.

2. Aggrieved, the assessee filed an appeal before the Appellate Tribunal. The Tribunal considering the overall facts, thought fit to fix the suppressed turnover roughly at Rs. 2 lakhs, taxable at 4 per cent and the Tribunal also held that the levy of penalty of Rs. 1,500 would be reasonable. Accordingly, the penalty was reduced from Rs. 5,000 to Rs. 1,500. In that view of the matter, the Tribunal modified the order passed by the Appellate Assistant Commissioner. It is against this order, the assessee is now in revision before this Court.

3. The learned counsel appearing for the assessee submitted as under :

The assessing officer based his order on the preliminary report prepared by the Income Tax Officer. The Income Tax Department after finalisation of account, fixed the suppressed sales at Rs. 11,740 on 2.717 M.T. Therefore, according to the counsel, if at all any addition is warranted on suppressed sales turnover, it would be only Rs. 11,740 and nothing more. The learned counsel further submitted that before the authorities below, detailed explanations were filed showing the quantity of iron and steel sold, relating to 531 tonnes would cover the sales turnover of 22 items said to have been suppressed by the assessee. According to the learned counsel, the explanation offered by the assessee was not accepted by the department. It was further pointed out that when the department accepted the explanation of the assessee for 93 tonnes, it ought to have accepted the explanation offered by the assessee for the remaining 160 tonnes also. Therefore, it was submitted that when the sales turnover of 160 tonnes is included in the sales turnover of 531 tonnes, the contention of the department that sales turnover of 160 tonnes was not disclosed, is unacceptable. The learned counsel again pointed out that in the open-yard the goods belonging to other concerns were also deposited and the goods belonging to the assessee were separately accounted for and furnished to the department, which was not accepted. It was, therefore, submitted that inasmuch as the assessee explained the sale of iron and steel to the extent of 531 tonnes, which was accepted by the Income Tax Department, except 2.717 metric tonnes, there is no reasonableness on the part of the Sales Tax Department to refuse to accept the explanation offered by the assessee in the matter of sales turnover of 160 tonnes.

4. On the other hand, the learned Additional Government Pleader (Taxes), while supporting the order passed by the Tribunal, submitted that the Tribunal without ascertaining or furnishing any particulars, simply reduced the suppressed sales turnover as determined by the Appellate Assistant Commissioner. So also in the matter of levy of penalty, the Tribunal has not assigned any reason for reducing the same from what was levied by the Appellate Assistant Commissioner. It was submitted that the Appellate Assistant Commissioner accepted the explanation offered by the assessee for 93 tonnes. But the Appellate Assistant Commissioner requested the assessee to furnish explanation with regard to the sales turnover of 160 tonnes. Even though the Appellate Assistant Commissioner granted time and opportunity to the assessee to furnish explanation for the sales turnover of 160 tonnes, no acceptable evidence was offered by the assessee. In the absence

of any explanation as to the suppressed sales turnover of 160 tonnes, it was submitted that the Tribunal was not correct in reducing the suppressed sales turnover determined by the Appellate Assistant Commissioner. The learned Additional Government Pleader (Taxes), pointed out that admittedly the assessee is not having accounts for maintaining opening stock and closing stock. The details of the sale of 22 items as pointed out in the order of the assessing officer was not explained. The learned Additional Government (Taxes) further submitted that the assessee has also not furnished any explanation to show that the sales turnover of 160 tonnes is included in the sales turnover of 531 tonnes. According to the learned Additional Government Pleader (Taxes) since the sales turnover relating to 160 tonnes remains unexplained, the assessee is not entitled to say that the sales turnover of 160 tonnes is second sales, and therefore even assessing that it is a suppressed sale, it should be exempted. For these reasons, it was submitted that this is a case where the department should file a revision petition, inasmuch as the Tribunal reduced the suppressed turnover and the penalty without assigning any proper reason.

5. We have heard the rival submissions. The fact remains that for the assessment year 1979-80, the assessee filed a return showing sales turnover of Rs. 37,44,925.56. The assessee has also filed a return for levy of Central sales tax. In so far as the sales turnover of Rs. 37,44,925.56 is concerned the assessee claimed exemption as second sales. This was accepted by the department. During the year April 1, 1979 to August 18, 1979 the assessee purchased 548 tonnes and the opening stock on April 1, 1979 was 6.833 tonnes. The total comes to 554.833 tonnes. The sale from April 1, 1979 to August 18, 1979 comes to 531 tonnes. On the basis of the report filed by the Income Tax Department on raid, the Sales Tax Officer found that 22 items of iron and steel amounting to 218.243 tonnes were not disclosed. So also the assessing officer found undisclosed stock of 36.707 tonnes at the unregistered open-yard. Thus the total comes to 253.346 tonnes. On the basis of Rs. 3,000 per ton, the assessing officer arrived at the suppressed turnover at Rs. 7,60,038. On appeal, the Appellate Assistant Commissioner accepted the explanation offered by the assessee for 93 tonnes and according to the Appellate Assistant Commissioner that inasmuch as the assessee failed to furnish explanation for 160 tonnes, he sustained the sales turnover of 160 tonnes as suppressed turnover, amounting to Rs. 4,80,000 which was further reduced to rupees two lakhs, on appeal by the Appellate Tribunal. The assessee submitted that the sale value of 160 tonnes is included in the sale value of 531 tonnes as shown by the assessee. The fact remains that the assessee is not maintaining accounts for closing stock and opening stock. In the absence of proof with regard to the abovesaid aspects, the department on physical verification of the document secured in the raid by the Income Tax Department estimated the total quantity of iron and steel not shown in the books. The authorities below required the assessee to produce evidence to show that the sales of 22 items are included in the total turnover submitted by the assessee. But to the satisfaction of the authorities below, no evidence was

produced by the assessee to explain the abovesaid suppression made by the assessee. Ultimately the Appellate Assistant Commissioner found that explanation is not forthcoming for the suppression of sale of 160 tonnes. The answer given by the assessee was that they have explained before the Income Tax authorities and they have accepted their explanation and determined the suppressed sales with regard to 2.717 tonnes. Therefore the sales tax authorities should have also accepted the assessment made by the Income Tax Department. The fact is that the sales tax authorities wanted explanation with regard to the suppressed sales turnover of 160 tonnes. Except stating that this sale value of 160 tonnes is included in Rs. 37,44,925.56 no material was produced to satisfy the Sales Tax Department. However, the Tribunal in its wisdom reduced the suppressed sales turnover determined by the Appellate Assistant Commissioner from Rs. 4,80,000 to rupees two lakhs. The Tribunal has not given any acceptable explanation for reducing the suppressed sales turnover as determined by the Appellate Assistant Commissioner. So also the Appellate Tribunal reduced the penalty from Rs. 5,000 levied by the Appellate Assistant Commissioner to Rs. 1,500. For reduction of penalties also no plausible explanation was found in the order passed by the Tribunal. However, the department has not come up by way of revision against the order passed by the Tribunal. The learned counsel for the assessee requests this Court to give some concession in the matter of reducing the suppressed sales turnover and the penalty. While exercising revisional jurisdiction, it is not possible to accept the request made by the learned counsel appearing for the assessee. Further, we are of the opinion that the Tribunal itself was very much lenient in reducing the suppressed sales turnover to rupees two lakhs and the penalty to Rs. 1,500. Accordingly, we see no ground to interfere with the order passed by the Appellate Tribunal in respect of both quantum and penalty.

6. In the result, this tax case (revision) is dismissed. No costs.

7. Petition dismissed.