

(2015) 07 MAD CK 0297

In the Madras High Court

Case No : Tax Case (Appeal) No. 2260 of 2008

K. Thirumalaisami

APPELLANT

Vs

The Joint Commissioner III (SMR)

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 34, 7A

Citation : (2015) 07 MAD CK 0297

Hon'ble Judges : R. Sudhakar, J;K.B.K. Vasuki, J

Bench : Division Bench

**Advocate : Lakshmi Sriram, for the Appellant; K. Radhakrishnan, G.A.,
Advocates for the Respondent**

Judgement

R. Sudhakar, J—This Tax Case (Appeal) is filed by the assessee as against the order dated 9.3.1995 passed by the Joint Commissioner in the suo motu revision.

2. The appellant is a dealer in aluminium vessels in Karaikudi and the assessment in this case relates to the assessment year 1991-92. It is seen that the place of business of the assessee was inspected on 04.10.1991, wherein the Department has found variation in the stock of Aluminium vessels, Aluminium circles, Aluminium waste and factory waste and bisuru. The Inspecting Officials also recovered four slips containing entries of business transactions. In the course of the assessment, the Assessing Officer found suppression of sales, which is relatable to slip No. 3 recovered at the time of inspection among other slips, namely, 1, 2 and 4. Hence, the assessee was assessed under the Tamil Nadu General Sales Tax Act on a total and taxable turnover of Rs. 16,48,948/- and Rs. 15,90,465/- respectively by the Deputy Commercial Tax Officer in his proceedings dated 15.2.1993. The Assessing Officer also levied penalty of Rs. 33,368/- under Section 12(3) of the TNGST Act. Aggrieved by the said assessment, the assessee preferred an appeal before the Appellate Assistant Commissioner, who sustained the actual suppressions based on stock variations and slip numbers 1, 2 and 4, but deleted the entire estimation with regard to slip

No. 3 holding that the appellant was suffering from nervous disorder at the time of enquiry by the inspecting officers and slip No. 3 related to only jottings and totals made by the appellant.

3. Finding that the order of the Appellate Assistant Commissioner prejudicial to the interests of the Revenue, in exercise of power under Section 34 of the TNGST Act, the Joint Commissioner issued suo motu notice to the assessee proposing to revise the order passed by the Appellate Assistant Commissioner. After due process of law, the Joint Commissioner revised the order passed by the Appellate Assistant Commissioner, thereby restored the turnover of Rs. 1,92,773/- involving tax of Rs. 7,711/- surcharge of Rs. 1,157/- and additional sales tax of Rs. 13,718/-.

4. Aggrieved by the said order of the Joint Commissioner, the assessee has filed the present appeal.

5. Learned counsel appearing for the appellant contended that de hors the statement of the partner, the finding of the Appellate Assistant Commissioner is that slip No. 3 by itself does not show suppression of sales, therefore, such a finding should not be overturned by the Joint Commissioner in the suo motu proceedings.

6. Heard learned counsel appearing for the appellant and the learned Government Advocate appearing for the respondent.

7. It is not in dispute and not contested by the appellant the suppression of sales turnover in respect of slip Nos. 1, 2 and 4 on the equivalent purchase in terms of Section 7A, which has been affirmed by the first Appellate Authority.

8. The core issue is whether the suppression of sales under Slip No. 3 to the tune of Rs. 1,92,772.85 should be deleted or not. The Original Authority went by the statement of the partner T.Sathiamoorthy, who after the date of inspection, had given a statement on 26.6.1992, which was recorded by the Officer in the typed format. A copy of the statement was given to the said Sathiamoorthy. From the date of inspection to the date of statement, there is a lapse of 9 months and there is no rebuttal of the statement recorded from the partner. In that scenario, on verification of Slip No. 3, the Original Authority came to the conclusion that there was suppression of sales for a sum of Rs. 1,92,773/- and consequently, suppression of purchase under Section 7A subjected to tax, surcharge and additional sales tax. In the appeal preferred by the assessee, the Appellate Assistant Commissioner confirmed the suppression in relation to slip Nos. 1,2 and 4, but granted relief in respect of slip No. 3 on the premise that the appellant/assessee was suffering from nervous disorder at the time of enquiry by the Investigating Officer; therefore, his statement cannot be correct and that was based on medical certificate. It is also a finding of the Appellate Assistant Commissioner that there is no material to this slip to show suppression of sales. Hence, he allowed the appeal to that extent. Against which, the suo motu revision proceedings was initiated by issuing notice to the assessee, which was

rebutted by the assessee. The Commissioner passed a final order upholding the order of the Assessing Officer in respect of slip No. 3 both on suppression of sales and purchase under Section 7A. As against the said order, this appeal is preferred. Challenging the said order.

9. On these facts, we find that the Joint Commissioner in the suo motu proceedings has given some reasons which we would like to point out for better clarity on this issue. Primarily, the plea of the assessee/partner that he was suffering from nervous disability during the time of inspection and therefore he had not given a correct statement was rejected by the revisional authority on the following grounds:

i) from the date of inspection to the date of statement i.e., on 26.6.1992, even after receipt of the recorded statement, there was no rebuttal by the assessee that he was suffering from ill health and the statement recorded was not correct; ii) the plea of the assessee that he was not aware of the business activity and that the Partner K.Thirumalaisamy alone was aware of the business transaction is not correct as the deposition is made by Sathiamoorthy, partner on 26.9.1992, who appeared before the Assessing Officer and filed the books of accounts at the time of final assessment and iii) Reply to the pre-assessment notice was filed by the T.Sathiamoorthy seeking time for filing objection. Since, no objection has been filed, the final assessment has been passed. Only at the time of appeal before the Appellate Assistant Commissioner, the assessee had raised the plea of ill health on the basis of the doctor's certificate. It is also the finding of the Revisional authority that the further appeal proceedings have been pursued by the said Sathiamoorthy and therefore he had full knowledge of the business activity. There is also another finding by the Revisional authority, which we would like to extract below as such:

"The concluding sentences like has been written and signed only by T.Sathiamoorthy and nobody else. The endorsement below to the effect that the statement was taken down, typewritten, read by the assessee and admitted as correct was recorded by the Assessing Officer, Enquiry Officer in this regard. It is also pertinent to note that a copy of the deposition was handed over to the assessee at the time of deposition itself namely on 26.6.92. In as much as the assessee is clothed with a legible and neat copy of his own statement, the contentions raised by the Learned Authorised Representative that such a statement could not be accepted are not at all acceptable."

(emphasis supplied)

10. Insofar as Slip No. 3 is concerned, the Revisional Authority once again verified the document and has given a finding as follows:

"I also perused the slip No. 3 available at page 127 of the assessment file. From the nature of calculations made, it would be evident that they amounted only to the working of price, tax, surcharge etc., for example, in the front page, the following entry is found:-

10.40 with reference to 104 should be relatable to 10% of the tax and 1.56 obviously at 15% is surcharge on the tax of 10.40. Therefore, the figure of 115.96 would naturally relate to the total value of the goods presumably sold. Only to this basis, a total figure of Rs. 1,82,984/- on the reverse side had been worked out. Therefore, with reference to the front page and back page, the Assessing Officer was quite justified in construing a sales suppression of Rs. 1,92,772/- and consequently, the Learned Appellate Assistant Commissioner was not justified in allowing the contentions of the assessee on the grounds of nervous disorder of the assessee, while giving the deposition and that the slip denoted only the jottings.

11. As a result, the Revisional Authority passed the following order:

"As a turnover of Rs. 1,92,773/- thus stands restored, the taxable turnover of the assessee would become Rs. 10,97,442/- as against Rs. 9,04,649/- as sustained by the Learned Appellate Assistant Commissioner and therefore the assessee would become liable to be assessed to tax under Additional Sales Tax to an extent of Rs. 13,718/-.

In the result, this order under Suo Motu Revision will have the effect of restoring a turnover of Rs. 1,92,773/- (r.off), involving a tax of Rs. 7,711/- surcharge of Rs. 1,157/- and Additional Sales Tax of Rs. 13,718/-."

12. We find from the above facts that the plea of ill health during the time of enquiry and subsequent dates is only an after thought, as has been rightly observed by the Revisional Authority. Even otherwise, the finding of the Appellate Assistant Commissioner on Slip No. 3 appears to be erroneous, as has been rightly found by the Revisional Authority, who, on verification has clearly worked out that it is a clear case of suppressed sale and the assessee in this case represented by the partner had full knowledge of the details contained in Slip No. 3 and he has given a statement before the Authority, which forms basis of the original assessment order.

13. From the above facts, it is clear that it is a case of suppression of sales. The finding of the Appellate Assistant Commissioner that the slip did not give any details does not stand to reason because he had failed to read the statement with the document as one single material for coming to the conclusion, which the revisional authority has rightly done.

14. In the light of the above, we find no reason to interfere with the order passed by the Joint Commissioner in the suo motu proceedings. Accordingly, this Tax Case (Appeal) stands dismissed.