
(1961) 02 KL CK 0009
In the High Court Of Kerala

K.M. Alikoya and Co.

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 10-02-1961

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Citation : (1961) 5 KLJ 553 : (1961) 12 STC 567

Hon'ble Judges : M.A. Ansari, C.J.; M. Madhavan Nair, J

Bench : Division Bench

Advocate : V. Rama Shenoi, A. Sivaraman and R. Raya Shenoi, for the Appellant; A. Madhavan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.A. Ansari, C.J.—The revision petitioner is a firm dealing in copra, pepper and other commodities, which had, for the assessment year 1957-58, furnished returns showing a net turnover of Rs. 13,241-84, and claimed exemption on Rs. 2,85,700-23, representing local sales covered by the licence. The Sales Tax Officer has rejected the returns, and has made assessment on the basis of the report by the Intelligence Officer, who had inspected the dealer's shop on 13th January, 1958. On that day the officer had recovered account sheets marked "A", "B", vouchers marked "C" to "J", and torn, pieces of vouchers marked 1 to 127. It is admitted that the dealer's account books do not show the purchase of copra, evidenced by discarded account books and the torn vouchers; and on the basis of the aforesaid evidence, the taxing authorities have made the following addition to the copra account of the revision petitioner.

2. The sales tax on copra till 30th September, 1955, was at the sale point at the rate of 2 naye paise in the rupee, and the petitioner was assessed to tax on the aforesaid amount at the aforesaid rate. Thereafter, the sales tax under a notification was levied on the last purchase point on copra at the rate of 4 naye paise in the rupee, and the taxing authorities have estimated the turnover taxable at this rate in the following way:-

3. It will be seen that the taxing authorities have accepted the dealer's returns, but have added to these returns, what they hold to be the suppressed amount of copra purchases and the additions are on the basis of what the Intelligence Officer had recovered on the date of his surprise visit to the petitioner's shop. It will be further seen that the addition works up to 742 per cent, of what was shown in the dealer's accounts, and the aforesaid 742 per cent, have been added for the entire period from 1st April, 1957, to 13th January, 1958.

4. It is not disputed that prior to the surprise visit the dealers had been making provisional returns, which were being accepted as correct. It is further not disputed that the stock register of copra during the period, when the tax was on the sale point of copra, had been checked, and nothing was found against their being incorrect. Nor the dealer's cash book for the entire period been treated by the taxing authorities as unsatisfactory. Indeed, the dealer had been treated, after the surprise inspection, to have honestly kept the accounts. It follows that the taxing authorities have added on the assumption that what was discovered on the date of the surprise visit was the prevailing rate for purchasing or selling copra right from April, 1957, up to January, 1958. They have further assumed that the same quantity of commodity would be available throughout the period. In the circumstances of the case, we think the aforesaid assessment to be arbitrary.

5. The explanation offered by the revision petitioner is that from 6th January, 1958, to 13th January, 1958, purchases from not less than 32 persons had not been entered in the account books, due to the inexperience of the person in charge of the business, and such an explanation has not been accepted because an experienced "Mooppan" in the shop was available. A further explanation offered was that the purchases evidenced by discovered documents were temporary bargains, wherein the sellers have the liberty to revoke, should they get better price elsewhere, and the bargains, as a matter of fact, were revoked on the sellers taking away the commodities. The revision petitioner's learned advocate has argued that according to the explanation the seller would deposit in the shop the commodity for being Should to the dealers after they had ascertained the highest price in the market. The aforesaid explanation has not been accepted by the taxing authorities, and we are not prepared to vary their conclusions. We, however, think that the taxing authorities have erred in making best judgment assessment, and so has the Tribunal by directing the taxing authorities only to estimate how much of the copra has been lastly purchased by the revision petitioner. The two grounds on which the Tribunal's order is challenged before us are that :

(1) The direction concerning the best, judgment assessment in Section 12(2)(b) of the General Sales Tax Act, 1125, requires a judicial approach by the taxing authority, and, therefore, turnover should be estimated fairly, judiciously and not vindictively ;

(2) Section 3 of the Kerala Surcharge on Taxes Act, 11 of 1957, places a limit of

2 per cent, increase of the tax on the sales and purchases of the commodities defined in Clause (c) of Section 2 of the Central Sales Tax Act, 1956 ; and the surcharge in this case has been incorrectly levied,

6. Now the proposition of law is well settled that taxing authorities when making best judgment assessment should discharge their duty judiciously, and that rule is not confined to assessments of Income Tax alone. It is of wider application because it arises from officers discharging a quasi judicial function when making such an assessment. Therefore, it governs all best judgment assessments. In this connection, we may refer to *Raghubar Mandal Harihar Mandal v. State of Bihar* [1957] 8 S.T.C. 770 where the Supreme Court dealing with Section 10(2) (b) of the Bihar Sales Tax Act, 1944, has observed as follows :-

The provisions of Section 10(2)(b) of the Bihar Sales Tax Act, 1944, and Section 23(3) of the Indian Income Tax Act, 1922, are substantially the same and impose on the assessing authority a duty to assess the tax after hearing such evidence as the dealer may produce and such other evidence as the assessing authority may require on specified points. In making an assessment u/s 10(2)(b) the Sales Tax Officer is not fettered by technical rules of evidence and pleadings and he is entitled to act on material which may not be accepted as evidence in a Court of law ; but he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment. When the returns and the books of account are rejected, the assessing officer must make an estimate and to that extent he must make a guess ; but the estimate must be related to some evidence or material and it must be something more than mere suspicion. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he must take into consideration such materials as the assessing officer has before him, including the assessee's circumstances, knowledge of previous returns and all other matters which the assessing officer thinks will assist him in arriving at a fair and proper estimate.

7. That proposition has been followed in *Jami Narasaya Prusty and Brothers v. State of Orissa* [1958] 9 S.T.C. 648 where the assessee's return did not include the sum for the sale amount of five watches, and the officer added Rs. 15,000 covering the period, during which the watches were sold. In that context it was held that the assessment for the three periods should be quashed, inasmuch as they were based upon mere guess-work and there was no proper basis for making the best judgment assessment. We feel the Appellate Tribunal in this case has inadequately appreciated the principle which must be followed when making such assessments. In the case before us the material recovered may justify the conclusions of the sales during the days, being what the recovered evidence covering the days disclose, but such material could hardly be the basis for ascertaining sales during the entire period preceding the recovery ; for same quantity of the commodity for sales would not be uniformly available, nor the market rate would be the same. Nor the previous scrutiny and correctness of the

stock registers and cash books of the dealers can be so lightly discarded, nor the earlier provisional returns. The position would not be different as regards the period when the tax was on the purchase point, because even here the seasonal availability of the commodity should be taken into consideration as well as the market rate for the commodity which would fluctuate according to the demand for the commodity and its being available in the market. There would further be the ledger, the daily cash book, which may or may not justify the inference of money having been secreted. Further the accounts for the period subsequent to the discovery have been accepted and they would furnish some basis for ascertaining what purchases had taken place reasonably near to those accounts. The returns of the past account year would be available for determining what would have been got from the sellers during the period when the tax was at the sale point. As we are not the authority that decide questions of fact, we would not ourselves determine what the best judgment assessment in the case should be ; but we would direct the taxing authorities to determine afresh after giving proper and judicial weight to all the materials in the case. The Tribunal is therefore directed to ask the taxing authorities to determine afresh the turnover in the light of the principles governing best judgment assessments.

8. Coming to the next objection, we feel that objection to have substance also. It is clear that surcharge is beyond the limits of the proviso which reads as follows :-

Provided that where in respect of declared goods as defined in Clause (c) of Section 2 of the Central Sales Tax Act, 1956, the tax payable by such dealer under the Travancore-Cochin General Sales Tax Act, 1125, or the Madras General Sales Tax Act, 1939, together with the surcharge payable under this sub-section, exceeds two per centum of the sale or purchase price, the rate of surcharge in respect of such goods shall be reduced to such an extent that the tax and the surcharge together shall not exceed two per centum of the sale or purchase price.

9. Therefore, the dealer has been wrongly made liable to surcharge on purchase and sale points because the sales tax on both the points during the assessment year has been 4 and 2 per cent, and in these circumstances the dealer would not be liable to surcharge at all on purchase or sale price of copra.

10. Accordingly, the revision petition is allowed. The judgment of the Tribunal is reversed, and the case is remanded to the Tribunal to proceed in the light of our observations on best judgment assessments made above.