(1981) 01 MAD CK 0007

In the Madras High Court

Case No : Tax Case No. 684 of 1977 (Revision No. 147 of 1977)

Kushiram Baharilal APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 08-01-1981

Acts Referred:

Citation : (1983) 53 STC 93

Hon'ble Judges : V. Ramaswami-II, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramaswami, J.—The assessee was originally assessed under the Central Sales Tax Act for the assessment year 1962-63 by an order dated

7th December, 1964. It was later found that out of the total taxable turnover, a turnover of Rs. 3,30,483.46 was not covered by valid C form and

that therefore they were liable to be taxed at 7 per cent. Accordingly a reassessment notice was issued on 28th February, 1968, requiring the

petitioner to show cause as to why this turnover should not be taxed at 7 per cent. The petitioner filed a writ petition and obtained an interim order

on 31st March, 1968. The writ petition itself was ultimately dismissed on 4th August, 1971. Thereafter, the assessing officer made a reassessment

order on 15th April, 1972, subjecting this turnover of Rs. 3,30,483.46 to tax at the rate of 3 per cent, again making a mistake in the rate of

taxation. The assessee preferred an appeal on the ground that before making the order dated 15th April, 1972, he was not given an opportunity of

showing that the turnover was not assessable to tax at a higher rate than 1 per cent. This appeal was allowed by the Appellate Assistant

Commissioner and the order of assessment was set aside and the matter was remitted to the Deputy Commercial Tax Officer. After the remand, a

fresh notice was issued, again pointing out that the turnover was liable to tax at 7 per cent in view of the fact that they are inter-State sales and not

covered by C forms. After hearing the petitioner, the Deputy Commercial Tax Officer made a fresh order on 30th March, 1974, bringing the

turnover to tax at the rate of 7 per cent. The appeal preferred to the Appellate Assistant Commissioner was dismissed on 22nd March, 1975, and

that filed before the Tribunal was dismissed on 22nd May, 1976.

2. In this petition, the learned counsel for the petitioner contended that the fresh notice after the remand order passed by the Appellate Assistant

Commissioner was given on 19th February, 1974, and that should be taken as the date on which the reassessment proceedings were initiated and

it is specifically so because the original reassessment order dated 15th April, 1972, subjected the turnover of Rs. 3,30,483.46 only to a tax of 3

per cent and not 7 per cent, and if this date is taken as the date on which the reassessment proceedings were initiated, it is clearly barred by

limitation as it is beyond a period of five years.

3. We are unable to agree with this contention. The original assessment order is the assessment order dated 7th December, 1964. That was sought

to be revised by the notice dated 28th February, 1968, proposing to subject the turnover to a tax of 7 per cent. That proceeding, which was

initiated by that notice, continued up to the stage when the Appellate Assistant Commissioner made his order. The mistake committed in subjecting

the turnover to 3 per cent tax by reassessment order does not enable the petitioner to contend that the reassessment proceedings were initiated for

the first time on 19th February, 1974. The assessment order itself was held to be invalid and set aside by the Appellate Assistant Commissioner

resulting in the original proceedings being left at large. The argument that the notice dated 19th February, 1974, sought to revise the original

assessment order dated 7th December, 1964, and therefore it is beyond the period of limitation, cannot be accepted. The notice dated 28th

February, 1968, had already reopened the original assessment and that proceeding had not rendered the finality. In a number of cases it has been

held that the limitation will have to be reckoned only with reference to the notice for reopening the assessment : vide Lakshmanaswami Chettiar &

Sons v. State of Tamil Nadu [1980] 46 STC 327 and other cases cited therein.

4. In the result, therefore, the reassessment order was within time and therefore there is no need to interfere with the order of Tribunal. No other

points are argued in this petition. The revision accordingly fails and is dismissed with costs. Counsel''s fee Rs. 250.

