
(1972) 06 MAD CK 0022

In the Madras High Court

Case No : Tax Case No. 278 of 1966 (Revision No. 200)

M. Ekambara Mudaliar and Another

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 21-06-1972

Acts Referred:

Citation : (1973) 32 STC 591

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : R.G. Rajan, for the Appellant; K. Venkataswami, First Assistant Government Pleader (Tax), for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—The petitioners in this case were dealers in various goods as also commission agents. They were assessed for the year 1957-58 under the Madras General Sales Tax Act, 1939 (Madras Act 9 of 1939), on 15th April, 1960, on a net turnover of Rs. 1,79,249.95. The said assessment order was revised by the Deputy Commissioner of Commercial Taxes suo motu u/s 32 of the Madras General Sales Tax Act, 1959 (Madras Act 1 of 1959), by an order dated 30th March, 1963 and he enhanced the net turnover by Rs. 1,40,617.29. As a result of the said revision the net turnover on which the petitioners have been assessed was Rs. 3,19,867.24. As against the enhancement of the turnover by the revisional authority, there was an appeal to the Sales Tax Appellate Tribunal. But the Tribunal upheld substantially the enhancement except as regards a small turnover of Rs. 4,400.

2. Before us the petitioners question the enhancement made by the revisional authority not only on merits but also on the ground that the Deputy Commissioner had no jurisdiction to invoke the power u/s 32 of Madras Act 1 of 1959 in respect of the assessment year 1957-58 which is governed by Madras Act 9 of 1939.

3. Taking up the question whether the enhancement by the revisional authority is justified in the circumstances of this case, it is seen that the petitioners had purchased goods like sugar and maida from a broker by name Krishnaswami who had his place of business at No. 185, Govindappa Naicken Street, Madras, that on a check and verification of the account books maintained by the said broker, the petitioners were found to have suppressed certain purchases and sales of maida and sugar made through the said broker and that the total of such suppressions came to Rs. 1,40,617.29. It is also seen that the broker was examined in the presence of the petitioners and that the petitioners were given an opportunity to cross-examine the said broker even at the assessment stage by the assessing officer. The broker has stated that the entries made in his accounts are based on the information given by his clerks, that the entries regarding purchases and sales are made in his accounts only when the transactions materialise and that he is entitled to the brokerage only when the transactions are completed. The account books maintained by the said broker and his evidence, which has been subjected to cross-examination by the petitioners, were considered by the assessing authority at the stage of the original assessment and rejected. But the revisional authority felt that there was no justification for the assessing authority to ignore the broker's accounts and his evidence especially when the same account books and the evidence of the broker had been accepted as genuine in various other assessment proceedings which had been affirmed even by the High Court on more than one occasion. The Tribunal also found that the broker's account books have been maintained in the regular course of business and that some of the transactions recorded in the broker's accounts have found place in the assessee's account books and that there is no reason to hold that the other transactions referred to in the broker's account books did not really take place. The Tribunal also considered the broker's evidence and accepted the same. The Tribunal was not prepared to reject the evidence of the broker and the evidentiary value of the entries made in his accounts, in the light of the letters given by the dealers with whom the petitioners are said to have transacted. The Tribunal ultimately upheld the order of the revisional authority enhancing the turnover.

4. Mr. R.G. Rajan, the learned counsel for the petitioners, contends that the revisional authority is not justified in reappraising the evidence which was considered by the assessing authority and rejected and that even accepting the evidence of the broker, it cannot be said that the suppressions had been duly established in this case. We are not in a position to accept the above contention as the appreciation of evidence is purely a matter for the ultimate fact-finding authority, the Sales Tax Appellate Tribunal and the Tribunal having taken the view that the evidence of the broker as well as the entries in his accounts could not be rejected as not genuine, it is not possible for this court, acting u/s 38 of the Act, to reappraise the evidence and come to a contrary conclusion on facts. As a matter of fact, the same account books kept by the broker have formed the basis of enhancement of the turnover of various other dealers and some of the dealers

came to this court by way of revisions and this court has held that as the account books of the said broker are genuine and kept in the regular course of business, they could be acted upon. Jagadisan and Srinivasan, JJ., in T.C. No. 200 of 1959 while dealing with the reliability of the broker's accounts said :

But having regard to the fact that Krishnaswami is a broker through whom the assessee was in the habit of making purchases, there is no reason to doubt the genuineness of the entries in Krishnaswami's accounts. It would have been easy for the assessee to have shown his relevant accounts in which the commission paid to the broker was entered in respect of these transactions and to have established that brokerage having been paid only in respect of the transactions recorded in his own books and not in the case of the other transactions, these latter transactions had really fallen through. But no such attempt was made by the assessee.

5. Again in *M. Ayyaswami Nadar v. State of Madras* [1965] 16 S.T.C. 957, Ramakrishnan and Ramamurti, JJ., justified the enhancement on the basis of the same accounts of the broker and they also expressed :

But Krishnaswami's accounts have been maintained in the regular course of business and he has had brokerage transactions with several other dealers besides the assessee. Many of the entries in the broker's accounts are traceable in the regular accounts of the assessee. The authorities were, therefore, justified in holding that the accounts of the broker were regularly kept....

6. In the light of the observations of this court on the earlier occasions with regard to the same account books kept by the broker, we are not persuaded to accept the contention of the petitioners' learned counsel that the account books of the broker cannot be relied on. Therefore, we are of the view that the enhancement made by the revisional authority cannot be successfully attacked on merits.

7. Coming to the question of jurisdiction of the revisional authority to invoke Section 32 of Madras Act 1 of 1959 in respect of the assessment year 1957-58 it is necessary to set out the provisions relating to the suo motu revision by the Deputy Commissioner, both under Madras Act 9 of 1939 and Madras Act 1 of 1959. Section 12(2) of Act 9 of 1939 which gave the power of revision to the Deputy Commissioner is as follows :

The Deputy Commissioner may-

(i) suo motu, or

(ii)...call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding and may pass such order with respect thereto as he thinks fit.

8. The relevant provision in Act 1 of 1959 is Section 32, which is as follows:

Section 32. (1) The Deputy Commissioner may, of his own motion, call for and examine an order passed or proceeding recorded by the appropriate authority u/s 4-A, Section 12, Section 14, Section 15, or Sub-sections (1) and (2) of Section 16 and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon as he thinks fit.

9. The contention of the learned counsel for the petitioners is that the Deputy Commissioner can invoke only Section 12(2) of Act 9 of 1939 in respect of the assessment year 1957-58 and that he had no jurisdiction to invoke Section 32 of Act 1 of 1959, as Section 61(1)(ii) contemplates the revisional authority to act only under the old Act as regards assessment years preceding 1st April, 1959, when the new Act came into force. In our view, the learned counsel appears to be right in his submission that the Deputy Commissioner could rightly act only u/s 12(2) of the old Act and not u/s 32 of the new Act, in relation to any period before 1st April, 1959. But the order passed in the present case by the Deputy Commissioner u/s 32 of the new Act falls u/s 4(a) of Madras Act 10 of 1963 which validates all acts, proceedings or things done or taken by the Government or by any officer of the State Government or by any other authority in connection with the levy or collection of such taxes notwithstanding that such acts, proceedings or things were done under the new Act in pursuance of Section 61(1) or any other provision of the new Act after the first day of April, 1959. This validating provision specifically states that all such acts, proceedings or things done shall for all purposes be deemed to be in accordance with law. We are, therefore, of the view that the above validating provision will cure the defect of jurisdiction on the part of the Deputy Commissioner when he invoked Section 32 of the new Act in respect of the assessment year 1957-58.

10. Even otherwise we are inclined to hold that so long as the Deputy Commissioner had the power to revise u/s 12(2) of the old Act and the order passed by him could be brought within that Section, the mere mention of Section 32 of the new Act in the revisional order passed by him will not make the order itself as one without jurisdiction. Therefore, we have to see whether the order passed by the Deputy Commissioner purporting to be u/s 32 of Madras Act 1 of 1959 could be justified as an order u/s 12(2) of Madras Act 9 of 1939.

11. The submission made by the learned counsel for the petitioners is that the Deputy Commissioner had very restricted powers of suo motu revision u/s 12(2) of the old Act, while he has been clothed with wide powers u/s 32(1) of the new Act and that u/s 12(2) of the old Act, the Deputy Commissioner could only call for and examine the records of any order passed or proceeding recorded under the provisions of the old Act by any officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, but under the new Act, the Deputy Commissioner while exercising suo motu revision could make such enquiry as he thinks fit. Though the learned counsel is right in saying that the powers of revision of the

Deputy Commissioner u/s 32 of the new Act is somewhat wider than the one given to him u/s 12(2) of the old Act, we are unable to appreciate his contention that the Deputy Commissioner, in this case, has acted beyond the limitations contained in Section 12(2). In this case, the assessing authority considered the turnover in question and excluded it from assessment for certain reasons. The Deputy Commissioner as revisional authority had exercised the power u/s 12(2) to see whether the order of the assessing authority excluding the said turnover from assessment is proper. It cannot be said that the Deputy Commissioner has brought in any new or fresh turnover which was not before the assessing authority for assessment as a result of an enquiry made by him. As a matter of fact, we find that the Deputy Commissioner in this case actually relied on the evidence already on record and not on any fresh evidence gathered by making further enquiries. He has not traversed beyond the powers contained in Section 12(2) while revising the assessment. To find out whether the order of assessment made by the assessing authority excluding certain turnover from the levy of tax is proper or not, the Deputy Commissioner as revisional authority has to reconsider the evidence already on record and this is what has been done in this case. We cannot, therefore, accept the petitioners' contention that the order of revision passed by the Deputy Commissioner could not be brought u/s 12(2) of the old Act.

12. The result is the tax case is dismissed, but in the circumstances without costs.