
(1991) 10 MAD CK 0055

In the Madras High Court

Case No : Tax Case No. 1361 of 1982 (Appeal No. 91 of 1982)

M. Kasirajan and Brothers

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 01-10-1991

Acts Referred:

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

Citation : (1991) 10 MAD CK 0055

Hon'ble Judges : Kanakaraj, J;A.S. Anand, J

Bench : Division Bench

Advocate : V. Srikanth for C. Venkataraman and D. Srinivasan, for the Appellant; A.K. Gopinath, Government Advocate (Taxes), for the Respondent

Judgement

Kanakaraj, J.—The appellants are dealers in tamarind, jaggery, grams, etc. They had reported a total and taxable turnover of Rs. 5,67,777.55 and Rs. 3,76,836.71, respectively for the assessment year 1976-77. When the accounts were checked it was found that there were certain discrepancies due to non-inclusion of second purchase of jaggery and second sales of grams. Further there was an inspection of the business premises on March 27, 1977 and three slips were recovered. From two of the slips purchase omission was noticed and the sale value was estimated at Rs. 20,115. To the extent of the suppression penalty was levied u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter called "the Act") to the tune of Rs. 1,207. After notice to the assessee, the assessing authority fixed the total and taxable turnover to the best of his judgment by adding the said sum of Rs. 20,115 as suppressed turnover. On appeal, the appellate authority sustained the addition based on the slips recovered from the place of business only to the extent of Rs. 1,595 and deleted the balance of Rs. 18,520. He also deleted the levy of penalty. In suo motu proceedings taken u/s 34 of the Act, the Joint Commissioner set aside the order of the appellate authority and restored that of the assessing authority. The assessee has filed this appeal against the order of the Joint Commissioner.

2. The contention of the learned counsel for the appellants is that affidavits had been filed from the agriculturists to prove that they had sent the goods under certain lucky names and the assesseees had noted the quantity promised to be supplied in slips of paper and that they had not sent the entire quantity of goods promised by them at the time of visit of the assesseees. According to the assesseees, if the contents of the affidavit are accepted no suppression can be deduced from the slips recovered at the time of inspection. To understand the case of the assesseees we would do well to give the details contained in the slips 1 and 2 recovered at the time of inspection.

3. At the time of inspection on March 27, 1977, a statement was recorded from the assesseees and that statement did not contain any explanation for the entries in the slips of the paper. Subsequently on April 6, 1977, one of the partners had been examined with reference to the slips. In that statement it was explained that at the time of visit of the partner, the agriculturists had agreed to send certain quantity of tamarind against certain names and that the entire quantity promised had not been received by the assesseees. The slips only contain such entries based on the promise of the agriculturists. The assessing authority found that there was no correlation between the entries in the account book with the names mentioned in the slips of paper. A few days before the appeal was heard on September 20, 1978, the affidavits of certain agriculturists were filed before the appellate authority. With a view to explain the entries in the slips of paper by name Mahendiran and Gouri vilas affidavits purported to say that the agriculturists would send tamarind in certain lucky names called "Mahendiran and Gouri vilas". Even here the affidavits proceeded to say that they had not sent the entire goods promised by them. According to the averments in the affidavits, slips of paper contained entries made by the assesseees at the time of his visit to the respective agriculturists. The appellate authority proceeded to accept this explanation and deleted the turnover of Rs. 18,520, which was based on entries against Mahendiran and Gouri vilas. However, the appellate authority could not find any explanation for other entries in the names of "P.V." and "Raju" and upheld the addition of Rs. 1,595 based on those entries. The Joint Commissioner disbelieved the story of the goods, having been sent in certain lucky names. He was of the view that this plea of the assesseees was apparently an afterthought and that is the reason why, the affidavits were filed just a few days before the hearing of the first appeal. Holding that the entries in the slips of paper had not been accounted in the regular books, the Joint Commissioner restored the orders of the assessing authority.

4. We called for the records and have perused the three affidavits sworn to by one Gurusamy, Surulisamy and Sankaralingam, Surulisamy has referred to the goods being sent in the name of Mahendiran. We find that in the statement given by the partner on April 6, 1977 that these particulars referred to in the affidavits had not been disclosed. If we examine the natural conduct of a person when confronted with slips of paper recovered in a surprise inspection, the immediate reaction would normally, be to tell the officer that the entries in the slips of paper

referred to a particular agriculturists and the real names of the agriculturists had been recorded in the books. On the other hand in this case the assesseees did not give such an explanation soon after the date of inspection. More than a year later, at the time of hearing of the first appeal, the affidavits were filed concocting a novel story. The real fact is that the names and the quantities mentioned in the slips of paper have not been brought to regular accounts. The assesseees were only making a crude attempt to get certain entries in the books of accounts, tally with part of the goods in the slips of paper and thus were trying to escape the best of judgment assessment. We agree with the Joint Commissioner that the story pleaded by the assesseees more than one year after the inspection cannot be believed in preference to the statement given immediately after the inspection. The Appellate Assistant Commissioner had fallen into an error in accepting the story pleaded in the affidavits and deleting the turnover of Rs. 18,520. There was no indication in the slips of paper as to how the names Mahendiran and Gouri vilas could be translated or decoded by the assesseees as Sankaralingam and Surulisamy at the time of writing the accounts. Once the suppression is established we do not find any cause for deleting the penalty on the suppressed turnover. Consequently the order of the Joint Commissioner is upheld and the appeal is dismissed. There will however be no order as to costs.

5. Appeal dismissed.