(1967) 06 MAD CK 0012

In the Madras High Court

Case No : Tax Case No. 176 of 1964 and Revision No. 117

M. Ramaswamy Pillai APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 26-06-1967

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 32, 32(1)

Citation : (1968) 22 STC 224

Hon'ble Judges : Veeraswami, J;Krishnaswamy Reddy, J

Bench : Division Bench

Advocate : K. Srinivasan, D.S. Meenakshisundaram and K.C. Rajappa, for the Appellant; K. Venkataswami, for The Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—The short point in this case is whether a Deputy Commissioner, in exercise of his powers u/s 32 of the Madras General

Sales Tax Act, 1959, has jurisdiction to make an order levying penalty for the first time on the assessee where the assessing authority in its original

order of assessment failed to make any observation on penalty. It is not in dispute that the assessing authority added Rs. 30,879.64 to the turnover

reported, and that the turnover so added had been suppressed, but was discovered by means of certain anamath slips, the figures in which found

no place in the assessee''s account books. In those circumstances, in its provisional notice to assess, the assessing authority called upon the

assessee to show cause why a penalty of Rs. 1,026 should not be levied ; but in the final assessment, apparently after applying its mind to the

objections filed by the assessee, it decided not to levy any penalty. That apparently was its conclusion though it found no expression in the assessment order itself. The only point urged by the assessee before the authorities below was that the Deputy Commissioner had no power to revise the assessment order and levy the penalty.

2. Section 12(3), which contains the power of the assessing authority to levy penalty, was interpreted by this Court in State of Madras v. Ramulu Naidu [1965] 16 S.T.C. 865 where it was held that the penalty contemplated by the sub-section depended on and followed a finding as to the incompleteness or incorrectness of the return submitted, and formed part of the proceedings resulting in the best judgment assessment, and that, therefore, what was contemplated by Sub-section (3) of Section 12 was one enquiry for both best judgment assessment and penalty, and that being the case, the assessing authority, while making the assessment by best judgment, should also decide at the same time and in the same enquiry why a penalty should be levied. Section 32(1) confers on the Deputy Commissioner of Commercial Taxes special powers and it says that he may, of his own motion, call for and examine an order passed or proceeding recorded by the appropriate authority u/s 12, among other sections, and may make such inquiry or cause such inquiry to be made and subject to the provisions of the Act, pass such order thereon as he thinks fit. It is argued that since the assessment order is silent about penalty, there is, here, no order passed or proceeding recorded by the appropriate authority, and, therefore, Section 32(1) will be inapplicable. We are not persuaded to accept the argument. As we said, the assessing authority in its notice proposing addition of turnover, called upon the assessee to show cause why a penalty should not be levied. It must be taken, therefore, that the assessing authority must have applied its mind to the question of penalty. There is no evidence that the assessing authority was silent about penalty in its final assessment order by mere oversight. We are inclined to think that this is a case where it should be deemed that the assessing authority, in view of the objections filed by the assessee, considered that, no penalty was called for. It is not necessary to attract Section 32(1) that there should always be an order expressly passed. We are aware that the word ""passed"" postulates an order made. But circumstances may show that -an order, though not expressly passed, is impliedly passed. In fact, in State of

Madras v. Ramulu Naidu [1965] 16 S.T.C. 865 this is what this Court

observed :

Where an officer at the time of making an assessment order was silent about the imposition of penalty, it must be taken that the assessing authority

had applied its mind but did not think it necessary to levy a penalty.

3. That would amount to an order which may fall well within the phrase ""an order passed"" in Section 32(1). If there is an order passed within the

meaning of the sub-section, then the sweep of the Deputy Commissioner''s power in that sub-section appears to be very wide and may

comprehend the power to revise the order so as to include a penalty where the assessing authority had failed to make it.

4. On that view it is not necessary to examine the scope of Section 31(1) or the other provisions of the Act. The petition fails and is dismissed but

in the circumstances there will be no costs.

