

(1967) 04 MAD CK 0061

In the Madras High Court

Case No : Tax Case No. 149 of 1964 (Revision Petition No. 93 of 1964)

M.V. Pavadai Chettiar Sons

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 24-04-1967

Acts Referred:

Citation : (1968) 21 STC 67

Hon'ble Judges : Srinivasan, J; Ramakrishnan, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; The Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishnan, J.—This petition is filed by way of revision against the order of the Sales Tax Appellate Tribunal in T.A. No. 242 of 1963. The prior circumstances which led to the order of the Sales Tax Appellate Tribunal are briefly the following :

The petitioner Pavadai Chettiar, who will be called as the assessee, is a dealer in cloth, bullion and jewellery. He had elected under Rule 18 of the Madras General Sales Tax Rules to the submission of monthly returns and to his being assessed on the basis of such returns. The assessment order is for the period ending 31st March, 1961. His premises were inspected by the Sales Tax Authorities on 27th December, 1960. Two anamath account books were discovered and they were in the form of two small pocket note-books. One book contained entries for transactions from 16th September, 1960 to 29th November, 1960, and the other, entries for transactions from 29th November, 1960 to 27th December, 1960. During the period covered by the anamath accounts, the entries therein revealed a turnover of Rs. 3,31,915 of transactions assessable at 2 per cent, and Rs. 10,880.19 of transactions assessable at 1/2 per cent. There were intrinsic data to show that similar transactions as were found in these small notebooks, must have taken place during the prior period. The authorities relied upon the

circumstances that even though there were no brought forward entries in the second note-book, there was really another pocket note-book for the prior one month period. Arguing backwards, by the same process of reasoning, the authorities held that the transactions even prior to the date 16th September, 1960, must have been suppressed and that there must have been similar pocket note-books, which were, however, not traceable. The Appellate Tribunal also observed that at the time of the inspection there were account books which indicated the existence of suppressions of turnover in 1959-60 and in the later part of 1960-61. Acting on these data, the authorities of the department found that the dealer must have suppressed transactions for the period 1st April, 1960 to 16th September, 1960, and therefore they made additions to the turnover for the aforesaid period both in respect of transactions assessable at 2 per cent, and in respect of transactions assessable at 1/2 per cent., by adding an equal amount for the period 1st April, 1960 to 31st August, 1960, and also a proportionate amount for the half month 1st September, 1960 to 16th September, 1960. This led to the addition of a turnover of nearly Rs. 4 lakhs to the returned turnover. They also found that the assessee had deliberately supplied false returns every month and that after having elected to be governed by Rule 18 of the Madras General Sales Tax Rules for the purpose of assessment, he was bound to have returned a correct turnover in his monthly returns. A penalty was levied by the assessing authority u/s 12(3) of the Act which was ultimately reduced by the Tribunal to Rs. 5,000, representing half the maximum penalty that could be inflicted under the section.

2. In this revision case, the learned counsel for the petitioner relies on the circumstance that the dealer on 25th April, 1961, after the end of the assessment year, filed what he called a supplementary return, in which he included the turnover disclosed in the pocket note-books above referred to. The learned counsel contended that since this supplementary return had been filed by the dealer before the final assessment was made, it could not be held that he had suppressed any part of his turnover, and that therefore it was illegal to levy on him a penalty u/s 12(3). It was also urged that there was no room to make an addition to the turnover disclosed in the anamath accounts on the basis of alleged suppressions prior to the period covered by these accounts.

3. In support of the argument attacking the levy of penalty, the learned counsel referred to a decision of a Bench of this Court in *State of Madras v. M. S. K. Shahul Hameed* [1967] 19 S.T.C. 288. The question dealt with by Veeraswami and Ramaprasada Rao, JJ., in that Bench decision was not a question which affected the award of penalty u/s 12(3) of the Act. The judgment shows that the question that arose was whether at the time of making a final assessment the authorities were entitled to take into account earlier provisional monthly returns as well as a supplementary return supplied by the dealer on the footing that the earlier returns were incorrect. Apparently the department took the view that the earlier provisional monthly returns should alone be accepted, and the assessee could not be permitted to correct the returns later on before the final

assessment. But the Tribunal held that before the final assessment is made, if the assessee rectifies the errors in the provisional returns and submits a correct return, the assessing officer can take that into account before making a final assessment. It is in that context that the Bench observed thus:

When a correct return or what is claimed to be a correct return is made before the assessment order, the assessing officer is bound to take note of it and is not entitled to ignore it and proceed on the footing that inasmuch as the assessee had filed incomplete or erroneous provisional monthly returns, that should be the basis for application of Section 12(2).

4. But there was no question considered in that decision as to whether an assessee can be awarded a penalty for submitting incorrect monthly returns after he had elected to be assessed on the basis of monthly returns under Rule 18 of the Madras General Sales Tax Rules. It is that point that falls for decision in this case. We called for and also perused the records in the concerned case leading to the Bench decision. We find that the regular accounts of the dealer contained the transactions which were omitted in the monthly returns and it was for that reason that the dealer attempted to correct the earlier returns by filing a supplementary return before the final assessment was made. But it is totally a different question which we have in this case where the assessee is found to have actually suppressed in his regular account as well as monthly returns the turnover disclosed in the anamath pocket note-book.

5. It appears to us that when once the assessee elects to be assessed on the basis of his monthly returns, he is obliged to submit correct returns so far as the turnover covered by the monthly returns is concerned. In this case, admittedly, at the time when the assessee submitted his monthly returns for the period covered by the anamath accounts, namely, 16th September, 1960 to 27th December, 1960, he failed to include the turnover disclosed by these anamath accounts and this was a wilful omission in the returns. He has no explanation for his failure to include that turnover. In fact his conduct in including this turnover in the supplementary return filed by him on 25th April, 1961, would show that he had deliberately omitted the relevant turnover from his monthly returns. While the fact that he submitted a supplementary return on 25th April, 1961, may justify the authority in including that turnover in his final assessment, and also in estimating, if necessary, the turnover for suppressions for the earlier period in the final assessment, so far as the question of the award of penalty is concerned, his filing a supplementary return on 25th April, 1961, will not be a ground for condoning his wilful default. In the above circumstances, we are of the opinion that the award of penalty in this case was within the competence of the assessing authority, and was perfectly legal.

6. In regard to the quantum of penalty, we are of the opinion that the Tribunal had given the necessary relief by reducing the penalty to one half of what had been awarded by the assessing officer and there is no ground at all to interfere with the quantum of penalty.

7. In regard to the estimate of the turnover for the period anterior to the period covered by the anamath accounts, the authorities below have given sufficient reasons for presuming the existence of transactions in the anterior period, to which we have referred to earlier in this judgment. We are of the opinion that the reasons given for the inference of suppressed turnover in the anterior period are adequate reasons and that there are no grounds to interfere with the decision both regarding the necessity to estimate the suppressions as well as the quantum of suppressions estimated.

8. The revision case is therefore dismissed with costs. Advocate's fee Rs. 100.