(1995) 10 MAD CK 0041

In the Madras High Court

Case No : Tax Cases No''s. 1944 to 1949 of 1984 (Appeals No''s. 37 to 42 of 1984)

Parameswari and Company — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 11-10-1995

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 22, 34

Citation : (1995) 10 MAD CK 0041

Hon'ble Judges : K.A. Thanikkachalam, J;Govardhan, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—T.C. Appeal Nos. 1944 and 1945 of 1984 relate to the assessment year 1977-78. T.C. Appeal No. 1944 relates to penalty levied u/s 22(2) of the Tamil Nadu General Sales Tax Act, 1959. T.C. Appeal No. 1945 of 1984 is relating to the penalty levied u/s 3-A of the Tamil Nadu Additional Sales Tax Act, 1970. T.C. Appeal Nos. 1946 and 1947 of 1984 relate to assessment year 1976-77. T.C. Appeal No. 1946 of 1984 relates to penalty levied u/s 22(2) of the Tamil Nadu General Sales Tax Act and T.C. Appeal No. 1947 of 1984 relates to penalty levied u/s 3-A of the Tamil Nadu Additional Sales Tax Act, 1970. T.C. Appeal No. 1948 of 1984 and 1949 of 1984 relates to the assessment year 1978-79. T.C. Appeal No. 1948 of 1984 relates to penalty levied u/s 22(2) of the Tamil Nadu General Sales Tax Act and T.C. Appeal No. 1949 of 1984 relates to section 3A of the Tamil Nadu Additional Sales Tax Act. The assessee is common in all these appeals. The assessee is a decorticator. The assessee collected sales tax in the assessment years under consideration from the customers and paid the same to the Government. However the assessing officer held that the assessee collected tax without authority and therefore penalty is exigible u/s 22(1) of the Tamil Nadu General Sales Tax Act and u/s 3A of the Tamil Nadu Additional Sales Tax Act. Accordingly penalties were levied under the abovesaid provisions in all the assessment years under consideration. Aggrieved the assessee filed appeals before the Appellate Assistant Commissioner. The

Appellate Assistant Commissioner deleted the penalties since the assessee is not a dealer and since the assessee also paid the tax collected by him to the Government. The Joint Commissioner by exercising his suo motu power u/s 34 of the Tamil Nadu General Sales Tax Act came to the conclusion that the order passed by the Appellate Assistant Commissioner in deleting the penalties in the assessment years under consideration is erroneous and prejudicial to the interest of the revenue. After giving opportunity to the assessee, the Joint Commissioner imposed the penalties by restoring the order passed by the assessing officer. It is against these orders the present appeals are preferred by the assessee.

2. We have heard the learned counsel appearing for the assessee as well as the Additional Government Pleader (Taxes). The fact remains that the assessee is a decorticator. The assessee is not a dealer. Therefore the assessee is not entitled to collect sales tax. However the assessee collected sales tax in the assessment years under consideration and paid the same to the Government. However during the assessment years under consideration there was a doubt as to who should collect the tax either the decorticator or the oil mill owners. It was held subsequently that it is the oil mill owners who are entitled to collect the tax. Since there was doubt on this matter this Court in the case of State of Tamil Nadu v. K. Mohammed Ibrahim Sahib 1991 83 STC 402; 1 MTCR 321 held that in a situation like this penalty is not exigible u/s 22(2) of the Tamil Nadu General Sales Tax Act. Considering the facts in this case and the decision rendered by this Court (State of Tamil Nadu v. K. Mohammed Ibrahim Sahib [1991] 83 STC 402; 1992 1 MTCR 321, we hold that in the case of the assessee also, he happens to be a decorticator who collected the tax and paid to the Government, should not be penalised under the provisions of section 22(2) of the Tamil Nadu General Sales Tax Act. Accordingly we set aside the suo motu order passed by the Joint Commissioner in levying the penalty.

3. In the result, the appeals are allowed and the penalty orders are cancelled in all the assessment years under consideration. No costs.

4. Appeals allowed.