
(1979) 11 MAD CK 0013

In the Madras High Court

Case No : T.C. No. 1187 of 1979 (Appeal No. 47 of 1979)

P.M. Perianna Pillai

APPELLANT

Vs

The Commissioner, Board of Revenue (C.T.)

RESPONDENT

Date of Decision : 13-11-1979

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 16

Citation : (1980) 46 STC 94

Hon'ble Judges : M.M. Ismail, C.J.; Ratnam, J

Bench : Division Bench

Advocate : M.V.B. Baskaran, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Ismail, C.J.—This is an appeal against the order of the Board of Revenue (Commercial Taxes) dated 9th August, 1979, suo motu

revising the order of the Appellate Assistant Commissioner, Salem, dated 19th March, 1975, setting aside the penalty of Rs. 3,408 imposed on the

appellant by the Joint Commercial Tax Officer, Leigh Bazaar and Gugai Division, Salem. The facts are not in controversy. The assessment relates

to the year 1972-73. On inspection of the business place of the appellant on 8th January, 1973, the Deputy Commercial Tax Officer (Sago

Investigation), Salem, and the Assistant Commercial Tax Officer, Attur, unearthed certain anamath pocket note books and slips showing

unaccounted transactions. The entries in the anamath pocket note books and slips were compared with the account books of the appellant and, as

a result of such comparison and verification, a total suppressed turnover of Rs. 1,92,381.82 was found. The Joint Commercial Tax Officer issued

a notice to the appellant herein asking him to show cause why his accounts

should not be rejected and the turnover be estimated and a penalty u/s

12(3) of the Tamil Nadu General Sales Tax Act, 1959, be levied on the appellant. The appellant, by his letter dated 28th February, 1974, stated

that he was ready to pay tax due on the sales turnover as proposed in the notice, but requested the Joint Commercial Tax Officer to drop the

proceedings for levy of penalty u/s 12(3) of the Act. While completing the assessment according to law the Joint Commercial Tax Officer levied a

penalty referred to above on the ground that the suppressions were unearthed from the anamath accounts recovered during inspection on 8th

January, 1973, and, therefore, the request of the appellant could not be complied with.

2. Against the order of the Joint Commercial Tax Officer, the appellant herein preferred an appeal to the Appellate Assistant Commissioner

(Commercial Taxes), Salem. The said officer, by his order dated 19th March, 1975, while sustaining the assessment on the basis of estimate, set

aside the penalty imposed by the Joint Commercial Tax Officer. The Appellate Assistant Commissioner stated :

Section 12(3) of the Act has been amended and the word "wilful" had been inserted in Section 12(3) of the Act with effect from 1st December,

1972. Revised Section 12(3) is analogous with Section 16(2) of the Act with effect from 1st December, 1972. As such, a specific finding about

the wilful non-disclosure of assessable turnover is essential to levy penalty u/s 12(3) of the Act after 1st December, 1972. Further, the decision of

the Madras High Court in the case of Madras Metal Works v. State of Madras [1973] 31 S.T.C. 566 applies, where penalty was levied prior to

the amendment of Section 12(3), i.e., prior to 1st December, 1972. As there is no specific finding that there has been a wilful non-disclosure of

assessable turnover in the order of assessment in this case and as the same is essential in order to justify the imposition of penalty u/s 12(3) of the

Act, I consider that the assessing officer is not justified in levying a penalty of Rs. 3,408 in this case. Hence, I set aside the levy of penalty in this

case for want of a specific finding as contemplated in the judgments of the Madras High Court in the case of Oveekee Textiles v. Deputy

Commercial Tax Officer, Tiruchengode [1971] 27 S.T.C. 439, and in the case of Ramakutty Nadar v. State of Madras [1973] 31 S.T.C. 44. In

the above circumstances, and basing the above decisions, the levy of penalty of Rs. 3,408 is set aside.

3. It was this order of the Appellate Assistant Commissioner that was revised by the Board of Revenue (Commercial Taxes). After giving notice to

the appellant herein, and after hearing him, in a very elaborate order, the Board pointed out that the assessing officer had used the word

suppression"" which would be sufficient and that the contention of the assessee-appellant that the word ""suppressed"" would mean only ""to conceal

was, therefore, not correct, and that this was a case where the dealer had wilfully failed to account for the transactions with a deliberate intention to

evade the payment of tax. It is the correctness of this order of the Board of Revenue (Commercial Taxes) that is challenged in the present appeal.

4. Section 12(3) of the Act states :

12. (3) In addition to the tax assessed under Sub-section (2), the assessing authority may, in the same order of assessment passed under Sub-

section (2), or by a separate order, direct the dealer to pay a penalty not exceeding one and a half times the amount of tax due on the turnover that

was not wilfully disclosed by the dealer in his return or in the case of wilful failure to submit a return, a penalty not exceeding one and a half times

the tax assessed, as the case may be.

5. There are two provisos to this section which it is not necessary to refer for the purpose of this case. The whole question for consideration is

what exactly is the ambit of the expression ""not wilfully disclosed"" occurring in Section 12(3). This expression has been the subject-matter of

consideration by this Court. All that we are interested in pointing out at this stage is that for the purpose of sustaining the levy of penalty u/s 12(3),

it is not necessary that the officer imposing the penalty must mechanically reproduce the expression ""not wilfully disclosed"" as if it were a formula

or manthram to be repeated in order to attract the levy of penalty or sustain the levy of penalty. If the discussion in the order of the assessing

authority clearly shows that he had applied his mind to the question as to whether the non-disclosure was wilful or otherwise and had come to the

conclusion that the non-disclosure was wilful, the fact that he had not actually used the expression in the ultimate portion of the order that he was

levying the penalty under that provision because the non-disclosure was wilful,

will not in any way invalidate or vitiate his order. With this observation we shall now refer to the decisions of this Court.

6. In *State of Tamil Nadu v. Sri Swamy and Company* [1977] 39 S.T.C. 85, a Bench of this Court, which dealt with the scope of Section 16(2) of the Act, stated as follows :

In these two cases while revising the assessments of the dealer u/s 16, the assessing officer also levied penalty u/s 16(2). The Tribunal set aside the order of penalty while confirming the reassessment order in one case and reducing the escaped turnover in the other case on the ground that there was no specific finding of wilful non-disclosure of the turnover as required u/s 16(2) of the Act. These revision petitions have been filed challenging only that portion of the order of the Tribunal relating to setting aside the order of penalty. The Tribunal is not correct in stating that the assessing officer had not given a finding of wilful non-disclosure of the taxable turnover. In fact, the assessing officer, after discussing the anamath slips, which showed sales, clearly stated that the penalty is levied for proved suppression. The use of the word "suppression" shows that what the assessing officer found was wilful non-disclosure. If it was not a wilful non-disclosure, the assessing officer would have stated as merely omissions. The use of the word "suppression" clearly brings out the wilful nature of the non-disclosure and, therefore, the Tribunal was not right in setting aside the penalty merely on the ground that there was no finding of wilful non-disclosure.

7. The above decision is important from more than one point of view. In the first place, that is the decision rendered with reference to Section

16(2) of the Act and, as a matter of fact, the Appellate Assistant Commissioner in the present case has pointed out, as we have shown already,

that after the amendment, Section 12(3) has come on a par with Section 16(2) with effect from 1st December, 1972, and, therefore, what the

Bench stated in the above decision with reference to Section 16(2) will certainly apply to the amended Section 12(3) of the Act. Secondly, the

Bench has pointed out that the use of the word "suppression" is sufficient to denote wilful non-disclosure. If we may say so with respect, we are in

entire agreement with this statement of the Bench. The word "suppression", according to the Shorter Oxford English Dictionary, means:

The action of keeping secret; refusal to disclose or reveal.

8. Consequently, the meaning given to the word "suppression" in the Shorter Oxford English Dictionary referred to above will clearly show that

suppression always implies a wilful non-disclosure. We have already referred to the order of the Appellate Assistant Commissioner where he dealt

with the contention of the representative of the petitioner that what the petitioner did was merely concealing the turnover and not wilfully non-

disclosing the turnover. Even the word "concealment" will involve a wilful non-disclosure. In fact, the very same Shorter Oxford English Dictionary

gives the meaning for the word "concealment" as follows:

In Law, The intentional suppression of truth or fact known, to the injury or prejudice of another.

9. Consequently, whenever it is found that a particular turnover has been suppressed or concealed, that can only mean that there had been a wilful

nondisclosure of correct turnover. In this particular case, as we have pointed out already, the Joint Commercial Tax Officer, while declining to

comply with the request of the appellant to drop the proceedings for the levy of penalty, has said that the anamath account and the slips were

unearthed by him. That itself will clearly show what exactly the conclusion he came to with regard to the character of non-disclosure.

10. The above decision of this Court in State of Tamil Nadu v. Sri Swamy and Company [1977] 39 S.T.C. 85 has been followed by another

Bench of this Court in State of Tamil Nadu v. R. R. Ramachari and Sons [1977] 40 S.T.C. 542. In that case, the Bench observed :

The question as to whether penalty could be levied in a case where there was only a finding of "suppression" was the subject-matter of

consideration by this Court in a later case than that relied on by the assessee and that is State of Tamil Nadu v. Sri Swamy and Company [1977]

39 S.T.C. 85. It was held that the use of the word "suppression" showed the wilful nature of the non-disclosure; and that if it had not been wilful

non-disclosure the assessing authority would have used the word "omission" and that the Tribunal in that particular case was not right in setting

aside the penalty on the ground that there was no finding of wilful nondisclosure. In view of the above decision, it follows that when once the word

"suppression" had been used, it is clear that the authorities had given a finding that there was a wilful non-disclosure of a part of the turnover which

was brought to tax u/s 16; and the penalty levied, therefore, was proper and the Tribunal was not right in deleting the penalty.

11. The matter came to be considered by another Bench in two other cases. One is State of Tamil Nadu v. S. M., Baba Sahib [1979] 44 S.T.C.

299. That too dealt with the scope of Section 16(2) of the Act. The Bench stated therein as follows :

The learned counsel, relying on the decision of this Court reported in State of Tamil Nadu v. Sri Swamy & Co. [1977] 39 S.T.C. 85, contended

that the use of the word "suppression" would show the wilful nature of the non-disclosure. We are in respectful agreement with this decision. But

we would like to add that the mere use of the expression "suppression" is not enough. A wilful non-disclosure of assessable turnover is a necessary

ingredient to make out that part of the section, namely, a deliberate intention to suppress an assessable turnover which should, in fact, have existed.

It is not possible to say, merely from the fact that there has been a reassessment of escaped turnover on the basis of best judgment, that there has

been a wilful non-disclosure of assessable turnover. There must be something to indicate that the turnover did in fact exist and that the assessee had

willfully not disclosed that assessable turnover.

12. The same Bench repeated the same observations in another decision, namely, State of Tamil Nadu v. Estate of V.U. Panneer Nadar by P.

Parameswari {wife) [1979] 44 S.T.C. 300. We are of the opinion that it is not possible to hold that the Bench in the last two decisions took a view

different from the one taken by this Court in State of Tamil Nadu v. Sri Swamy & Co. [1977] 39 S.T.C. 85, because the Bench stated that they

were in respectful agreement with the said decision. If we hold that the Bench, in the course of further observation, took a different view, it will be

uncharitable to the Bench which dealt with the last-mentioned two cases and we will not be construing the judgment of the Bench according to the

natural tenor and ordinary language. Consequently, it is clear that all the decisions of this Court have been uniform in holding with reference to

Section 16(2) of the Act that the use of the word ""suppression"" will inevitably indicate a finding that there has been a wilful non-disclosure. This

conclusion of ours is fully supported by the dictionary meaning of the words ""suppression"" and ""concealment"" as we have indicated already. In

view of these features, we are satisfied that the order of the Board of Revenue (Commercial Taxes) in this case does not call for any interference whatever and, consequently, the appeal fails and it is dismissed.