
(1992) 06 MAD CK 0015

In the Madras High Court

Case No : Tax Case No. 222 of 1983 (Revision No. 104 of 1983)

P.M. Sundaram and Company

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 29-06-1992

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 36(3)

Citation : (1992) 06 MAD CK 0015

Hon'ble Judges : Raju, J;K.S. Bakthavatsalam, J

Bench : Division Bench

Advocate : Senniappan, for M/s. C. Venkataraman, D. Srinivasan and A.K. Gopinath, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

Raju, J.—The petitioners before this Court are the assesseees and they are dealers in chillies, coriander, foodgrains, etc., at Paramakudi. For

the assessment year 1978-79, they reported a total and taxable turnover of Rs. 6,46,277.29 and Rs. 23,453.34, respectively. On going through

the accounts several serious defects were noticed, warranting rejection of the accounts. The place of business of the petitioner was also inspected

on April 27, 1979, from where also certain materials were recovered. In the light of all these and after taking into account the sales slips for the

period from October 23, 1978 to March 31, 1979, it was noticed that actual suppression as per the sales slips found out was Rs. 87,074.61. An

equal sum was added for the period not covered by the slips. The assessing authority determined the total and taxable turnover of the petitioner at

Rs. 8,26,169 and Rs. 1,97,603, respectively. A penalty u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959, at 1 1/2 times the tax due on

actual suppression (Rs. 5,226) was also levied.

2. Aggrieved, the petitioner filed an appeal before the first appellate authority. The said authority was of the view that the turnover found in the slips

that could be attributed to chillies can be fixed only at Rs. 51,105 and that the rest of the turnover should relate to foodgrains. Instead of adding

any turnover for the previous period, as has been done by assessing authority, the appellate authority thought it fit to sustain the addition to the tune

of Rs. 51,105 only. The penalty levied u/s 12(3) of the Act has also been reduced to Rs. 1,022. On further appeal before the Appellate Tribunal,

the Revenue also filed an application for enhancement and restoration of the additions as made by the assessing authority. The Tribunal on a careful

consideration of the materials placed before it noticed the fact that even the Appellate Assistant Commissioner ought to have arrived at the

suppression of taxable turnover of chillies alone at Rs. 51,105 and that being the position, there was no justification for the first appellate authority

interfering with the estimate of further suppression for the period prior to October 23, 1978. The Tribunal was of the view that the anamath

accounts detected contained continuous anamath transactions not accounted for by the appellants for the period from October 23, 1978 to March

31, 1979 and it is reasonably disclosed that the appellants were in the habit of suppressing the transactions regularly. Having regard to the

continuous pattern of suppression made by the appellants, as disclosed from the manner and method of maintaining anamath accounts, the Tribunal

thought it fit to justify the addition made towards probable suppression for the period prior to October 23, 1978. The Tribunal also took note of

the rival decision reported in The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore, .

On the above view, the Tribunal while sustaining the addition on the basis of the slips at Rs. 51,105 determined by the first appellate authority

considered it necessary to add for probable suppression for the period prior to October 23, 1978, an equal sum thus revising the estimate of the

suppressed turnover at Rs. 1,02,210 taxable at 4 per cent in respect of chillies. The claim of the petitioners for reduction of the penalty as well as

the request of the Revenue for enhancement of the penalty was rejected. Aggrieved, the above tax case (revision) has been filed.

3. Heard learned counsel on either side. We have been taken through the orders of the authorities below. In our view, no exception could be taken to the finding rendered by the Tribunal to justify the additions for the period prior to October 23, 1978. No doubt, the actual slips recovered during the time of inspection related to the period October 23, 1978 to March 31, 1979. But on consideration of the nature and pattern of maintenance of anamath accounts, the suppressions were found to be a continuous process and scheme warranting and necessitating additions for probable suppressions even for the period prior to October 23, 1978. We see no illegality in the finding of the Tribunal recorded on the manner and pattern of anamath accounts maintained and detected during the time of inspection. The factual finding rendered on the justification and necessity for addition of equal amount for the period prior to the period to which the anamath slips recovered were found to be actual, in our view cannot be said to be either patently wrong or erroneous or vitiated by perversity of approach. Consequently, we see no reason to interfere with the order. We are unable to agree with the learned counsel for the petitioners that in view of the provision for filing an application for enhancement has been specifically provided for under the provisions of the Tamil Nadu General Sales Tax Act, 1959, only by Tamil Nadu Act 22 of 1982, we should hold that there was no power for the Tribunal prior to the enactment of the Tamil Nadu Act 22 of 1982 to entertain any application for enhancement. We are afraid we can countenance such a plea in the teeth of a well-considered decision of a Division Bench of this Court reported in Deputy Commissioner of Commercial Taxes v. Panayappan Leather Industries [1981] 47 STC 88, wherein it has been held very clearly that on the language contained in section 36(3)(a)(i) of the Act, the power to enhance the assessment is vested in the Tribunal itself, and that the procedure of filing an enhancement petition is merely by way of putting the assessee on notice that in the appeal preferred by the assessee the Revenue is going to request the Tribunal to enhance the assessment, so that the assessee may not be taken unaware if the Tribunal proceeds to concede the request of the Revenue and enhance the assessment. Consequently, the said submission of the learned counsel also fails. The tax case (revision) fails and shall stand dismissed. But in the circumstances of the case, there will be no order as to costs.

4. Petition dismissed.