

(1972) 06 MAD CK 0011

In the Madras High Court

Case No : Tax Case No. 307 of 1966 and Appeal No. 17

R. Arumugham Chettiar

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 19-06-1972

Acts Referred:

Citation : (1973) 32 STC 71

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K.J. Chandran, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—The petitioner is a dealer in gingelly oil, castor oil, vanaspati, etc. and he reported gross and taxable turnovers of Rs.

3,26,766.99 and Rs. 83,913-24 respectively. The assessing officer, after a check of the accounts produced and after considering the anamath

books recovered from the place of business on 28th November, 1963, determined the gross turnover at Rs. 3,59,287.57 and the net turnover at

Rs. 1,18,48941 and subjected the same to tax at various rates as per the provisions of the Madras General Sales Tax Act, depending upon the

nature of the goods dealt with. The assessing authority added a sum of Rs. 19,737.39 in the taxable turnover said to be the suppressions for the

whole year as per the anamath account books recovered. The suppressions as per the anamath account books were Rs. 6,579.13. The assessee

questioned this addition of Rs. 19,737.39 in the taxable turn-Over as suppressed before the Appellate Assistant Commissioner who, after going

through each entry in the anamath books, found that most of the entries in that anamath account books tallied with the entries in the regular

accounts, but in respect of a few of the items there was no 100 per cent, tally in the amounts entered in the anamath accounts and the bill amounts

and that in some of the bills, the purchasers' names have not been mentioned. But he felt that these defects in respect of some of the items out of

the many entered in the anamath accounts cannot show that the assessee, who has returned a large turnover of Rs. 3 lakhs and odd, had actually

suppressed the transactions. In that view, the appellate authority set aside the enhancement of Rs. 19,737.39 and also the order of penalty.

2. This order of the Appellate Assistant Commissioner was revised suo motu by the Board of Revenue u/s 34 of the Madras General Sales Tax

Act. The Board of Revenue revised the order of the Appellate Assistant Commissioner and sustained the enhancement made by the assessing

authority under the head, "suppressions". The reasons given by the Board of Revenue for sustaining the addition of the said Rs. 19,000 and odd

were twofold: (1) That the Appellate Assistant Commissioner verified the entries in the anamath account books with reference to a book called

thitta chittai maintained by the assessee and found that the entries in the anamath account books all tallied with the regular accounts of the assessee,

but that the said that the chittai was not produced at any earlier stage and that, therefore, no reliance should have been placed by the appellate

authority on the account thitta chittai maintained by the assessee. So far as this reason is concerned, it is seen that the thitta chittai was produced

even before the assessing authority at the time of the original assessment and we actually find the seal of the assessing authority in the said book in

token of his having seen it at the time of the assessment. It cannot, therefore, be taken that the thitta chittai was brought into existence by the

petitioner, only for the purpose of the appeal, at the appellate stage. We, therefore, feel that the Appellate Assistant Commissioner was justified in

comparing the entries in the anamath books with the thitta chittai, which was produced even at the stage of the assessment.

3. The second reason given by the Board of Revenue is that there is no cent per cent correlation in respect of some of the items in the anamath

account books which have been specifically referred to by the Appellate Assistant Commissioner. It is true that there has been a slight discrepancy

in the figures mentioned in the bills and in the entries shown in the anamath accounts as cash collections and it is also true that some of the bills do

not contain the purchasers' names. The question is whether these defects are sufficient to lead to the conclusion that the petitioner should have

some suppressed transactions apart from his regular transactions recorded in the regular account books. The petitioner's case right from the

beginning was that though the bills had been prepared as cash sales, actually the transactions were done on credit basis and the anamath book was

kept only for the purpose of tracking those sales and for making the cash collections. This plea was accepted by the Appellate Assistant

Commissioner, though it was rejected by the assessing authority. We are of the view that the slight inconsistency in the amounts involved cannot

straightaway lead to the conclusion that the items of cash collections entered in the anamath account represent transactions different from the ones

shown in the bills and entered in the regular accounts. On the facts of this case, we are inclined to agree with the view taken by the Appellate

Assistant Commissioner that the facts are not sufficient to establish that the petitioner had effected suppressed transactions, especially when the

other entries in the anamath book had been traced and correlated to the regular accounts and only a few transactions involving a small turnover,

when compared with the total turnover reported by him, have not been fully correlated.

4. The result is, the tax case is allowed and the order of the Board of Revenue is set aside. No costs.