

(1992) 08 MAD CK 0023

In the Madras High Court

Case No : Tax Case No. 75 of 1984 (Revision No. 34 of 1984)

R. Subba Reddy

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 03-08-1992

Acts Referred:

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

Citation : (1992) 08 MAD CK 0023

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

Bench : Division Bench

Advocate : R. Venkataraman, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

Bakthavatsalam, J.—The petitioner challenges the order of levy of penalty for the assessment year 1972-73 under sub-section (3) of section

12 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act"). Though the original assessment was made in 1974, it

seems that a revised order of assessment was passed on June 2, 1976. Notice was issued under sub-section (3) of section 12 of the Act to

impose penalty for the assessment year in question. Though the petitioner submitted that no order of assessment was passed by the assessing

authority, obviously he was satisfied that there was no case made out for attracting the provisions of penalty u/s 12(3) of the Act, subsequently,

another notice was issued for imposition of penalty on March 1, 1978, by the assessing officer under sub-section (3) of section 12 of the Act. This

was challenged by the assessee before the first appellate authority as well as before the Appellate Tribunal. The Tribunal has held that so far as the

penalty proceedings has been initiated it is enough to sustain the levy of penalty

on the facts and in the circumstances of the case.

2. Mr. R. Venkataraman, learned counsel for the petitioner, draws our attention to sub-section (3) of section 12 as it stood then. Sub-section (3)

of section 12 as it stood then reads as follows :

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 separate, order direct the dealer to pay by way of penalty -

(a) a sum which shall not be less than fifty per cent but which shall not be more than one hundred and fifty per cent of the amount of tax due on the

turnover that was not wilfully disclosed by the dealer in his return, or

(b) a sum which shall not be less than fifty per cent but which shall not be more than one hundred and fifty per cent of the tax assessed in the case

of wilful failure to submit a return.

Under proviso to sub-section (5) of section 12 of the Act, penalty cannot be imposed after the period of five years from the expiry of the order to

which the assessment relates. There is no dispute in this case that the assessment year in question is 1972-73. The penalty has been imposed by an

order dated September 30, 1982. Though the relevant section underwent a change in 1979, we are not concerned with that. As the section stood

during the assessment year in question 1972-73 penalty should have been imposed before March 31, 1978. The fact that the notice has been

issued on March 1, 1978, will not take away the rigour of the section by which the penalty ought to have been imposed. Though a question was

taken before us whether the amendment which came into force on December 1, 1972, could be made applicable for the assessment year 1972-

73, we are not expressing any option on this question because we propose to dispose of this tax revision case on the ground that no penalty has

been imposed within the period of five years ending assessment year 1972-73. Accordingly, the order of the Tribunal is set aside and the tax

revision case stands allowed. No costs.

3. Petition allowed.