

(1991) 07 MAD CK 0041

In the Madras High Court

Case No : Tax Case (Revision) No's. 1397 and 1398 of 1981

Rajalakshmi Industries

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-07-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(2), 12(3)

Citation : (1991) 07 MAD CK 0041

Hon'ble Judges : A.S. Anand, C.J.;Kanakaraj, J

Bench : Division Bench

Advocate : Mr. R. Venkataraman, for the Appellant; Haza Najiruddin, Government Advocate (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—These two tax revision cases have been filed by the assessee against the common order of the Sales Tax Appellate

Tribunal, Main Bench, Madras, dated August 10, 1981, concerning the assessment years 1974-75 and 1975-76. The legal and factual questions

being common, we are obliged to dispose of these revision cases in common.

2. The assessing authority assessed the petitioner-assessee who is a dealer in varnish for the assessment years 1974-75 and 1975-76 on the basis

of an inspection of the place of business by the Central Intelligence Wing Officers. During the inspection, certain records were seized and they

revealed large remittances to the bank, and the assessee was called upon to explain those remittances as the assessee did not maintain any books

of account whatsoever relating to its trading activities. The assessee did not produce the books of account despite several reminders from the

department. The assessing authority, finding that no return had been filed and no account had been produced, was left with no option but to take

recourse to best of judgment assessment on the basis of the materials seized during the inspection and the extracts of the accounts of the assessee

with the Indian Overseas Bank. The deposits with the bank during the assessment year 1974-75 amounted to Rs. 71,500 while for the assessment

year 1975-76, they amounted to Rs. 7,57,049.75. Since the assessee was unable to render any explanation or produce any record about the

source of the remittances, the assessing authority took the remittances as arising out of the sale transactions and assessed the assessee on Rs.

71,500 as the taxable turnover for the year 1974-75 and on Rs. 7,57,049.75 as the taxable turnover for the year 1975-76. Besides, penalty was

also levied u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959 Thereinafter referred to as ""the Act"" on the assessee in respect of both the

assessment years. The assessee preferred two appeals before the Appellate Assistant Commissioner. Both the appeals were heard together. The

assessee disputed the entire assessment for both the years and also disputed the levy of penalty and the surcharge. The appellate authority,

however, did not find any merit in the pleas raised by the assessee and dismissed the appeals, thereby confirming the orders of assessment as also

the penalty levied by the assessing authority. The assessee filed second appeals before the Sales Tax Appellate Tribunal, Main Bench, Madras,

and both the appeals were again heard together and disposed of by a common order dated August 10, 1981, against which the present revision

cases have been filed.

3. Learned counsel for the assessee-petitioner questioned the best of judgment assessment as well as the levy of penalty. Learned counsel argued

that though the assessee had not filed the returns and had also not produced the accounts despite giving of opportunities, yet the reason for not

filing the returns or producing the accounts was the detention of Thiru T. Kadiresan, the managing partner of the assessee-firm under the

Maintenance of Internal Security Act (hereinafter referred to as ""MISA""). This plea appears to us to be an argument of despair. On the assessee's

own showing before the appellate authority as well as the Tribunal, Thiru Kadiresan was shown to have been detained under MISA on February

8, 1976 and released in July 1976. There was no reason why the return for the year 1974-75 could not have been filed in time prior to the

detention under MISA. There is also no reason as to why the accounts were not produced before the assessing authority despite numerous

opportunities when the assessment proceedings were taken up in the year 1980 because admittedly the managing partner was not under any

detention at that point of time. The assessing authority as well as the appellate authority and the Tribunal concurrently found that the assessee who

held a licence in form D.L. 2 with an annual quota of 10,000 litres of denatured spirit for manufacture of armature varnish had neither maintained

production-cum-stock account nor any sales account or sales bills. It was also unable to explain the dealings as found in the bank extract. The

submission of the assessee that the copies of the bank extracts had not been furnished to the assessee to enable it to offer an explanation is a futile

submission, because the order of assessment itself incorporated the details of the bank extract. It was the obligation of the assessee to have

explained the huge remittances, as the assessee alone could be said to be in possession of the relevant material and knowledge relating thereto. The

assessee failed to do so. The assessing authority as well as the appellate authority and the Tribunal, therefore, were perfectly justified in resorting to

the best of judgment assessment on the facts and circumstances of the case. Since the assessee had failed to establish before the authorities below

that it was not liable to be assessed, the order of assessment made by the assessing authority and upheld by the appellate authority as well as the

Tribunal does not call for any interference in exercise of our revisional jurisdiction, as we do not find the same to suffer from any error whatsoever.

On facts, findings have been recorded based on the bank extracts and assessments have been made on the basis thereof. We do not, therefore,

find any force in the grievance made by the learned counsel for the petitioner in that behalf.

4. Learned counsel for the assessee then argued that the levy of penalty u/s 12(3) of the Act was not justified. He submitted that though the

assessing authority had levied penalty in respect of both the assessment years u/s 12(3) and the appellate authority had upheld the levy of penalty,

the challenge to the levy of penalty raised by the assessee before the Sales Tax Appellate Tribunal was not noticed, much less considered or

discussed by the Tribunal. Learned counsel submitted that levy of penalty u/s 12(3) of the Act cannot be an automatic exercise whenever recourse

is taken to best of judgment assessment u/s 12(2) of the Act. Learned counsel also placed reliance on the judgment of a Full Bench of this Court

reported in *Kathiresan Yarn Stores v. State of Tamil Nadu* [1978] 42 STC 121 in support of his submission.

5. Learned counsel appearing on behalf of the Revenue submitted that since the assessee had not filed any return and was unable to explain the

huge remittances into the bank which had given rise to the best of judgment assessment being rendered against it, it was obvious that the assessee

had rendered itself liable to be penalised u/s 12(3) of the Act also.

6. The Full Bench judgment in *Kathiresan Yarn Stores* case [1978] 42 STC 121 dealt extensively with the question of levy of penalty particularly

in cases where there has been a failure to disclose the turnover. The Full Bench opined thus :

All the circumstances of the case will have to be carefully scrutinised and the question whether penalty should be imposed must be considered on

the basis of the judicial determination of the question whether grounds exist for the imposition of such penalty. In order that penalty may be

imposed, it must be possible first to come to the conclusion that there was actually turnover and further that that turnover was not disclosed. The

mere fact of a best judgment assessment, particularly when the assessment is based on the inference flowing from the inability of the assessee to

establish the case pleaded by him, will not be sufficient for the purpose of imposition of penalty, for the degree of proof required for the imposition

of penalty is quite different from and is of a much higher order than that required for the purpose of making a best judgment assessment.

7. The judgment of the Full Bench undoubtedly supports the plea that the authorities have to come to a conclusion by way of judicial determination

whether grounds exist for the imposition of penalty or not. We find that though pleas were raised in the grounds of appeal before the Tribunal, the

Tribunal is singularly silent of any discussion about the levy of penalty. No finding has been recorded about the existence of grounds for the

imposition of penalty. The order of the Tribunal upholding the levy of penalty without dealing with the submission and the pleas of the assessee

against such levy, cannot be sustained. We, therefore, while upholding the order of the Tribunal in so far as it relates to the order of assessment, set

aside the order of the Tribunal where it confirmed the levy of penalty without any discussion whatsoever. We remand the cases to the Tribunal to

decide afresh about the question of penalty u/s 12(3) of the Act by making a proper judicial determination with regard thereto. The Tribunal shall

pass fresh orders on the question of penalty after hearing the parties.

8. The tax revision cases, therefore, partly, succeed to the extent indicated above, and in that view of the matter, there shall be no order as to costs

in both the cases.

9. Petition partly allowed.