
(1980) 02 MAD CK 0008

In the Madras High Court

Case No : T.C. No. 156 of 1980 (Appeal No. 7 of 1980)

S. Rajamani

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 26-02-1980

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 22, 22(2)

Citation : (1980) 46 STC 451

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

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant;

Judgement

Ismail, C.J.—This is an appeal against the order of the Board of Revenue (Commercial Taxes) dated 8th August, 1979, suo motu revising

the order of the Appellate Assistant Commissioner, Coimbatore. Admittedly the appellant herein collected a sum of Rs. 18,374 by way of sales

tax whereas the transactions were not liable to sales tax under the law. In view of this, the Deputy Commercial Tax Officer took action against the

appellant u/s 22(2) of the Act levied a penalty. The appellant preferred an appeal to the Appellate Assistant Commissioner and that officer by an

order dated 27th May, 1976, which the learned counsel for the appellant himself admitted was not intelligible, set aside the levy of penalty. It is this

order of the Appellate Assistant Commissioner that was revised by the Board of Revenue which set aside the order of the Appellate Assistant

Commissioner and restored the order of the assessing authority.

2. The learned counsel for the appellant contended that since the appellant had undertaken and in fact passed credit notes in favour of the

customers from whom the appellant had collected the tax, under the judgment of the Supreme Court, the penalty should not be levied. It is

admitted that till the Board of Revenue issued notice the appellant had not taken any such step. As a matter of fact, it would appear that the Board

of Revenue expressly called upon the appellant whether he was prepared to refund the amount collected from the customers. Even then the

appellant did not give a straight reply, but tried to put forward the contention that he had passed credit notes in favour of the customers to the

extent of Rs. 9,200 and purported to produce the certificate of posting for communicating those credit notes to the customers. The Board of

Revenue did not accept this as sufficient proof of refund. We are unable to hold that the Board of Revenue committed any error in coming to this

conclusion having regard to the fact that more than one opportunity was given by the Board of Revenue to the appellant and the appellant failed to

make use of the said opportunities.

3. The learned counsel for the appellant then contended that, in any event, with regard to the surcharge part of it, the Board should not have taken

any action u/s 22 because section 22 will not apply to the collection of surcharge. In this context, he relied on sub-section (2) if section (2) of

section 3 of the Tamil Nadu Sales Tax (Surcharge) Act, 1971, and contended that that section does not either expressly or by necessary

implication make section 22 apply to the collection of surcharge. Section 3(2) of the Tamil Nadu Sales Tax (Surcharge) Act, 1971, reads as

follows :

Section 3(2) Save as otherwise provided in this Act, the provisions of the said Act shall apply in relation to the surcharge payable under sub-

section (1) as they apply in relation to the tax payable under the said Act.

4. Having regard to the fact that what was sought to be levied under the Act of 1971 was only a surcharge which was dependent upon the liability

to pay sales tax and also the language of section 3(2), we are unable to uphold the contention of the learned counsel for the appellant. Section 3(2)

will apply every provision of the Tamil Nadu General Sales Tax Act, 1959, as is applicable to sales tax, to the surcharge. Under these

circumstances, we cannot hold that the order of the Board of Revenue is erroneous from any point of view. Consequently, the tax case is

dismissed.

5. Appeal dismissed.