

(1979) 06 MAD CK 0033

In the Madras High Court

Case No : Tax Case No. 450 of 1975 (Appeal No. 33 of 1975)

Sankar and Company

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-06-1979

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 37, 38

Citation : (1980) 46 STC 32

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; The Additional Government Pleader, for the Respondent

Judgement

Sethuraman, J.—This is an appeal against the judgment of the Board of Revenue dated 6th May, 1975, u/s 37 of the Tamil Nadu General Sales Tax Act. The assessee was a dealer in oil-seeds, oil and oilcake at Tiruchy. It reported a total and taxable turnover of Rs. 7.16 lakhs and Rs. 3.82 lakhs respectively for 1971-72. The Deputy Commercial Tax Officer, Woraiyur Division, found certain defects in the accounts and determined the taxable turnover at Rs. 4,94,349.00, as against the turnover reported by the assessee. The assessee appealed to the Appellate Assistant Commissioner contending that the estimate was not proper. The Appellate Assistant Commissioner found that though some of the criticisms against the accounts were not material or correct, still there were some others which called for an estimate of the assessee's turnover. He sustained an addition of 2 per cent made by the assessing officer towards low yield and low gross profit and refixed the taxable turnover at Rs. 3,90,583.00 as against Rs. 4,94,349.00 determined by the assessing authority.

2. The order of the Appellate Assistant Commissioner was examined by the Board of Revenue and the Board considered that the accounts were defective and that the addition sustained by the Appellate Assistant Commissioner was not proper or adequate. Thereafter, the Board of Revenue went into the question of

the correct turnover to be determined and, in the light of all the facts, it modified the taxable turnover to Rs. 4,93,399.00. It is this order of the Board that is now challenged in the present appeal.

3. The learned counsel for the appellant contended that the Board in passing the order had proceeded to make the estimate on two grounds. The first was that the electricity consumption was only 19.5 units at the time of the test check, though the available consumption of electricity as recorded in the assessee's books came to 21 units per bag of seeds. The other ground for rejecting the turnover as fixed by the Appellate Assistant Commissioner was that the assessee must have actually crushed 567 bags of gingelly seeds and the sales of seeds as recorded in the books to this extent were not correct. The submission was that these two criticisms were not really warranted and did not justify the estimate as made by the Board of Revenue.

4. We shall take up for consideration the criticism as regards the sale of 567 bags of gingelly seeds as recorded in the assessee's books which, according to the assessee, were actually sold to third parties. During the assessment, the assessing officer sent out summons to several parties to whom the assessee claims to have sold the 567 bags of gingelly seeds. Each of these letters came back with the endorsement "no such addressee at the address mentioned". The learned counsel for the assessee contended that there was nothing which requires the assessee to record the name and address of each of the parties and the assessee had only recorded the name as given by the respective persons. We are unable to agree with this explanation attempted on behalf of the assessee. After all, these persons were purchasing only gingelly seeds. They had absolutely no reason to give fake addresses in order to escape any kind of liability to tax. The learned counsel for the assessee himself admitted that these persons were all persons living in villages who crush gingelly seeds into gingelly oil in country chekku. If so, there is absolutely no motive on their part to give wrong addresses to the assessee. If really they had shifted from those places, the endorsement of the postal authorities would be wholly different as "not found", etc. But from the fact that the endorsement is that there is no such addressee at the address given by the assessee, it is clear that the addresses were wrong ones and that there is no proof for any sale of gingelly seeds to any of these persons. The result will be that the accounts cannot be accepted when it records such palpably wrong statements. The authorities would be justified in estimating this turnover on this single ground alone.

5. As regards the consumption of electric energy at an average of 21 units per bag of seeds it was found at the time of the test check that the consumption could only be 19.5 units per bag. The higher consumption per bag of seeds was attempted to be explained as due to operations such as sieving, powdering, recrushing, etc. The Board of Revenue considered this explanation and held that it was an afterthought. We do not consider that this view of the Board of Revenue can be said to be erroneous, so as to require interference.

6. The further contention urged on behalf of the assessee was that even on the basis of 19.5 units, the addition that has been made by the Board of Revenue to the turnover was high and excessive. 57,025 units were consumed for crushing 2,669 bags of seeds. It is only the consumption that was taken at an average of 21 units on the basis of the test check. The consumption could only be 19.5 units and the difference in the consumption cannot lead to the inference that 567 bags were converted into oil. As pointed out by the learned counsel, the out-turn for the difference in units would only be about 250 bags and the value thereof would have to be taken for the assessment. The sale of oil and oilcake of 567 bags of gingelly seeds has been worked out to Rs. 88,452.00 by the Board of Revenue. In view of the fact that the assessee can be taken to have consumed for the purpose of crushing another 250 bags of gingelly seeds, the figure will be suitably modified by the assessing authority. We have proceeded on the basis that even though the assessee had not established that he had sold some bags of gingelly seeds, it is not improbable taking into account the electricity consumption that the assessee had sold at least a part of the quantity as and by way of gingelly seeds. That is why we have sustained the addition to the extent of sale proceeds of oil and oilcake derivable out of 250 bags of gingelly seeds.

7. During the course of the argument, there was some discussion as to the scope of the power of interference by this Court against the order of the Board of Revenue. Section 37 of the Tamil Nadu Sales Tax Act, which gives a right of appeal to this Court against an order of the Board of Revenue, does not provide any restriction on the scope of the jurisdiction of this Court. For instance, Section 38 of the Act, which deals with the power of revision by the court, has confined the power only to interference in matters of law. But there is no such restriction in Section 37. Section 37(2) provides that the appeal is, to be in the prescribed form and should be verified in the prescribed manner. The form that has been prescribed under Rule 30 contains in column 8 as against sub-column (e)(ii) the following narration: "State the questions of law raised for decision by the High Court." This form appears to proceed on the basis that the appellant will have to raise only questions of law for the decision of the High Court. The form, as prescribed, cannot control the jurisdiction of the court which is conferred by the statute. This part of the form has to be understood as applying to those cases where any question of law as such is raised and will not apply to a case where the appeal is against an order of the Board of Revenue on a question of fact. It is quite understandable that the legislature has provided for a right of appeal on fact as well as law to the High Court, because the Board was interfering with an order of a subordinate authority in revision and the appeal to the High Court is in effect a first appeal.

8. In these circumstances, the jurisdiction of the court will have to be understood in its wider scope, both on question of fact as well as on question of law.

9. The appeal is partly allowed. The reduction is modified accordingly. No costs.