(1995) 01 MAD CK 0045

In the Madras High Court

Case No : Tax Case No. 1017 of 1983 (Revision No. 380 of 1983)

State of Tamil Nadu APPELLANT

Vs

K. Balasubramanian RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12

Citation : (1995) 01 MAD CK 0045

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The department is the petitioner herein. The assessee did not disclose a turnover of Rs. 38,500 in the A-1 return. A

penalty notice was issued by the assessing officer to show cause as to why penalty should not be levied u/s 12(5) of the Tamil Nadu General Sales

Tax Act, 1959. The assessee filed a letter dated February 11, 1982, stating that the investigation of accounts did not indicate any omission of

purchase or sale or any other transaction, and hence the levy of penalty is not justified. However, the assessing officer refused to accept the

explanation offered by the assessee, and accordingly, minimum penalty of Rs. 1,910 being 50 per cent of the tax due on the turnover not disclosed

was levied. On appeal, the Appellate Assistant Commissioner confirmed the penalty levied by the assessing officer. Aggrieved the assessee filed an

appeal before the Tribunal and the Sales Tax Appellate Tribunal deleted the penalty levied by the authorities below, since according to the

Tribunal, the assessee pointed out the mistake even before the completion of the assessment made by the assessing officer.

2. Aggrieved by this order, the department has filed this revision before this

Court.

3. The learned Additional Government Pleader (Taxes) submitted that the assessing officer pointed out that the turnover of Rs. 38,500 was not

disclosed in A-1 return. According to the learned Additional Government Pleader (Taxes) only after this mistake was pointed out by the assessing

officer, the assessee came forward with an explanation that due to inadvertence the turnover in question was not reported in A-1 return. According

to the learned Additional Government Pleader (Taxes), if any revised return was filed by the assessee and the tax due on the turnover which was

not disclosed, was paid, before completing the assessment, then the penalty is not leviable u/s 12(5) of the Act. In the present case the learned

Additional Government Pleader (Taxes) pointed out that the assessee has neither disclosed the turnover of Rs. 38,500, nor paid the tax due

thereon before completing the assessment, and therefore, the Tribunal was not right in deleting the penalty levied by the assessing authority.

On the other hand none was present on behalf of the assessee. This revision came up for hearing on an earlier occasion and the assessee was not

represented through any counsel and therefore it was directed to be posted for hearing today. Even today, nobody was present on behalf of the

assessee. We have considered the arguments of the learned Additional Government Pleader (Taxes) and perused the records carefully.

4. The fact remains that the assessee failed to disclose the turnover of Rs. 38,500 in A-1 return. The assessee explained that the investigation of

accounts did not indicate any omission of purchase or sale or any other transaction, and therefore, it was submitted that the levy of penalty is not

warranted. Generally if the assessee files a revised return and pays tax on the turnover, which was not disclosed before completing the assessment,

the Tribunal used to delete the penalty levied u/s 12(5) of the Act. But in the present case, there was no evidence on record to show that any

revised return was filed or any tax due on the turnover which was not disclosed was paid, before completing the assessment. In such

circumstances, the penalty levied by the authorities below, u/s 12(5) of the Act cannot be said to be not justified. Hence, we set aside the order

passed by the Tribunal and restore the penalty levied u/s 12(5) of the Act. In that view of the matter, this tax case is allowed. No costs.

5. Petition allowed.

