

(1991) 03 MAD CK 0014
In the Madras High Court
Case No : T.C. (Revision) No. 1109 of 1981

State of Tamil Nadu

APPELLANT

Vs

K. Mohamed Haneefa

RESPONDENT

Date of Decision : 18-03-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 12A, 16, 16(1), 32

Citation : (1991) 03 MAD CK 0014

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

Bench : Division Bench

Advocate : R. Lokapriya, for the Appellant; S. Ramanathan, for the Respondent

Judgement

Dr. A.S. Anand, C.J.—This is a revision by the Revenue against the order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai,

dated 19th of December, 1980.

2. The assessee-respondent was originally assessed on the purchase turnover of Rs. 18,240 at the rate of 3 per cent for the assessment year

1976-77 with regard to the last purchase of hides and skins. The assessee-respondent had purchased 6,586 pieces of calf skin, and after showing

an average purchase rate of Rs. 3 per piece, had submitted the return. The Joint Commercial Tax Officer, Dindigul, assessed the assessee by the

order dated 31st of July, 1977, on the estimated purchase value of 6,586 pieces of raw calf skin sold by the assessee to non-registered dealers

and the purchase value was determined and assessed at the rate of 3 per cent for Rs. 18,240. The successor to the Joint Commercial Tax Officer

apparently reopened the assessment proceedings already concluded u/s 12 of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred

to as "the Act", and fixed the purchase turnover at Rs. 1,77,822 as against the turnover of Rs. 18,240 fixed in the original assessment proceedings.

The assessee preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner, while agreeing with the

finding of the assessing authority in the reopened proceedings, held that the last purchase turnover of raw calf skin had "escaped from assessment

but he refixed the last purchase turnover of the raw calf skin at Rs. 98,790 instead of Rs. 1,77,822. The assessee filed an appeal before the

Tribunal. The Tribunal found that the assessing authority could not have reopened the concluded assessment proceedings itself as it was not a case

of escaped assessment and, therefore, no recourse could be had to the provisions in section 16 of the Act. The appeal was, therefore, allowed

against which the present revision.

3. Did the Joint Commercial Tax Officer have any jurisdiction to reopen a concluded assessment by taking recourse to section 16 of the Act is the

only question which we are called upon to deal with in this revision ?

4. Section 16(1) which deals with assessment of escaped turnover reads thus :

16. Assessment of escaped turnover. - (1)(a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped

assessment to tax, the assessing authority may, subject to the provisions of sub-section (2) at any time within a period of five years from the expiry

of the year to which the tax relates, determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on

such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against

such assessment.

(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it

is assessable, the assessing authority may, at any time within a period of five years from the expiry of the year to which the tax relates, reassess the

tax due after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such

reassessment.

5. On a plain reading of section 16 it is obvious that section 16(1)(a) has limited application. It would come into play only where for any reason,

the whole or any part of the turnover of business of a dealer has escaped assessment to tax; it vests the power in the assessing authority to subject

the escaped turnover to assessment in the manner provided for in the section itself. Under clause (b) of sub-section (1) of section 16, where the

turnover was assessed at a lower rate, the assessing authority has been vested with the power to reassess the tax due in the manner prescribed by

the section itself. Admittedly, in the instant case neither clause (a) nor clause (b) of sub-section (1) of section 16 was attracted. It was not an

assessment of escaped turnover at all. What the succeeding assessing authority did was to reassess and exercise "revisional" powers or powers of

review", which undoubtedly it did not possess. The order passed u/s 16 by the succeeding assessing authority was, therefore, clearly illegal. On

the department's own showing the case was of under-assessment of the turnover and not of any assessment of the escaped turnover. In situations

like this, provision has been made under the Act in section 32 which empowers the Deputy Commissioner to call for and examine the records of

any case suo motu or on an application for the purpose to satisfy himself as to the legality or propriety of an order made by his subordinate

authority or as to the regularity of the proceedings. That power could be exercised only by the Deputy Commissioner and not by the assessing

authority itself. The Legislature, with a view to remove any doubts and difficulties with regard to matters where there has been under-assessment,

assessment, introduced in the Act section 12-A which specifically provides as follows :

12-A. Assessment of sales shown in accounts at low prices: - (1) If the assessing authority is satisfied that a dealer has, with a view to evade the

payment of tax, shown in his accounts sales or purchases of any goods, at prices which are abnormally low compared to the prevailing market

price of such goods, it may, at any time within a period of five years from the expiry of the year to which the tax relates, assess or reassess the

dealer to the best of its judgment on the turnover of such sales or purchases after making such enquiry as it may consider necessary and after giving

the dealer a reasonable opportunity to show cause against such assessment.

(2) The provisions of sub-sections (2) to (5) of section 16, shall, as far as may be, apply to assessment or reassessment under sub-section (1) as

they apply to the reassessment of escaped turnover under sub-section (1) of section 16"".

This section was introduced by Act 47 of 1979 with effect from December 3, 1979 and vests the power in the assessing authority with regard to

the sales shown in accounts at the low price. In the rules framed under the Act, rule 18-C was incorporated with effect from 1st October, 1984.

That rule provides as follows :

18-C. In making an assessment u/s 12-A, the assessing authority shall take into account such of the following factors as may be relevant to the

determination of the prevailing market price of the goods, namely, -

(i) the prices charged by other dealers at the relevant stage of sale of similar goods during the relevant period;

(ii) the difference between the price charged by the dealer on his sale and the price charged by the second and subsequent dealers on the sale of

the same goods;

(iii) the difference between the price paid by a dealer towards the purchase of the goods from the earlier seller and the price charged for the resale

of the same goods; and

(iv) the differential price charged on sales against bulk orders and small orders in respect of the same goods. If the difference in prices, exclusive of

the sales tax element, is more than fifteen per cent, the assessing authority shall examine the reasons for the variation, taking into account the

relationship between the parties to the transactions, the charges for after-sale services, packaging, transport and other expenses incurred by

subsequent sellers which add to the cost of the goods at each stage of sale by successive dealers. The assessing authority shall also examine

whether there is such difference in the price charged on the sales of the same goods to different customers and whether the goods are made

available to all distributors or other customers in unlimited quantities and at the same prices. After making due allowance towards the variation in

prices and normal profit margin, the assessing authority shall arrive at the market price that should have been charged by the dealer and levy tax on

the taxable value so arrived at.

However, in the instant case, the assessment relates to the year 1976-77 and neither section 12-A nor rule 18-C would have any application.

Since, the succeeding assessing authority exercise jurisdiction which did not vest in it, the Tribunal rightly set aside the order of the assessing

authority as also of the Appellate Assistant Commissioner. Recourse to section 16 of the Act could not be had in matters of under-assessment, as

it has application to cases of escaped assessment only. The power to assess escaped turnover u/s 16 has normally to be exercised in matters de

hors the original assessment, which admittedly was not the position in this case. We, therefore, find that the order of the Tribunal does not call for

any interference. The revision fails and is dismissed but without any order as to costs.

6. Petition dismissed.