
(1995) 01 MAD CK 0073
In the Madras High Court
Case No : T.C. No's. 833 and 834 of 1983

State of Tamil Nadu

APPELLANT

Vs

K.M.S. Kasinathan Chettiar and Brothers

RESPONDENT

Date of Decision : 03-01-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 7A

Citation : (1995) 01 MAD CK 0073

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

Bench : Division Bench

Judgement

Thanikkachalam, J.—The department is the petitioner in both these revisions. These revisions are directed against the order passed with regard to the quantum of addition and the cancellation of the penalty. The assessee is a dealer in brassware at Kumbakonam. The assessee declared a total and taxable turnover of Rs. 47,18,006.07 and Rs. 29,94,055.57 respectively for the assessment year 1979-80. The assessee is maintaining only pattarai account. The production-cum-stock accounts were not maintained. The place of business was inspected and the place of residence of one Kasinathan Chettiar was also inspected. No defects were found in the residence. The stock verification held at the shop revealed difference of 292.25 kg. in brassware and the suppression was estimated at Rs. 32,120 at 4 per cent by adding five times the actual suppression.

2. Karpagam Metal Rolling Mills at Thiruppur was also inspected. In the inspection 131 slips were recovered with a file containing 45 letters, used forms XXP, 49 leaves, godown issue register, two exercise note books, etc. On verification of entire records, it was found that purchase of 4 tonnes of brass scraps were not accounted for. There were also excess stock in brass billets, brass scraps and copper scraps and deficit stock in brass cuttings, and zinc scraps. In respect of branch at Anupparpalayam no manufacturing account was maintained. Hence the assessing officer rejected the accounts as incorrect and made a best judgment assessment. The assessing officer estimated the

suppression at Rs. 2,98,383. A penalty of Rs. 3,797 was levied u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959. Consequently, the additional tax was levied at 0.7 per cent of taxable turnover. For the sales effected at Tiruppur surcharge was levied at 5 per cent.

3. Aggrieved the assessee filed an appeal before the Appellate Assistant Commissioner. On appeal the Appellate Assistant Commissioner held that an addition of two times will be sufficient instead of five times as done by the assessing officer. The suppression in the head office is fixed at Rs. 19,272 the purchase suppression u/s 7-A of the Act was determined at Rs. 57,243. The estimated sales suppression of brass sheets and circles was determined at Rs. 1,52,413. Thus the taxable turnover comes to Rs. 2,09,656. In the order the Appellate Assistant Commissioner pointed out that if 50 per cent is added to the purchase suppressions, it would be sufficient to meet the ends of justice.

4. As against this order, the assessee preferred appeals before the Appellate Tribunal. Aggrieved by the order passed by the Appellate Assistant Commissioner, the department has also filed an enhancement petition. Considering the facts arising in this case the Tribunal determined the addition at Rs. 1,25,000 for the Tiruppur branch as against Rs. 2,09,656 sustained by the Appellate Assistant Commissioner. The Tribunal took the view that there is also no need to make out the case for further probable addition of 50 per cent. The Tribunal also held that where there is suppression with regard to the purchase and the suppressed sale, there is no need to make separate addition u/s 7-A of the Act. The Tribunal was also of the view that there is no case for levying penalty, since clear suppression was not established by the department. It is against this order, the department is in revision.

5. The learned Additional Government Pleader (Taxes) submitted that there was suppression of stock variation. There is evidence on record to show that the assessee purchased raw materials outside the books. On account of that there is also sale suppression. The assessing authorities estimated the purchase suppression and the sales suppression and made additions separately under both these heads. While so, without assigning any reason any reason and without any basis the Tribunal reduced the addition to Rs. 1,25,000 from Rs. 2,09,656 sustained by the Appellate Assistant Commissioner. Since the Tribunal reduced the addition on suppressed turnover that would not mean that the penalty levied u/s 12(3) of the Act should also be cancelled. The department established by cogent and convincing evidence that there was purchase suppression and sales suppression. Purchase suppression was admitted by the assessee himself. While so; penalty is exigible u/s 12(3) of the Act. Hence it was submitted that the Tribunal was not correct in reducing the addition as well as cancelling the penalty.

6. On the other hand, learned counsel appearing for the assessee submitted that while reducing the addition, in fact the Tribunal sustained Rs. 19,272 which was considered as suppression estimated by the department. The learned counsel for the assessee submitted that the Tribunal never interfered with the order passed

by the Appellate Assistant Commissioner while reducing the addition. It was pointed out that actually only the quantum with regard to purchase suppression and sales suppression was reduced by the Tribunal. Through it was not stated in so many words as to because of the reduction in the case of purchase suppression and sales suppression, a total reduction was given in the order of the Tribunal. Since the addition was made with regard to the suppression of sales as well as suppression of purchase on the estimated basis, addition with regard to estimated sales suppression would be unwarranted. Even the Appellate Assistant Commissioner redetermined the addition with regard to the suppression as well as the quantum of penalty. This would go to show that the Tribunal was not in error which reducing the quantum of purchase suppression and sales suppression in its order. For these reasons, the learned counsel for the assessee supported the order passed by the Tribunal.

7. We have heard the rival submissions. The Appellate Assistant Commissioner sustained an addition of Rs. 57,243 towards purchase suppression u/s 7-A of the Act, so also a sum of Rs. 1,52,413 was fixed as estimated sales suppression. The total comes to Rs. 2,09,656. The assessing officer also levied a penalty of Rs. 8,797 u/s 12(3) of the Act, which was cancelled by the first appellate authority. The assessee is having his main business at Kumbakonam. The assessee is having a mill at Anupparpalayam and a branch at Tiruppur. The best judgment assessment is mainly based on the inspection results. The assessee was maintaining only pattarai account. No doubt, the assessee was not maintaining day-to-day stock and manufacturing account. On inspection, stock variation was found at 292.250 kg. The assessing officer made five times addition. On appeal, the Appellate Assistant Commissioner decided that an addition of two times will be sufficient. Suppression in the head office is fixed as Rs. 19,272. The actual stocks were compared with the book stock. During the inspection by the department, four tonnes of brass scraps were not accounted for. But it was subsequently accounted for after inspection stock variation consisting of brass billets, brass scraps, brass cuttings, copper scraps and zinc scraps. According to the assessee, the manufacturing process was going on and so the total weight should not be compared with individual items. According to the assessee, if the total weight of all commodities were compared, the actual stock would be 15,730.300 kg. while the book stock was 15,435 kg. Therefore, according to the assessee, there is no much difference. However, this was not accepted by the department. The department has accepted that the manufacturing activities were going on and the outturn used to be written only in the course of the day. No doubt there is difference between the stock maintained in the books and the stocks found out during inspection. Therefore, the department decided that there is stock variation. The value of the excessive stock was worked out at Rs. 57,243. The department assessed the purchase u/s 7-A of the Act. The assessee contended that addition was made u/s 7-A of the Act only on the basis of the estimate, whereas the department contended that the addition was made on approved omission of purchase. But, however, the finished product was

estimated by the assessing officer along with the value of the suppressed finished product, 15 per cent was added towards gross profit and thereby the value of suppression was fixed at Rs. 2,98,383 by the assessing officer which was reduced to Rs. 1,52,413 by the Appellate Assistant Commissioner.

8. While considering these aspects the Tribunal pointed out that separate addition on purchase suppression u/s 7-A of the Act need not be made. For the suppression on the part of the assessee 50 per cent was added for probable omission. The Tribunal considered that the addition of 50 per cent on probable omission also need not be made. As already seen the suppression u/s 7-A of the Act was determined at Rs. 57,243 and the estimated sales suppression was determined at Rs. 1,52,413. The total comes to Rs. 2,09,656. This was reduced by the Tribunal to Rs. 1,25,000 in fact the Tribunal would have thought that this figure of Rs. 1,25,000 would satisfy both the suppressions. But it was not stated so in the order of Tribunal in so many words.

9. It remains to be seen that the purchase suppression was found out only as a result of inspection between the stocks stated in the books and the actual stocks in the hands of the assessee. According to the assessee, the manufacturing process was going on, and if the total weight in the books was compared with the actual stocks found out in the hands the difference between these two figures is very negligible. If there is additions with regard to the purchase suppression and sales suppressions which were made on the basis of estimate, it is open to the fact finding appellate authorities on the basis of the facts available on record to estimate the correct addition. The Tribunal being the ultimate facts findings authority considered that a consolidated addition of Rs. 1,25,000 would meet the purchase suppression as well as the sales suppression. Since this conclusion was arrived at by the Tribunal on the basis of the facts we consider that we are unable to interfere with such findings arrived at by the Tribunal. Accordingly, we find that there is no defect in the conclusion arrived at by the Tribunal in refixing the addition both for purchase suppression and sales suppression. Accordingly, we are not inclined to interfere with the same.

10. So far as the penalty is concerned the assessing officer has levied penalty even for the estimated purchase and sales suppression. If there is actual suppression, penalty can be levied. On the basis of the stock variation alone, penalty cannot be levied. It was pointed out that through the purchase of four tonnes of brass scraps was not accounted for in the beginning, but subsequently, the assessee accounted for the same, Since the suppression was not established clearly, the Tribunal came to the conclusion that penalty is not eligible. The reasons given by the Appellate Assistant Commissioner for cancelling the penalty which were accepted by the Tribunal appears to be in order. Hence, we are not inclined to interfere with the order passed by the Tribunal in cancelling the penalty. Accordingly, both the revisions filed by the department are dismissed. But there will be no order as to costs.

11. Petitions dismissed.