
(1997) 10 MAD CK 0072

In the Madras High Court

Case No : T.C. No. 637 of 1990 (R.C.O. No. 335 of 1990)

State of Tamil Nadu

APPELLANT

Vs

M. Natarajan

RESPONDENT

Date of Decision : 17-10-1997

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 12(5)

Citation : (2003) 133 STC 513

Hon'ble Judges : K.P. Sivasubramaniam, J; Janarthanam, J

Bench : Division Bench

Advocate : K. Elango, for Taxes, for the Appellant;

Final Decision : Dismissed

Judgement

Janarthanam, J.—This revision at the instance of the Revenue is directed against the order dated December 14, 1988 of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madras-20, for short, "the Tribunal" and made in T.A. No. 283 of 1987 relating to the assessment year 1984-85. The assessee, Thiru M. Natarajan, 86-A, Gandhi Nagar, Kovilpatti is a dealer in Yavesh Match Works registered under the Tamil Nadu General Sales Tax Act, 1959 and Central Sales Tax Act, 1956. It appears the assessee-dealer, though effected inter-State sales, did not, however file monthly return showing the inter-State sales of matches effected. An inspection was carried out at the premises of the assessee-dealer by the Enforcement Wing and during the course of inspection, it appears that the assessee-dealer effected inter-State sales between the period April 1, 1984 and October 31, 1984 to the tune of Rs. 96,000. The assessee-dealer, it appears prior to the issuance of pre-assessment notice, filed a return showing a total and taxable turnover to the tune of Rs. 1,37,000 which comprised the turnover of Rs. 96,000 between April 1, 1984 and October 31, 1984 and Rs. 41,000 between November 1, 1984 and March 31, 1985. On the return so filed, the Assistant Commercial Tax Officer, Kovilpatti-1 levied tax under the C.S.T. Act on the said turnover in a sum of Rs. 2,740, besides mulcting liability upon the assessee-

dealer, a penalty in a sum of Rs. 2,880 u/s 12(3) of the T.N.G.S.T. Act, 1959.

2. The aggrieved assessee-dealer filed an appeal in C.S.T. 38 of 1986 before the Appellate Assistant Commissioner (C.T.), Tirunelveli, who after taking into consideration the materials available on record, sustained the imposition of tax on the turnover of Rs. 1,37,000 he, however, holding that the quantum of penalty levied is excessive, reduced the levy of penalty at 50 per cent of the tax fixing it at Rs. 960.

3. The aggrieved assessee-dealer did not stop there. He agitated the matter further by filing an appeal before the Tribunal as stated above. The Tribunal took the view that the penalty imposed is not sustainable and consequently allowed the appeal, giving rise to the present action--Tax Case (Revision) No. 637 of 1990.

4. The assessee-dealer, despite service of notice, did not choose to engage a counsel of his choice in order to defend him in the present action nor was he present in the court to defend him. Consequently, there is no other go for this Court to dispose of this matter by hearing the arguments of Mr. K. Elango, learned Government Advocate representing the Revenue. Puzzling it is for us to know as to how the assessing officer mulcted a liability upon the assessee-dealer in the sense of imposition of penalty in a quantified sum u/s 12(3) of the T.N.G.S.T. Act, when especially the assessment made by him, in the very naturally things, could not be said to be best judgment assessment (sic). As already adverted to the assessee-dealer filed the revised return prior to the issuance of a pre-assessment notice relatable to the assessment year in question. It is only on the return so filed the assessee-dealer had been assessed to tax. Such being the case, the imposition of penalty upon the assessee-dealer by the assessing officer u/s 12(3) of the Act is not warranted.

5. The Appellate Assistant Commissioner simply holding that the penalty imposed is excessive, reduced the penalty amount to 50 per cent of the tax and fixing it at Rs. 960. The rationale or the reasoning as given above for the unsustainability of the imposition of penalty by the assessing officer also holds good relatable to the unsustainability of the modification of the order of penalty by the Appellate Assistant Commissioner.

6. When we came to the order of the Tribunal, we are able to discern that the Tribunal took the view that the imposition of penalty is not warranted even u/s 12(5) of the T.N.G.S.T. Act, when especially the assessee-dealer has filed a revised return prior to the final assessment. The view so taken by the Tribunal on the facts and circumstances, cannot at all be stated to be not sustainable under law. In this view of the matter, the revision deserves to be dismissed and the same is accordingly dismissed. No costs.