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(1995) 01 MAD CK 0043

In the Madras High Court

Case No : Tax Case No. 831 of 1983 (Revision No. 314)

State of Tamil Nadu APPELLANT

Vs

Mahalakshmi Textile Mills Ltd. RESPONDENT

Date of Decision : 03-01-1995

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

Citation : (1995) 01 MAD CK 0043

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 reported a total and taxable turnover of Rs. 7,56,88,286.36 and

Rs. 5,92,48,519.21 in the A2 returns filed by it for the assessment year 1979-80. The assessing officer determined the total and taxable turnover

as Rs. 6,94,86,679 and Rs. 5,93,72,630 respectively after verifying the accounts. According to the assessing officer, the annual statement filed by

the assessee cannot be treated as a return in the prescribed form provided under the law. The assessing officer also held that the returns filed by

the assessee were not correct and complete. Hence, he levied a penalty of Rs. 4,474 u/s 12(5) of the Tamil Nadu General Sales Tax Act, 1959.

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

second appeal before the Tribunal. The Tribunal considering the fact that a revised return was filed before completing the assessment and tax due

thereon was paid, cancelled the penalty levied by the assessing officer. It is against that order the present revision has been preferred by the

department.

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2. According to the learned Additional Government Pleader (Taxes), the revised statement was filed only after it was found out by the assessing

officer that the original returns filed were not in order. Therefore, according to the Additional Government pleader (Taxes), penalty is exigible u/s

12(5) of the Act. On the other hand, the contention of the assessee was that the assessee furnished the turnover in question when the accounts

were taken up for scrutiny. There is no variation between the book turnover and the turnover in the return read with supplementary details

furnished by the assessee. The assessee was also paying the tax due on the returns. Therefore, it was submitted that there is on ground to levy the

penalty u/s 12(5) of the Act.

3. The fact remains that the defects in the original return was rectified by the assessee by filing a revised statement before completing the

assessment. The tax due thereon was also paid in time. In a case where the assessment filed revised return before completing the assessment it

cannot be said that the original return filed by the assessee is defective and hence penalty is exigible. In T.C. No. 771 of 1983 (State of Tamil

Nadu v. Lucky Rasi Radio House, Periyakulam) by an order dated January 2, 1995 (Reported in 1996 STC 210 Mad supra) this Court held that

when the assessee filed revised return before the completion of the assessment and the tax due thereon was paid, then no penalty is exigible u/s

12(5) of the Act. According to the facts arising in the present case, the revised return was filed before the completion of the assessment and the tax

due on the revised return was also paid in time. Therefore, we are also of the opinion that no penalty is exigible in the present case. Accordingly,

the order passed by the Tribunal in cancelling the penalty is in order. Hence, we are not inclined to interfere with the same.

4. In the result, the revision is dismissed. No costs.

5. Petition dismissed.

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