

(1995) 07 MAD CK 0079

In the Madras High Court

Case No : Tax Case (Revision) Petition No. 135 of 1984 (Revision No. 255 of 1984)

State of Tamil Nadu

APPELLANT

Vs

M.M. Mohideen Thamby and Co.

RESPONDENT

Date of Decision : 05-07-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16, 32, 34

Citation : (1995) 07 MAD CK 0079

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

Bench : Division Bench

Judgement

Thanikkachalam, J.—In the original assessment for the assessment year 1976-77, the assessing officer considered only a sum of Rs. 2,31,237.83. Therefore, the sum of Rs. 2,31,237.83 alone finds a place in the assessment order. While exercising the suo motu power u/s 32 of the Tamil Nadu General Sales Tax Act, the Deputy Commissioner has found that the exemption allowed on Rs. 2,31,237.83 by the assessing officer was not correct. He also brought a turnover of Rs. 4,00,012 for assessment as it related to local purchases of raw hides and skins within Tamil Nadu. Penalty proceedings was also initiated to levy a penalty of Rs. 12,000.

2. The assessee contended that the revision was barred by limitation and that there was no jurisdiction for the Deputy Commissioner to enhance a turnover of Rs. 4,00,012, which was not considered by the assessing officer at the time of original assessment.

3. The Tribunal on hearing the arguments of both sides and after perusal of the records, has held that the revision is within the period of limitation prescribed under amended section 32 of the Tamil Nadu General Sales Tax Act and accordingly, it rejected the plea of the assessee that the revision was time-barred. As regards the addition, the Tribunal has upheld the revision made on a turnover of Rs. 2,31,237.83 as the assessee has not objected to it. With regard

to the addition of Rs. 4,00,012, the Tribunal deleted the same. So also, the Tribunal held that the assessing officer has so authority to initiate penalty proceedings. Accordingly, the penalty of Rs. 12,000 has also been deleted. It is against this order, the department is in revision before this Court.

4. We have heard the learned Additional Government Pleader (Taxes), who supported the order passed by the Deputy Commissioner. According to the learned Additional Government Pleader (Taxes), the order passed by the Tribunal in deleting the addition made by the Deputy Commissioner and the penalty proposed to be levied is incorrect. We have also heard the learned counsel appearing for the assessee, who contended that the direction given by the Deputy Commissioner to reopen the assessment is barred by limitation. On merits the learned counsel appearing for the assessee supported the order passed by the Tribunal.

5. The fact remains that in the original assessment for the assessment year 1976-77, the assessing officer considered a turnover of Rs. 2,31,237.83. The Deputy Commissioner, while exercising his suo motu power u/s 32 of the Tamil Nadu General Sales Tax Act found that a turnover of Rs. 4,00,012 has escaped the assessment. Hence, he directed the assessing officer to reopen the assessment for the purpose of re-doing the assessment. The original assessment for the assessment year 1976-77 was made on February 28, 1978. Limitation for exercising power u/s 32 of the Tamil Nadu General Sales Tax Act would end by February 28, 1983. In between this period, the Deputy Commissioner issued a notice dated January 19, 1983, for reopening the assessment. While exercising his suo motu power, the Deputy Commissioner can direct the assessing officer to reopen the assessment if there is time-limit for reopening. While directing the assessing officer to reopen the assessment, the Deputy Commissioner is also bound by the provisions contained in section 16(1) of the Tamil Nadu General Sales Tax Act. According to section 16(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 5 years from the expiry of the year to which the tax relates, determine to the best of its judgment the turnover which has escaped the 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. Therefore, even if a direction was given by the Deputy Commissioner to reopen the assessment, the assessing officer can reopen the assessment only if there is a period of five years for reopening as contemplated u/s 16(1)(a) of the Act. In the present case, the period of 5 years u/s 16 of the Tamil Nadu General Sales Tax Act runs up to March 31, 1982. Even the notice issued by the Deputy Commissioner dated January 19, 1983, will not save the period of limitation of 5 years as contemplated u/s 16(1)(a) of the Act. Therefore, when there is no time to respect the direction given by the Deputy Commissioner for reopening the assessment is barred by limitation and therefore, the reassessment made by

including the turnover of Rs. 4,00,012 appears to be not in order. Section 16 is also binding upon the Deputy Commissioner. No doubt, with regard to the turnover originally dealt with by the assessing officer, viz., Rs. 2,31,237.83, addition was made since objection was not made by the assessee. When the reassessment is hit by the period of limitation, the escaped turnover cannot be brought to tax and no penalty proceedings can also be initiated.

6. In *A. Valayutha Raja v. Board of Revenue (C.T.)*, Madras-5 [1970] 26 STC 176, this Court held as under :

"The provisions as to the period of limitation within which escaped turnover can be brought to tax as provided in section 16(1) equally apply when such an order is sought to be passed by the Board in exercise of its powers u/s 34. The effect of the period of limitation envisaged in section 16(1) is wide enough and cannot be said to be limited to assessment of escaped turnover under that sub-section by the assessing authority only. It is to be invoked in all cases where a statutory functionary under the Act assumes jurisdiction to assess escaped turnover."

In view of the foregoing reasons we are upholding the order passed by the Tribunal in setting aside the reassessment proceedings and the penalty proceedings.

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

8. Petition dismissed.