
(1990) 10 MAD CK 0083
In the Madras High Court
Case No : T.C. No. 127 of 1981

State of Tamil Nadu

APPELLANT

Vs

M.S. Venkatasamy Raja

RESPONDENT

Date of Decision : 22-10-1990

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (1990) 10 MAD CK 0083

Hon'ble Judges : Venkataswami, J;Abdul Hadi, J

Bench : Division Bench

Judgement

Venkataswami, J.—The Revenue aggrieved by the order of the Tamil Nadu Sales Tax Appellate Tribunal (Second Additional Bench), Madras I, dated September 11, 1980, made in T.A. No. 450/79 setting aside the penalty levied u/s 16(2) of the Tamil Nadu General Sales Tax Act (hereinafter called as "the Act") has preferred this revision.

2. The brief facts are the following : The assessment year in question is 1972-73. The respondent seems to have manufactured and sold sugarcane crushers and electrical motors to agriculturists. The turnover relating to these sales were not shown in the return submitted by the assessee. While checking the transactions in the bank in which the assessee-respondent had account, the department came to know of the sales made by the assessee-respondent. Accordingly, the assessment was reopened u/s 16 of the Act. In reply to the reopening of the assessment, the respondent-assessee contended that there were no sales and he only manufactured the machinery on the materials supplied by the agriculturists. Alternatively he contended that he had merely issued bills without actually dealing with the commodities mentioned therein to enable the agriculturists to obtain loans from the bank and these two pleas were not accepted both by the assessing officer as well as the Appellate Assistant Commissioner, on appeal. On second appeal, the Tribunal after elaborately appreciating the modus operandi and also in view of the fact that the respondent-assessee had not produced all

the relevant records and in particular the extract of bank account, gave the finding that the two pleas were not acceptable. Consequently the Tribunal found as follows :

"From the totality of the facts and circumstances of the case, we have to hold that the sales found to have been made by the appellants as per the bank records, have not been disproved to be otherwise by them and the reassessment made of them confining to the actual sales as per the records which were found to have escaped assessment to tax u/s 16 of the Act is quite in order and no interference whatsoever is called for."

Having held as above, the Tribunal set aside the penalty on the ground that it cannot be said that these sale transactions have been established to the satisfaction of one and all in clear terms without any element of doubt involved and also the transactions relate to the year 1972-73. In support of the above observations, the Tribunal placed reliance on a judgment of this Court reported in *Kathiresan Yarn Stores v. State of Tamil Nadu* [1978] 42 STC 121 (FB).

3. The learned Additional Government Pleader contended that the ratio laid down in *Thvl. Kathiresan Yarn Stores, Salem Vs. The State of Tamil Nadu*, will not apply to the facts of this case. In this case, the Tribunal and all the authorities below in unequivocal terms have found that there were sales transactions and the replies given by the assessee-respondent cannot be accepted. Having so held, necessarily it follows that the non-disclosure of the turnover in question was wilful and consequently section 16(2) of the Act is attracted. The observation of the Tribunal while considering the levy of penalty that the sales transactions have not been established to the satisfaction of one and all is contrary to the finding given by the Tribunal in the previous paragraph. We find force in the argument of the learned Additional Government Pleader. In unmistakable terms the Tribunal has found that there were sales transactions and the assessee-respondent had not produced relevant records to satisfy the Tribunal by establishing the case pleaded by him. It is also not in dispute that but for the inspection, the turnover would have escaped assessment, as the respondent had not returned the disputed sales transactions in the turnover submitted by him. In the circumstances, we are of the view that the ratio laid down in *Thvl. Kathiresan Yarn Stores, Salem Vs. The State of Tamil Nadu*, will not apply to the facts of this case and the requirement of section 16(2) is satisfied and the levy of penalty is warranted and the Tribunal went wrong in setting aside the levy of penalty. Accordingly, the tax case is allowed. However, there will be no order as to costs.

4. Petition allowed.