

(1983) 06 MAD CK 0026

In the Madras High Court

Case No : T.C. No. 233 of 1983 (Revision No. 112 of 1983)

State of Tamil Nadu

APPELLANT

Vs

P.T. Marimuthu Chettiar

RESPONDENT

Date of Decision : 22-06-1983

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 36, 36(3), 7A

Citation : (1984) 55 STC 253

Hon'ble Judges : G. Ramanujam, J; Fakkir Mohammed, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant;

Judgement

Ramanujam, J.—The only question that has been canvassed in this case by the State is as to whether the Sales Tax Appellate Tribunal, while

granting relief in part to the assessee, could set right the mistake committed by the lower authorities in applying a lesser rate of tax by passing an

order prejudicial to the assessee, when the State has not filed any petition for enhancement of tax or seeking intervention by the Tribunal on its

behalf.

2. The assessee is the proprietor of Balamurugan Oil Mill, Madurai. He has purchased gingelly seeds both from inside and outside the State,

manufactured gingelly oil and oil cake and sold them both locally and outside the State. He has also purchased gingelly oil cake from unregistered

dealers and sold them on consignment basis to dealers outside the State. The assessing authority determined the assessee's total and taxable

turnovers at Rs. 12,22,362.00 and Rs. 11,92,505 for the year 1979-80 as against the reported total and taxable turnovers of Rs. 6,84,341 and

Rs. 6,76,370 respectively. As against the said assessment, the assessee appealed before the Appellate Assistant Commissioner and the Appellate

Assistant Commissioner refixed the taxable turnover at Rs. 11,32,657.42, which included the purchase of gingelly oil cake from country chekku oil

dealers and sold them on consignment basis to the tune of Rs. 4,50,533.00. The said turnover of Rs. 4,50,533 was assessed at 3 1/2 per cent u/s

7A of the Act having purchased and sold them on consignment basis. When the matter was taken to the Tribunal by the assessee, it was urged

before the Tribunal that the said turnover of Rs. 4,50,533 also included certain direct sales by the appellant to dealers outside the State apart from

the sale on consignment basis. Dealing with the said claim of the assessee, the Tribunal found that there were direct sales of gingelly oil cake within

the State to the tune of Rs. 32,747 and by way of inter-State sale to the extent of Rs. 9,566. Since the assessee has been shown to have directly

sold the gingelly oil cakes to persons inside the State as also to persons outside the State the Tribunal reduced the taxable turnover u/s 7A of the

Act by Rs. 20,000 for sales directly effected by the assessee of the country oil cakes. The Tribunal, therefore, deleted a sum of Rs. 20,000 and

the same has not been challenged by the State in this tax case. The present tax case has been filed on the basis that the Tribunal has committed an

error in applying the rate of 3 1/2 per cent taxable turnover u/s 7A instead of 4 per cent as provided for in the statute. But, however, we are of the

view that the Tribunal is justified in not interfering with the rate of tax adopted by the lower authorities. Admittedly, in this case the assessing

authority applied the rate of 3 1/2 per cent for the purchase of gingelly oil cake taxable u/s 7A of the Act. The Appellate Assistant Commissioner,

on appeal, also applied the same rate of 3 1/2 per cent to the said turnover. When the matter came before the Tribunal, the Tribunal merely

reduced the taxable turnover by Rs. 20,000. When the State is aggrieved against the order of assessing authority as well as the Appellate Assistant

Commissioner in applying the wrong rate of 3 1/2 per cent as against the correct rate of 4 per cent in relation to the turnover u/s 7A of the Act, the

State should have filed a petition for enhancement before the Tribunal or it should have brought to the notice of the Tribunal that the correct rate of

tax is only 4 per cent. But in this case the original authority, the first appellate authority and the Tribunal have proceeded on the basis that the

correct rate of tax applicable to the turnover taxable u/s 7A of the Act is 3 1/2 per cent. Even though the correct rate of tax applicable to the said turnover is 4 per cent, as pointed out by the learned Government Pleader, the order of the Tribunal cannot be interfered with. The Tribunal passed an order in an appeal filed by the assessee. In that appeal the Tribunal can pass an order prejudicial to the assessee, if the State has filed a petition for enhancement, in which case, the Tribunal would issue a show cause notice to the assessee before passing an order prejudicial to the assessee.

In this case, in the appeal filed by the assessee, the Tribunal can pass an order giving relief to the assessee or dismissing the assessee's appeal, if it is not inclined to interfere with the order of the appellate authority, in favour of the assessee. Even if the order appealed against is palpably incorrect, the Tribunal cannot suo motu interfere with the order of the appellate authority and it can do so only on an enhancement petition filed by the State. As a matter of fact, if the Tribunal finds or it is brought to the notice of the Tribunal by the State that the order of the lower authorities is wrong, then the Tribunal can suo motu interfere with the order of the appellate authority and it can do so only on an enhancement petition filed by the State. As a matter of fact, if the Tribunal finds or it is brought to the notice of the Tribunal by the State that the order of the lower authorities is wrong, then the Tribunal can suo motu interfere with that order under appeal before it. For the Tribunal can either give relief to the assessee on his appeal or refuse to give relief. But it cannot pass an order in favour of the revenue.

3. As a matter of fact, sub-section (3)(a) of section 36 of the Tamil Nadu General Sales Tax Act, 1959, specifically provides for such a situation.

The said provision enables the Tribunal to pass an order prejudicial to the assessee appellant before it, if the State files an enhancement petition in the prescribed form and in the prescribed manner within 60 days from the date of receipt of notice of filing of the appeal before the Tribunal. If as submitted by the learned Government Pleader in this case that without no (sic) such enhancement petition the Tribunal can rectify the mistake committed by the lower authorities in applying the wrong rate of tax, then such a provision contained in sub-section (3)(a) of section 36 is quite unnecessary.

4. Though section 36(3) enables the Tribunal to pass orders as it thinks fit, it can only allow the appeal, either in whole or in part, filed by the assessee or dismiss the same, refusing to grant any relief to the assessee. But it cannot definitely pass an order prejudicial to the assessee. If such a power is assumed on the part of the Tribunal, the assessee will be worse off in filing the appeal and such a thing was not contemplated by the statute. It is only with a view to enable the Tribunal to pass an order prejudicial to the assessee at the instance of the State, sub-section (3)(a) of section 36 was introduced in the year 1982. It is no doubt true that before the introduction of sub-section (3)(a) in the year 1982, sub-section (3) (a) enabled the Tribunal in the case of an order of assessment to confirm, reduce, enhance or annul the assessment or penalty or both. Though under sub-section (3)(a) of section 36 the Tribunal is empowered to enhance the tax rate, it cannot be said that the Tribunal can enhance the assessment suo motu without any application filed by the State for enhancement. The fact that the said section gives power to the Tribunal to enhance, cannot mean that the Tribunal can suo motu enhance the assessment without any application in that behalf by the State so as to pass an order prejudicial to the assessee-appellant. Admittedly, in this case the State did not file any petition for enhancement invoking the jurisdiction of the Tribunal to enhance the assessment. Normally if such a petition for enhancement is not filed, the Tribunal's jurisdiction is only to deal with the grounds of appeal and pass an order prejudicial to the assessee. But if an enhancement petition is filed, the jurisdiction of the Tribunal is enlarged so as to deal with the grounds urged by the State in an enhancement petition. Therefore, unless the State files an enhancement petition, the Tribunal cannot suo motu pass an order prejudicial to the assessee. Sub-section (3) of section 36 before its amendment in the year 1982 came up for consideration before this Court in Deputy Commissioner of Commercial Taxes, Tiruchirappalli Division v. Panayappan Leather Industries [1981] 47 STC 88. In that case it was held :

..... In an appeal preferred by the assessee u/s 36, the entire assessment is set at large before the Tribunal, and the Tribunal can go into the correctness or otherwise of the order of the assessing authority himself and not the order of the Appellate Assistant Commissioner alone against

which the appeal has been filed and if it comes to the conclusion that the assessing authority has not assessed a turnover which is liable to be assessed under the law or assessed a turnover at a rate lower than that sanctioned by the law, it is open to the Tribunal to set aside the order of the assessing authority and revise the assessment or direct him to make a fresh assessment in the light of the opinion expressed by it. All that is necessary in a case where the revenue files an enhancement petition at the hearing of the appeal filed by the assessee would be that, since the revenue has requested the Tribunal to pass an order adversely or prejudicial to the assessee, the assessee should be given a reasonable opportunity to put forward his case with reference to the proposed enhancement.

The learned Judges in that case further observed :

Neither in the Act nor in the Rules made thereunder there is any provision for the revenue formally filing an enhancement petition. However, as the power to enhance the assessment is vested in the Tribunal itself, the procedure of filing an enhancement petition is merely by way of putting the assessee on notice that in the appeal preferred by the assessee the revenue is going to request the Tribunal to enhance the assessment.

5. In this case, as already stated, no such enhancement petition was filed by the State before the Tribunal, nor was it brought to the notice of the Tribunal that incorrect rate of tax has been applied by the assessing authority as well as by the first appellate authority. Thus, before the Tribunal the revenue did not even ask sub-section (3)(a) of section 36 of the Act, the Tribunal has got power suo motu to pass an order prejudicial to the assessee by way of enhancing the assessment, the power of jurisdiction of the Tribunal to enhance the assessment has not been invoked by the State (sic). Therefore, the Tribunal in this case cannot be said to be in error in not interfering with the order of the lower authorities regarding the rate of tax. In this view of the matter, we feel, that the order of the Tribunal does not call for any interference. Therefore, this tax case is dismissed.

No costs.