

(1991) 04 MAD CK 0056

In the Madras High Court

Case No : Tax Case No. 1635 of 1981 (Revision No. 663 of 1981)

State of Tamil Nadu

APPELLANT

Vs

R. Jeyaraj

RESPONDENT

Date of Decision : 09-04-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 12(2), 12(3), 16(2)

Citation : (1991) 04 MAD CK 0056

Hon'ble Judges : Raju, J;A.S. Anand, J

Bench : Division Bench

Advocate : R. Lokapriya, for the Appellant; K. Govindarajan, for the Respondent

Judgement

Raju, J.—The Revenue has filed the above tax revision case against the order of the Tribunal in so far as it set aside the levy of penalty u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959, in respect of the suppression of the turnover of Rs. 30,062.

2. The assessee is carrying on business in coconut oil and oil cake. In respect of the purchase of copra, the assessee did not disclose properly the turnover which necessitated the best judgment assessment by proceedings dated August 26, 1974. The respondent-assessee appears to have challenged the assessment in respect of the said turnover and also claimed other reliefs. The appellate authority, by its order dated November 8, 1974, directed the refixation of the total and taxable turnover of the assessee, which has also been carried out by the assessing officer by proceedings dated December 17, 1974. Thereafter, on account of the fact that penalty u/s 12(3) of the Tamil Nadu General Sales Tax Act was omitted to be levied, proceedings were initiated on June 30, 1978, to levy penalty u/s 12(3) of the Act [mistakenly referred to in the notice as section 16(2)] in respect of the suppression of the turnover relating to copra which was the subject-matter of best judgment assessment when orders were passed u/s 12 of the Act initially. Overruling the objections of the assessee, the assessing authority by proceedings dated September 2, 1978, levied a penalty of Rs. 1,426

u/s 12(3) of the Act. An appeal challenging the said levy of penalty failed before the appellate authority. Thereupon, it was taken up further before the Tribunal, and the Tribunal relying upon the decision reported in Thvl. Kathiresan Yarn Stores, Salem Vs. The State of Tamil Nadu, , set aside the levy of penalty on the ground that it is not in every case of best judgment assessment that levy of penalty automatically followed, and in the absence of cinching evidence of suppression, no penalty can be levied. Aggrieved, the Revenue has filed the above tax revision case.

3. Mr. Lokapriya, learned Government Advocate, relied upon the decision in P.M. Perianna Pillai Vs. The Commissioner, Board of Revenue (C.T.), and contended that when wilful non-disclosure is referred to in the order, the same is sufficient to justify the levy of penalty u/s 12(3) of the Act.

4. Mr. Govindarajan appearing for the assessee, apart from relying upon the reasoning of the Tribunal and the decision reported in Thvl. Kathiresan Yarn Stores, Salem Vs. The State of Tamil Nadu, contended that this is a case in which the decision of this Court reported in State of Madras v. Ramulu Naidu [1965] 16 STC 865 squarely applied, that consequently, the levy of penalty is without jurisdiction, and that no interference is called for with the order of the Tribunal.

In the decision reported in State of Madras v. Ramulu Naidu [1965] 16 STC 865, a Division Bench of this Court considered the scope of the provisions contained in section 12(3) of the Act, as it stood at the relevant point of time prior to its amendment in 1972, and came to the conclusion that the penalty, in case of best judgment assessments, has to be imposed when making the assessment u/s 12(2) of the Act, and not by a separate order subsequently. The court was of the view where an officer at the time of making an assessment order was silent about the imposition of penalty, it must be taken that the assessing authority had applied its mind, but did not think it necessary to levy penalty, and the succeeding assessing authority would have no jurisdiction to reopen the earlier assessment order or act independently of it for purposes of levying penalty. So far as the case on hand is concerned, it can be, seen that reopening of the proceedings by the issue of notice on June 30, 1978, was only for the purpose of levying penalty u/s 12(3) of the Act. Consequently, apart from the justification or otherwise on the facts of the case for levying penalty, the stage or the point of time at which it could be levied, as the provisions stood at that point of time, has passed, as penalty has to be imposed when making the assessment u/s 12(2), and the levy by a separate proceedings thereafter by a subsequent authority cannot be justified. Consequently, the order of the Tribunal, though not for the reason assigned by the Tribunal, but for slightly different reasons, assigned by us, cannot be interfered with.

5. The tax revision case, therefore, fails, and will stand dismissed. But under the circumstances, there will be no order as to costs.

6. Petition dismissed.