(1995) 02 MAD CK 0041

In the Madras High Court

Case No : Tax Case No''s. 22 and 1462 of 1984 (Revision No''s. 19 and 355 of 1984)

State of Tamil Nadu — APPELLANT

Vs

Simpson and Co. Ltd. — RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 22

Citation : (1995) 02 MAD CK 0041

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

Bench : Division Bench

Advocate : Mrs. Chitra Venkataraman, Additional Government Pleader Taxes, for the Appellant; K. Vaitheeswaran, for the Respondent

Judgement

Thanikkachalam, J.—These two revisions are directed against the order, cancelling the penalty levied u/s 22(2) of the Tamil Nadu General

Sales Tax Act, 1959, in the assessment years 1975-76 and 1978-79. In the assessment year 1975-76, penalty was levied at Rs. 1,390 for illegal

collection of tax u/s 22(2) of the Act. In the assessment year 1978-79, Rs. 23,175 was levied as penalty u/s 22(2) of the Act. In the assessment

year 1975-76, the assessee submitted that the excessive tax collected was due to the confusion prevailing with regard to the rate of tax payable on

the turnover. It was further submitted that the excessive tax collected by the assessee was refunded to the customers. It was, therefore, pleaded

that no penalty can be levied u/s 22(2) of the Act. In the assessment year 1978-79, the assessee submitted that the excessive tax was collected

since there was some confusion in the matter of rate of tax to be collected during the particular point of time. It was further submitted that wherever the customers were found the excessive tax collected from them were refunded and wherever the customers were not found, the excessive tax

collected from them were deposited with the Government. Considering all these aspects, the Tribunal deleted the penalties levied u/s 22(2) of the

Act in both the assessment years for consideration.

2. Aggrieved, the department is in revision before this Court in the assessment years under consideration. The learned Additional Government

Pleader (Taxes) submitted that the tax was collected illegally by the assessee, in the assessment years under consideration and therefore, penalty is

exigible u/s 22(2) of the Act. It was further submitted that the assessee would not have entertained any bona fide belief that there was some

confusion in the matter of rate of tax to be collected at a particular point of time. In order to support this contention, reliance was placed upon a

decision reported in 1993 90 STC 243 Mad in the case of Steel Sales Organisation v. State of Tamil Nadu. On the other hand, the learned

counsel appearing for the respondent while supporting the order passed by the Tribunal, submitted that inasmuch as the excess tax collected were

refunded to the customers and in case where the customers were not found, the excessive tax collected were deposited with the Government.

Therefore, it was submitted that on facts no penalty can be levied u/s 22(2) of the Act.

3. We have heard the rival submissions. The fact remains that the assessee collected excessive tax during the assessment years under

consideration. It is the case of the assessee that wherever the customers were found, the excessive tax collected from them were refunded and

wherever the customers were not found, the excessive tax due to them were deposited with the Government. In such a case, the assessee is not

keeping the excessive tax collected by it in its hands. This fact would go to show that the penalty is not exigible u/s 22(2) of the Act. In the decision

reported in 1993 90 STC 243 (Steel Sales Organisation v. State of Tamil Nadu) cited supra, this Court came to the conclusion that there would

not have been any bona fide contention on the part of the assessee in collecting the excessive tax and therefore, held that penalty is exigible u/s

22(2) of the Act on the facts arising in that case. Considering the facts arising in this case in the assessment years under consideration, we are of the opinion that the Tribunal was correct in deleting the penalty accepting the reasons given by the assessee that the excessive taxes were paid

back to the customers wherever the customers were found and deposited the excessive tax wherever the customers were not found. Accordingly,

we are not inclined to interfere with the order passed by the Tribunal in the assessment years under consideration.

4. In the result, the revisions are dismissed. No costs.

5. Petitions dismissed.

