(1991) 08 MAD CK 0086

In the Madras High Court

Case No : Tax Case No. 805 of 1982 (Appeal No. 48 of 1982)

Steel Sales Organisation APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 08-08-1991

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 22, 22(1), 22(2), 34

Citation : (1991) 08 MAD CK 0086

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

Bench : Division Bench

Advocate : T. Pradmodkumar for M/s. D. Trilokchand Chopda, D. Madanchand Chopda and P.R.K.K. Venkatsubramaniam, for the Appellant; D. Srinivasan, Additional Government Pleader (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—The assessee is in appeal against the order passed by the Joint Commissioner on May 6, 1982, in exercise of his suo motu powers of revision u/s 34 of the Tamil Nadu General Sales Tax Act, 1959, hereinafter called "the Act". Since the controversy in the appeal relates only to levy of penalty u/s 22(2) of the Act, we are relieved of the necessity to deal with the facts of the case in detail.

2. The assessee was subjected to penalty of Rs. 26,785 by the assessing authority u/s 22(2) of the Act for collection of sales tax in contravention of the provisions of the Act and the Rules made thereunder during the assessment year 1975-76. On appeal, the Appellate Assistant Commissioner deleted the entire penalty. The Joint Commissioner examined the order of the Appellate Assistant Commissioner with the relevant record and proposed to revise that order. A notice was issued to the assessee, and after inviting his objections to the proposal and hearing the assessee, the Joint Commissioner set aside the order of the Appellate Assistant Commissioner and restored that of the assessing authority.

3. That the assessee actually collected "sales tax recoupment" to the extent of

Rs. 17,856.40 is not disputed. The plea of the assessee before the Joint Commissioner that the amount was collected as recoupment and neither as sales tax nor anything purporting to be sales tax, failed and in our opinion, rightly.

4. Section 22(1) of the Act provides that no person who is not a dealer shall collect any amount by way of tax or purporting to be by way of tax under the Act and that no registered dealer shall make any such collection except in accordance with the provisions of the Act and the Rules made thereunder. Sub-section (2) of section 22 mandates that if any person or registered dealer, as the case may be, collects any amount by way of tax or purporting to be by way of tax in contravention of the provision of sub-section (1) the assessing authority may, after giving the party concerned a reasonable opportunity of being heard, by an order in writing impose, upon him by way of penalty a sum not exceeding one and a half times of such amount. It is not disputed before us that what was collected by the assessee as "sales tax recoupment" was not authorised by the Act or the Rules framed thereunder. The assessee had, therefore, undoubtedly contravened the provisions of section 22(1) of the Act by collecting an amount "purporting" to be by way of tax. The material on record, therefore justifies the finding arrived at by the Joint Commissioner that the assessee contravened section 22(1) of the Act and rendered himself liable for penalty u/s 22 of the Act.

5. Learned counsel for the appellant, faced with this situation, pleaded for reduction in the amount of penalty. In the facts and circumstances of the case we cannot agree. The appellant has retained the amount collected in contravention of section 22(1) of the Act till date with him. There is no justification therefore, even to reduce the quantum of penalty particularly when we find that the assessee knowingly retained the amount which had been collected in contravention of section 22(1) of the Act. The mere use of the expression "recoupment of sales tax" in the bills undoubtedly shows that it was a clever device on the part of the assessee to escape from the provisions of section 22(1) of the Act. The assessee knowingly had collected what he was not authorised by the law to collect and, therefore, we do not find any justification to interfere with the quantum of penalty either. Consequently the appeal fails and is dismissed but we make no order as to costs.

6. Petitions dismissed.