

(1992) 08 MAD CK 0063

In the Madras High Court

Case No : Tax Case No"s. 1326 and 1405 of 1984 (Revision No"s. 232 and 303 of 1984)

Swamy Jayakrishna and Company

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-08-1992

Acts Referred:

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

Citation : (1992) 08 MAD CK 0063

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

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

Abdul Hadi, J.—The petitioners in these two tax cases are one and the same and two tax cases have been filed since the subject-matter relates to two different assessment years, viz., 1974-75 and 1975-76. Tax Case No. 1405 of 1984 though was not in the list before us today, by consent of the learned counsel appearing on either side, the papers were called for and taken up for consideration since the first appellate authority as well as the Tribunal considered them together.

2. The petitioners are dealers in oil seeds at Kumbakonam and according to them, they were also acting as commission agents and doing brokerage business. For the assessment years 1974-75 and 1975-76 they were initially assessed on a taxable turnover of Rs. 13,15,500 and Rs. 8,05,158 respectively. On an inspection said to have been conducted by the officers of the department on October 5, 1979 several records appears to have been recovered relating to the clandestine business dealings of the petitioner. After analysing the records and after giving due and sufficient opportunity by issuing a show cause notice and considering the explanation submitted, the Deputy Commercial Tax Officer, III Enforcement revised the assessment and determined the taxable turnover for

the assessment years 1974-75 and 1975-76 at Rs. 61,19,751 and Rs. 45,67,005 respectively. Penalty at 1 1/2 times the tax levied over the turnover brought to assessment was also levied u/s 16(2) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act"). Thereupon, the petitioner pursued the matter before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner considered the claim of the petitioner that the recovered records mainly related to their brokerage business and not regular sale transactions and the said submissions have been considered by the authority at length with reference to each one of the bundles. A careful perusal of the reasons assigned with reference to each and every one of the bundle of slips recovered would show that cogent and convincing reasons were assigned by the first appellate authority to reject the claim that the transactions reflected therein merely pertain to their brokerage business. The first appellate authority went into the details of the transactions and found that the claim that they operated as middlemen to bring the agriculturists and purchasers together could not be believed on the very materials found disclosed in the slips, credit chittai and sale bills. In respect of some of the transactions, it was found that the petitioner even collected tax and as against the plea that the transactions were completed on the same day, the first appellate authority specifically found that it was not really so and there was sufficient gap between the arrival of the stocks and actual disposal, to belie such a claim. To reject the claim of the petitioner, the first appellate authority also took into account the rate of brokerage that may be realised and the substantial sums of money every day advanced for their business to pay the agriculturists and the length of time for which the stocks acquired were kept stored before they were ultimately disposed of. On the above view the first appellate authority also came to the categorical finding that the petitioner has purchased groundnut and gingelly seeds from the agriculturists and not only sold them at their convenience, but has suppressed both the purchase and sales from the notice of the department. While confirming the revision of assessment, the appellate authority did not even consider it desirable to reduce the penalty and on the other hand was of the view that the factum of suppression of purchase and sales of groundnut and gingelly seeds clearly warrant deterrent action. Aggrieved, the petitioner pursued the matter further before the Sales Tax Appellate Tribunal. The Tribunal also agreed with the factual findings recorded by the authorities below. The Tribunal also took into account the statement given by the proprietor of the petitioner-concern admitting the fact that the transactions covered by the slips recovered were not only outright sales transactions but have not been brought to account and reported to the department earlier. Though the Tribunal also confirmed the findings of the authorities below in the matter of levy of penalty it chose to take a lenient view not on the ground that the petitioner had any justification for not disclosing the turnover in question but on the ground that the assessment related to the assessment years 1974-75 and 1975-76 and on that account was inclined to reduce the penalty to Rs. 2,25,000 for the assessment year 1974-75 and to Rs. 1,75,000 for the assessment year 1975-76 and except for the above modification

in the quantum of penalties, the appeals were ordered to be dismissed.

3. The above tax case revisions have been filed challenging the order of the Tribunal referred to supra. Mr. Inbarajan, learned counsel for the petitioner reiterated the stand taken before the authorities below that the transactions reflected in the slips recovered related to merely the brokerage transactions of the petitioners and not regular sale transactions. We are unable to countenance the plea of the learned counsel. We have been taken through at length of the orders of the first appellate authority as well as that of the Tribunal. The authorities below have cogently marshalled the vital material reflected in the various slips, credit chittai and sale bills while rejecting the very stand taken before them that the transactions covered by those records were brokerage transactions. The findings of the Tribunal on an analysis of the material can be usefully set out hereunder :

"We have perused the connected records and examined the arguments advanced by both sides. In short the contention of the appellants is that the entire disputed turnover relates to the brokerage business of the appellants and not their business transactions. It was explained by the appellants that the villagers used to dispose of their produce through the appellants, who used to receive brokerage of Rs. 2 per bag. It was also their contention that the property in the goods did not pass to them and as such the entire turnover is not exigible to tax. In this case, the Enforcement Wing Officers, have recovered 12 bundles of purchase and sales slips showing daily purchases and sales. In these slips, the purchases are noted in the red line and the sales in the blue line. In the statement given on January 3, 1980, the proprietor of the appellants has admitted that these transactions have not been accounted for and they are all outright transactions. There had been no whisper about the brokerage business in that statement. It was contended on the side of the appellants that the statement was given under coercion. But it is pertinent to note that the statement was not recorded on the date of inspection but two months thereafter. Subsequently, on various dates statements have been recorded. In the face of these facts, it cannot be accepted that all these statements were given under threat or coercion. There has been no reply to the pre-assessment notice for the assessment year 1975-76 also. Only long after the statements were recorded, the plea of brokerage was put forth. There are also other factors which indicate that the disputed turnover does not represent brokerage transactions but only their business transactions. The examination of these slips does not show that the transaction of purchase and sale was completed on the same day in the presence of the appellants. There are number of occasions in which the kernel purchased on a particular day was sold long after. As rightly pointed out by the learned Appellate Assistant Commissioner, no commission agent would purchase goods and keep it for months together and sell it for a commission of Rs. 2 per bag. Further, it is unnecessary to keep such elaborate accounts and slips for a brokerage business and also for a paltry commission of Rs. 2 per bag. There has been variation in the figures against all the rates, between the purchase rate and

selling rate. There has also been no accounts to show for the commission received by the appellants. The learned authorised representative was not able to say whether these commission amounts have been assessed to Income Tax. The contention of the appellants that the purchases from them have been sought to be assessed by the department as first buyers of oil seeds is not well-founded. The copies furnished by the learned authorised representative show that they relate to the year 1976-77."

4. In the light of the above categorical findings of the Tribunal confirming the findings of the first appellate authority rendered on an appreciation of the materials made available before those authorities, we are unable to interfere with the same since we do not find any patent error of law or perversity of approach in the findings rendered. An attempt has been made to canvass the correctness of the quantum of penalty. In the light of the concurrent findings of fact that the suppression in question was not only wilful but the petitioners were found to have themselves collected in respect of certain transactions tax due thereon and yet did not disclose the same, we are not inclined to take any lenient view particularly after the Tribunal itself has shown some concession in the quantum of penalty.

5. For all the above reasons, we dismiss the above tax cases. But there will be no order as to costs.

6. Petitions dismissed.