

(1976) 04 MAD CK 0075

In the Madras High Court

Case No : Tax Case No. 327 of 1971 (Revision No. 215 of 1971)

The Deputy Commissioner (C.T.)

APPELLANT

Vs

N. Pillar Chetty and Co.

RESPONDENT

Date of Decision : 22-04-1976

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 40, 45, 46

Citation : (1976) 38 STC 342

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : K. Venkataswami, Additional Government Pleader No. I, for the Appellant; R.S. Venkatachari, for the Respondent

Final Decision : Allowed

Judgement

Ismail, J.—This tax revision case is by the Deputy Commissioner (Commercial Taxes), Coimbatore, against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated 20th January, 1971.

2. With regard to assessment to sales tax for 1967-68, the assessee reported a total and taxable turnover of Rs. 12,78,036.62 and Rs. 12,37,084.34 respectively. On verification of their accounts and after a series of inspections, the assessing officer determined the taxable turnover as Rs. 14,23,743.98 and also imposed a penalty of Rs. 1,500 u/s 12(3) of the Tamil Nadu General Sales Tax Act. On appeal to the Appellate Assistant Commissioner (Commercial Taxes), Coimbatore, the taxable turnover was re-fixed, making an addition of 7 1/2 per cent to the taxable turnover as per accounts, but the penalty was sustained. Against this order of the Appellate Assistant Commissioner, the assessee preferred an appeal to the Tribunal. The Tribunal by the impugned order sustained the assessment to tax but deleted the penalty levied by the authorities on the ground that compounding fee has already been collected from the assessee and, therefore, the collection of penalty u/s 12(3) of the Act would constitute double taxation. It is the correctness of this conclusion of the Tribunal

that is challenged before us.

3. We are clearly of the opinion that the conclusion of the Tribunal is erroneous in law. The provision for levy of penalty and the provision for compounding an offence are two entirely different matters as provided in the Act.

4. Section 40 of the Act imposes an obligation on every person registered under the Act, every dealer liable to get himself registered under the Act, and every other dealer who is required so to do by the prescribed authority by notice served in the prescribed manner to keep and maintain a true and correct account and such other records as may be prescribed. Section 45(2)(d) of the Act constitutes a wilful contravention of any of the provisions of the Act an offence punishable under the Act. Section 46 of the Act provides for composition of offences and it is with reference to this section only, compounding fees had been collected from the assessee on the ground that on three occasions when there was inspection by the officers of the department, there was discrepancy in the stock. It was the result of the failure to maintain proper accounts which called for collection of compounding fee.

5. However, the imposition of penalty is an entirely different matter. In this particular case, the penalty has been imposed u/s 12(3) of the Act. Section 12(1) provides that the assessment of a dealer shall be on the basis of the prescribed return relating to his turnover submitted in the prescribed manner within the prescribed period. Sub-section (2) of Section 12 says:

If no return is submitted by the dealer under Sub-section (1) within the prescribed period, or if the return submitted by him appears to the assessing authority to be incomplete or incorrect, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment....

6. Sub-section (3) of Section 12 provides:

In addition to the tax assessed under Sub-section (2), the assessing authority may, in the same order of assessment passed under Sub-section (2), or by a separate order, direct the dealer to pay a penalty not exceeding one and a half times the amount of tax due on the turnover that was not wilfully disclosed by the dealer in his return or in the case of wilful failure to submit a return, a penalty not exceeding one and a half times the tax assessed, as the case may be.

7. It was u/s 12(3) that the taxing authority imposed a penalty of Rs. 1,500.

8. The Tribunal itself in its order recorded a finding that the accounts of the assessee could not be accepted and, therefore, upheld the best judgment assessment made by the officer. Notwithstanding this, the Tribunal held that having collected the compounding fee, it was not proper to impose penalty. The Tribunal says:

...The learned authorised representative does not dispute the shortages and

excesses noticed at the time of inspections, nor is there any controversy about the quantum of discrepancies discovered. Thus, it is clear that the accounts of the appellants cannot be accepted. But it is urged that having collected compounding fee, it is in the form of double taxation if a further penalty u/s 12(3) is imposed. There is considerable force in this argument. In some cases, compounding fee had been collected far in excess of the reasonable limit. In the circumstances, we are satisfied that it is not a fit case where resort should be had to Section 12(3). In the view we take the penalty cannot be sustained and must be set aside....

9. We are clearly of the opinion that the reasoning as well as the conclusion of the Tribunal on this aspect of the matter is erroneous. There is no question of any double taxation or double penalty. The provision contained in Section 12(3) in respect of the imposition of penalty is in relation to failure to submit true and proper returns and, on the other hand, the collection of compounding fee is with reference to the failure to maintain true and correct accounts as required by Section 40 of the Act. Consequently, the collection of compounding fee was with reference to an independent contravention of the Act while the imposition of penalty was with reference to an entirely different violation of the provision of the Act. In such a situation, there is no scope for invoking any theory of either double taxation or double penalty. We may also point out that the Tribunal has observed that, in some cases, compounding fee had been collected far in excess of the reasonable limit. It is not in dispute that the compounding fees that were collected were within the limits prescribed. If so, the quantum of compounding fee cannot be the subject-matter of discussion before the Tribunal. The payment of the compounding fee is the result of an option exercised by the assessee to avoid prosecution and, therefore, the question of the compounding fee being "far in excess of the reasonable limit" or the assessee nurturing any grievance against the amount of compounding fee does not arise in the present case. It is not as if the Tribunal took the view that having regard to the compounding fee already collected, a smaller penalty was called for. On the other hand, the view of the Tribunal is that resort to the provision for imposition of penalty itself could not be had because compounding fee has already been collected. Such a conclusion is patently erroneous in law and cannot be sustained. The learned counsel for the assessee contended that we can reduce the penalty ourselves or we can remit the matter to the Tribunal for reconsideration as to the quantum of penalty imposed by the assessing authorities. That question does not arise in the present tax revision case, which has been filed by the department against the finding of the Tribunal, that no penalty whatever could be imposed under law in view of the collection of compounding fee already made.

10. Accordingly, the tax revision case is allowed and the order of the Tribunal, in so far as it deleted the penalty imposed by the taxing authorities, is set aside. However, there will be no order as to costs.