(1959) 12 MAD CK 0023

In the Madras High Court

Case No : Tax Revision Case No. 61 of 1957

The State of Madras APPELLANT

Vs

Haji Shakoor Mohammed Essa RESPONDENT

Date of Decision : 04-12-1959

Acts Referred:

Citation : (1960) ILR (Mad) 646 : (1960) 73 LW 186 : (1960) 2 MLJ 143 : (1960) 11 STC 213

Hon'ble Judges : Ramachandra Iyer, J;Rajagopalan, J

Bench : Division Bench

Advocate : G. Ramanujam, for The Government Pleader, for the Appellant; R. Krishnaswami Aiyar, for M.A. Ghatala, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—This application, preferred by the State u/s 12-B of the Sales Tax Act, arose out of the proceedings to assess the assessee

for the year of assessment 1952-53. The original order of assessment was passed by the Deputy Commercial Tax Officer as the assessing

authority, on 10th February, 1954. The assessee preferred an appeal to the Commercial Tax Officer against that order of assessment and that

appeal terminated on 29th June, 1954. Subsequent to that in March, 1956, the Deputy Commercial Tax Officer took action under Rule 17(1) of

the Madras General Sales Tax Rules and issued a notice to the assessee to show cause why a turnover that had escaped assessment in the original

assessment should not be subjected to assessment. On 31st March, 1956, the Deputy Commercial Tax Officer assessed the escaped turnover by

adding a little over Rs. 75,000 to the turnover which was originally taxed. Against the order dated 31st March, 1956, the assessee preferred an appeal to the Commercial Tax Officer, who dismissed it on 13th August, 1956. A further appeal was preferred by the assessee to the Tribunal.

The Tribunal held that, as the Deputy Commercial Tax Officer had not conformed to the requirements of Rule 17 (1-A), the order dated 31st

March, 1956, had to be set aside. It was the correctness of that decision that was challenged by the State.

2. One of the points taken before the Tribunal was that, as the assessment of the escaped turnover related to the assessment year 1952-53, Sub-

rule (1-A) and Sub-rule (3-A) of Rule 17, which were issued subsequent to the termination of the assessment year 1953, could have no

application. That was rightly rejected by the Tribunal and that plea has not been persisted in before us.

3. The Tribunal, in our opinion, was right in the interpretation it placed on the scope of Rule 17 (1-A). Rule 17 (1-A) and Rule 17 (3-A) have to

be read together and in the case covered by Rule 17 (1-A) the assessing authority is the authority that dealt with the appeal u/s 11. In this case it

was the Commercial Tax Officer, who had dealt with the appeal of the assessee against the original order of assessment, that was clothed with the

jurisdiction to assess the escaped, turnover. The duty of the original assessing authority, the Deputy Commercial Tax Officer, when he discovered

that there had been a turnover that had escaped assessment, was to issue a notice under Rule 17(1) and thereafter submit the records to the

Commercial Tax Officer as required by Rule 17(1-A). That the Deputy Commercial Tax Officer did not do in this case.

4. On behalf of the learned Additional Government Pleader, stress was laid on the passage in Rule 17 (1-A) ""where in respect of the turnover

referred to in Sub-rule (1) an order has already been passed u/s 11...."" Obviously the turnover cannot refer to the escaped turnover which is also

referred to in Rule 17(1). Rule 17(1) refers to the whole or any part of a turnover that has escaped assessment. Against the original assessment of

the turnover there was an appeal and subsequently it was found there was an escape of assessment when that turnover was assessed. In such

circumstances, if there has been an appeal against the original order of assessment u/s 11 Rule 17(1-A) comes into play and the Deputy

Commercial Tax Officer, when he discovers that there has been a turnover that has escaped assessment, has only to submit the records to the

Commercial Tax Officer, who is constituted the assessing authority in such a case by Rule 17 (1-A).

5. As we said, the view taken by the Tribunal is correct. The petition fails and is dismissed with costs. Counsel''s fee Rs. 100.