

(1977) 12 MAD CK 0021

In the Madras High Court

Case No : Tax (Revision) Case No. 311 of 1975

The State of Tamil Nadu

APPELLANT

Vs

Agarwal Mudukundj

RESPONDENT

Date of Decision : 31-12-1977

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3, 7

Citation : (1978) 42 STC 147

Hon'ble Judges : P. Govindan Nair, C.J;Varadarajan, J

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant;

Final Decision : Allowed

Judgement

Varadarajan, J.—This tax revision case is by the revenue to revise the order dated 28th January, 1974, of the Sales Tax Appellate Tribunal (Second Additional Bench), Madras, permitting the assessee to pay the tax u/s 7 of the Tamil Nadu General Sales Tax Act, 1959, at compounded rates.

2. The respondent-assessee, running a sweetmeat stall, returned a total and taxable turnover of Rs. 94,139.45 in form A-I submitted on 5th January, 1973, for the year ended 31st March, 1973 and opted to pay tax u/s 7 of the Act at compounded rates. The assessing officer called for the assessee's accounts and verified them and rejected them on account of certain defects noticed in the accounts and resorted to the best judgment method of assessment and called upon the assessee to show cause why the turnover should not be determined as Rs. 1,03,553.39 by the addition of 10 per cent to the turnover returned by the assessee, taxable at 31/2 per cent u/s 3(2) of the Act. The assessee did not file any objection. The assessing officer confirmed the proposal and assessed the tax at Rs. 3,624.37 and called upon the assessee to pay the balance of Rs. 872.37, after adjusting the tax of Rs. 2,752.00 already paid.

3. The assessee took the matter in appeal before the Appellate Assistant

Commissioner who agreed with the assessing officer and dismissed the appeal, holding that no interference was called for, as the assessing officer had added only a nominal ten per cent to the turnover returned by the assessee after rejecting the assessee's accounts as unreliable.

4. In the assessee's further appeal to the Tribunal, it has been found by the Tribunal that the rejection of the assessee's accounts was justified. However, the Tribunal found that the addition of ten per cent to the turnover disclosed by the assessee was excessive and reduced it to five per cent and determined the turnover at Rs. 98,846.42 and assessed it u/s 7 of the Act on the ground that the assessee had opted for assessment under that section.

5. The assessee does not contest the case. But the revenue's contention is that the assessee had not exercised the option to be assessed u/s 7 at the beginning of the year 1972-73 and cannot exercise the option at the time of the final assessment, in view of the deletion of Rule 15(4-B) of the Rules framed under the Act by G. O. Ms. No. 2845 (Revenue) dated 27th September, 1971 and that the order of the Tribunal permitting the assessee to pay the tax at the compounded rate u/s 7 of the Act is erroneous.

6. u/s 7(1) of the Act, the rate of tax is Rs. 3,000 per annum where the total turnover is not less than Rs. 95,000 but not more than a lakh of rupees. The Tribunal has fixed the turnover in this case at Rs. 98,846.42, as mentioned above. But Section 7(2) lays down that any dealer other than a casual trader or an agent of a non-resident dealer may apply to the assessing authority for permission to pay the tax under the section and, on being so permitted, he shall pay the tax due in advance during the year in monthly or prescribed instalments and, for that purpose, shall submit returns in the manner prescribed.

7. The assessee has not appeared to dispute the revenue's contention that in view of the deletion of Rule 15(4-B) the assessee should have exercised the option at the beginning of the year and obtained the assessing officer's permission and, the assessee not having done so, is not entitled to claim the benefit u/s 7(1) of the Act. We accept the revenue's contention in this behalf and hold that the assessee, not having exercised the option and obtained the prior permission within the year to pay the tax at the compounded rate, is not entitled to the benefit of Section 7(1) of the Act. We accordingly allow the tax revision case but, under the circumstances of the case, without costs.