**(1976) 03 MAD CK 0074**

**In the Madras High Court**

**Case No :** Tax Case No. 266 of 1971 (Revision No. 165 of 1971)

The State of Tamil Nadu APPELLANT

Vs

C.M. Tiles RESPONDENT

**Date of Decision :** 09-03-1976

**Acts Referred:**

**Citation :** (1976) 38 STC 440

**Hon'ble Judges :** V. Ramaswami, J;Sethuraman, J

**Bench :** Division Bench

**Advocate :** K. Govindarajan, Additional Government Pleader No. I, for the Appellant; N. Inbarajan, C.S. Chandrasekara Sastri, C. Venkataraman and C. Natarajan, for the Respondent

## Judgement

V. Ramaswami, J.—For the assessment year 1964-65, the assessee reported a total and taxable turnover of Rs. 38,692.58 and Rs. 17,096.24. He claimed exemption on a turnover of Rs. 21,596.34 on the ground that he has undertaken works contracts for mosaic flooring and that the sum of Rs. 21,596.34 represented labour charges which were separately shown in the sale bills. This explanation was accepted by the assessing officer and the total and taxable turnover was determined as reported.

2. On some information, the assessing officer called for the books again for verification. As the assessee failed to produce the accounts, the assessing officer issued a notice u/s 16 proposing to revise the assessment and to refix the turnover disallowing the exemption given previously on the turnover of Rs. 21,596.34 and proposing to estimate the sales of sanitary goods at Rs. 13,000. Thus, he proposed to reassess the petitioner on a total turnover of Rs. 51,692.58, including the sum of Rs. 17,096.24, which was held to be taxable under the original assessment order. After hearing the objections and in the absence of the records, he made a reassessment order bringing to tax the entire turnover of Rs. 51,692.58. This order was confirmed in appeal. But, on a further appeal to the Tribunal, the Tribunal held that on a verification of the transactions

it was satisfied that they represented works contract and that, therefore, the entire turnover of Rs. 51,692.58 is not liable Jo be taxed.

3. In this revision, the learned counsel for the revenue raised two contentions. Firstly, in so far as the turnover of Rs. 17,096.24, which was assessed in the original assessment order, the Tribunal could not have interfered with as that was not the subject-matter of reassessment proceedings u/s 16. The assessee had not filed any appeal or challenged the original assessment order in any other way prescribed by law. In this connection, the learned counsel also relied on the decision of this court in State of Madras v. Mettur Industries Ltd. [1973] 32 S.T.C. 239. This court has held in that decision that in the reassessment proceedings u/s 16 the subject-matter is only the escaped turnover and no part of the turnover which was assessed in the original assessment forms part of the proceedings u/s 16 and that, therefore, the appeal and a further appeal before the Tribunal could only relate to the escaped turnover and not to the original turnover which was assessed. If the assessee had not disputed the original taxable turnover determined, he could not dispute the same in the reassessment proceedings. Therefore, the learned counsel for the revenue is right in his contention that in respect of the turnover of Rs. 17,096.24, no relief could have been granted by the Tribunal.

4. The learned counsel next contended that even in respect of the turnover of Rs. 21,596.34, there is no evidence to show that it related to works contract and that, therefore, the Tribunal erred in giving relief. It is true that the Tribunal did not discuss the evidence on the basis of which it came to the conclusion that it is a works contract. But it may be seen from the orders of the assessing and appellate authorities that they did come to the conclusion that it is a works contract. There is no evidence at all. The assessee did not produce any records. Having accepted in the original assessment proceedings that the sum of Rs. 21,596.34 related to labour charges, which were separately shown in the sale bills, unless there is any evidence to show that that finding was given on a misrepresentation or mistake, it is not possible for the assessing authority to bring that into assessment u/s 16 . Even in respect of the alleged sanitary sales, we are unable to interfere with the order of the Tribunal in the circumstances of this case. In respect of the sales of sanitary goods, the statement of the assessee was that he had sold only for a sum of Rs. 1,800, but that also was as part of the works contract. Though the learned counsel for the revenue is well-founded in his contention that the Tribunal had not discussed the question of works contract in detail, we are unable to interfere with the order of the Tribunal in this case on the peculiar facts and circumstances.

5. We, therefore, allow the revision petition so far as it related to the turnover of Rs. 17,096.24 and dismiss the same in respect of the rest of the turnover. There will be no order as to costs.

 