

(1977) 02 MAD CK 0036

In the Madras High Court

Case No : Tax Case No. 92 of 1977 (Revision No. 17 of 1977)

The State of Tamil Nadu

APPELLANT

Vs

Jakthi Veliyeetakam

RESPONDENT

Date of Decision : 04-02-1977

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 36, 38

Citation : (1977) 40 STC 466

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

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

Ismail, J.—In this case, the assessing officer levied a penalty of Rs. 2,201 u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959. On an appeal preferred by the assessee, the Appellate Assistant Commissioner set aside the order of penalty. The assessee preferred an appeal to the Sales Tax Appellate Tribunal questioning the determination of the turnover itself. In that appeal, the State filed a petition to restore the penalty levied by the assessing officer and cancelled by the Appellate Assistant Commissioner. The Tribunal refused to restore the penalty. It is this order of the Tribunal concerning the penalty that is sought to be revised in this tax revision case filed u/s 38 of the Act.

2. We are of the opinion that the so-called petition filed by the revenue for restoration of the penalty was not competent and the Tribunal had no jurisdiction to restore the penalty. It is Sub-section (3) of Section 36 of the Act, which deals with the scope of orders, which the Appellate Tribunal may pass in an appeal preferred before it. That Sub-section reads as follows :

36. (3) In disposing of an appeal, the Appellate Tribunal may, after giving the appellant a reasonable opportunity of being heard,-

(a) in the case of an order of assessment-

- (i) confirm, reduce, enhance or annul the assessment or penalty or both;
 - (ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed or
 - (iii) pass such other orders as it may think fit; or
- (b) in the case of any other order, confirm, cancel or vary such order.

3. For the purpose of this case, we are assuming that the expression "order of assessment" occurring in Section 36(3)(a) includes an order levying penalty because Section 36(3)(a)(i) refers to the penalty itself. With regard to the request of the State to the Tribunal to restore the penalty, we are of the opinion that none of the four words occurring in Section 36(3)(a)(i), namely, "confirm, reduce, enhance or annul" is capable of including a power to restore a penalty which has been set aside by the appellate authority. Obviously, the words "confirm, reduce or annul" will have no relevancy to the request which the State has made to the Tribunal. The only expression that will be of any consequence is the word "enhance". For the word "enhance" to apply, there must be something to be increased. In this case, since the Appellate Assistant Commissioner has set aside the very order of penalty, there was no penalty to be increased. To enhance the penalty already imposed is different from restoring the penalty which was imposed by the original authority but set aside by the Appellate Assistant Commissioner since the subject-matter of the appeal before the Tribunal is the order of the appellate authority only and not the order of the original authority. Consequently, an application for restoration of the penalty in the present case will not come within the scope of Section 36(3)(a)(i) of the Act and, therefore, the Tribunal was right in not restoring the order of penalty though the reasons given by the Tribunal for doing so are different. Hence the tax revision case is dismissed.