(1983) 06 MAD CK 0024

In the Madras High Court

Case No : Tax Case No. 364 of 1983 (Revision No. 135)

The State of Tamil Nadu APPELLANT

Vs

O.A. Abdul Samak Sahib Sons. RESPONDENT

Date of Decision : 16-06-1983

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(4), 12(5)

Citation : (1984) 57 STC 68

Hon'ble Judges : G. Ramanujam, J;Fakkir Mohammed, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramanujam, J.—The question that arises in this tax case is as to whether the penalty u/s 12(5) of the Tamil Nadu General Sales Tax Act,

1959, could be levied on the basis that the assessment is u/s 12(4) of the Act. In this case, the assessee submitted a return, but the assessing

authority found the return to be incorrect and incomplete and proceeded to make a best judgment assessment after ignoring the turnover as

disclosed in the books. The question is whether the assessment in this case could be said to have been made u/s 12(4) in which case alone the

penalty u/s 12(5) could be levied. Section 12(4) enables the assessing authority to assess a dealer on the basis of his accounts if such dealer (i) has

failed to submit the prescribed return; or (ii) has failed to submit the prescribed return within the prescribed time; or (iii) if the return submitted is

found to be incomplete or incorrect. Admittedly, in this case, the assessing authority not only rejected the return filed by the assessee as incorrect

and incomplete but also rejected the accounts of the assessee and proceeded to make a best judgment assessment. Admittedly, the best judgment

assessment is not on the basis of the book entries. Therefore, the assessment cannot be said to have been made under sub-section (4) of section

12. The penalty u/s 12(5) can be levied only if the assessment is made under sub-section (4) of section 12, that is, when the assessment is made on

the basis of the entries found in the books of account of the assessee, and not when the assessment is made dehors the accounts and after rejecting

the same. Thus, the Tribunal in this case appears to be right in holding that the penalty u/s 12(5) cannot be justified on the facts of the case. The tax

case is, therefore, dismissed.