(1981) 10 MAD CK 0006

In the Madras High Court

Case No : Tax Case (Revision) No. 999 of 1977

The State of Tamil Nadu APPELLANT

Vs

P.M.A. Mathurai Veerasamy and Co. RESPONDENT

Date of Decision : 15-10-1981

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 22, 22(2), 3

Citation : (1983) 52 STC 131

Hon'ble Judges : Sethuraman, J;N.V. Balasubramanian, J

Bench : Division Bench

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

Judgement

Sethuraman, J.—This is a revision petition filed by the State against the order of the Sales Tax Appellate Tribunal, Madurai, dated 16

August, 1976.

2. The assessee is carrying on business in Madurai in jaggery. During the year 1973-74, the assessee purchased jaggery from agriculturists under

bought notes and cane jaggery under pattials and statements of accounts. The assessing officer noticed that the assessee has collected surcharge in

respect of sales of cane jaggery, though it was not entitled to do so. He accordingly held that the assessee had contravened the provisions of

section 22(2) of the Tamil Nadu General Sales Tax Act read with sub-section (1) of section 3 of the Tamil Nadu Sales Tax (Surcharge) Act,

1971. The collections came to Rs. 4,808.96. The assessing officer levied Rs. 6,213,44 as penalty. The assessee appealed to the Appellate

Assistant Commissioner, who confirmed the levy of penalty. The assessee thereafter appealed to the Tribunal. The Tribunal held that the collection of surcharge on the sales of cane jaggery fell outside the purview of section 22(2) of the Tamil Nadu General Sales Tax Act, and that the levy of

penalty was illegal. The State has challenged this order of the Tribunal.

3. By the Tamil Nadu Sales Tax (Surcharge) Act (Act No. 24 of 1971), provision was made for the levy of surcharge on sales tax. Section 3 of

the said Act provides that every dealer who is liable to pay tax under the Tamil Nadu General Sales Tax Act, 1959, on the sale or purchase of

goods within the limits of the area in which this Act is in force shall, on and from the date of the commencement of this Act, pay a surcharge on

such tax at certain specified rates. Sub-section (2) of section 3 of the said Act provides :

Save as otherwise provided in this Act, the provisions of the said Act shall apply in relation to the surcharge payable under sub-section (1) as they

apply in relation to tax payable under the said Act.

The ""said Act"" mentioned in the provision is the Tamil Nadu General Sales Tax Act, 1959.

4. In the First Schedule to the Tamil Nadu General Sales Tax Act, a list of goods in respect of which single point tax is leviable under sub-section

(2) of section 3 of the Act is to be found. Item 68, as it was then in force, referred to jaggery and gur as goods which were taxable at the point of

first purchase in the State. Thus, there was no levy of sales tax on the sales of jaggery. The assessee was thus not liable to any tax under the Tamil

Nadu General Sales Tax Act on the sale of jaggery, but still has collected surcharge. Section 7 of the Tamil Nadu Act 24 of 1977 authorises the

collection of surcharges only from persons who are eligible for tax under the Tamil Nadu General Sales tax Act. As in the present case, the sales

were not liable to be taxed, there is no question of collection of surcharge by the assessee.

5. The authorities have invoked section 22 of the Tamil Nadu General Sales Tax Act for levy of penalty. Section 22 runs to the extent relevant as

follows :

(1) No person who is not a registered dealer shall collect any amount by way of tax or purporting to be by way of tax under this Act; and no

registered dealer shall make any such collection except in accordance with the provisions of this Act and the rules made thereunder.

6. This section prohibits the collection of tax by any person who is not a registered dealer. Sub-section (2) of section 22 of the Tamil Nadu

General Sales Tax Act provides :

(2) If any person or registered dealer collects any amount by way of tax or purporting to be way of tax in contravention of the provisions of sub-

section (1), whether or not any tax is due from such person or dealer under this Act in respect of the transaction in which he collects such amount,

the assessing authority, may, after giving such person or dealer a reasonable opportunity of being heard, by order in writing impose upon him by

way of penalty a sum not exceeding one and a half times such amount.

7. The consequence of collection of tax in contravention of the provisions of sub-section (1) has been provided in the above sub-section. The

assessee in that case is liable to penalty to the extent of one and a half times the amount collected.

8. The question now is whether section 22 could be applied to the collection of surcharge. We are not now concerned with its application to any

collection tax as such, because in the present case the assessee had admittedly not collected any tax as such. He had collected only surcharge. We

have already extracted section 3(2) of the Tamil Nadu Sales Tax (Surcharge) Act. It is a provision which incorporates, by reference, the

provisions of the Tamil Nadu General Sales Tax Act, 1959. These provisions apply in relation to the surcharge payable under sub-section (1) of

section 3 as they apply in relation to the tax payable under the provisions of the Tamil Nadu General Sales Tax Act. The expressions ""tax payable

and ""surcharge payable"" would stand in contrast with any penalty payable. If it was the intention of the legislature that the entire gamut of the

provisions of the Tamil Nadu General Sales Tax Act were to be applied, then it could have very well said that all the provisions of the said Act

would apply to the levy of surcharge. In that event, section 22 of the Tamil Nadu General Sales Tax Act would also have been attracted by

reference. However, in the present case, the provision is more restrictively worded, and therefore, on the language of the provision, we do not

consider that there is any scope for levy of penalty u/s 22 for collection of surcharge. It is true that the assessee who has collected the surcharge in

contravention of what is contemplated by the statute goes scot-free, but that is a consequence of the way in which the provision has been worded.

We do not, therefore, consider that there is any error in the order of the Sales Tax Appellate Tribunal.

9. The tax case is accordingly dismissed. But under the circumstances, there will be no order as to costs.

