(1977) 06 MAD CK 0040

In the Madras High Court

Case No : Tax Case No. 448 of 1974 (Revision No. 204 of 1974)

The State of Tamil Nadu APPELLANT

Vs

R.R. Ramachari and Sons RESPONDENT

Date of Decision : 21-06-1977

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (1977) 40 STC 542

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

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant; C.S. Chandrasekara Sastri, C. Venkataraman and C. Natarajan, for the Respondent

Final Decision : Allowed

Judgement

Sethuraman, J

1. The assessee is a dealer in aluminium and eversilver vessels. He was assessed on a taxable turnover of Rs. 6,53,349.75 for the assessment year 1966-67. The order of assessment is dated 8th October, 1968. The place of business of the assessee as well as the residence of the assessee were inspected by the special staff of the Intelligence Wing on 8th October, 1970. During the course of inspection certain anamath records containing the business transactions of the dealer were secured. A scrutiny of the entries made therein showed the details of the aluminium and stainless steel sheets handled by them in the manufacture of vessels. Certain transactions, which found place in the anamath accounts secured by the special staff, were verified with the regular accounts and on such verification it was seen that certain transactions had not been brought into the regular books for the relevant year. The Deputy Commercial Tax Officer was therefore of the view that the dealer had suppressed 6,714 kgs. of aluminium vessels manufactured during the year 1966-67. On the basis of the difference between the anamath accounts and the regular accounts, the turnover that was suppressed by the dealer was calculated to be Rs. 40,284 and this amount was

added in the assessment u/s 16 of the Tamil Nadu General Sales Tax Act. In addition, a penalty of Rs. 500 was also levied.

2. The assessee appealed against the addition as well as the penalty before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner upheld the addition to the assessment as well as the liability to penalty. But he reduced the penalty to Rs. 250. On further appeal, the Sales Tax Appellate Tribunal confirmed the addition of Rs. 36,581.60 based on the actual calculation of the transactions not accounted for. With reference to the levy of penalty, the objection before it by the assessee was that there was no specific finding by the assessing officer to the effect that the escapement of the turnover was as a result of an overt culpable act on the part of the assessee. The Tribunal held that there was no specific finding of" willfulness "as required in the decisions and, therefore, deleted the penalty in full. It is this order of the Tribunal, in so far as it deleted the penalty levied, that is the subject of the present tax revision case filed by the State.

3. The learned Additional Government Pleader submitted that a proper reading of the assessment order u/s 16 would show that in the present case there was a suppression of turnover as proved by the anamath accounts and once "suppression" was proved the finding has necessarily to be understood as if there was a wilful non-disclosure of the relevant amount in the return. The learned counsel for the assessee, relying on a decision of this court in Ramakutty Nadar v. State of Madras [1973] 31 S.T.C. 44, submitted that there must be a specific finding establishing wilfulness of nondisclosure before penalty could be levied.

4. The question as to whether penalty could be levied in a case where there was only a finding of "suppression" was the subject-matter of consideration by this court in a later case than that relied on by the assessee and that is State of Tamil Nadu v. Sri Swamy and Company [1977] 39 S.T.C. 85. It was held that the use of the word "suppression" showed the wilful nature of the non-disclosure; and that if it had not been wilful non-disclosure the assessing authority would have used the word "omission" and that the Tribunal in that particular case was not right in setting aside the penalty on the ground that there was no finding of wilful non-disclosure. In view of the above decision, it follows that when once the word "suppression" had been used, it is clear that the authorities had given a finding that there was a wilful non-disclosure of a part of the turnover which was brought to tax u/s 16; and the penalty levied, therefore, was proper and the Tribunal was not right in deleting the penalty. The penalty as confirmed by the Appellate Assistant Commissioner is restored. The revision petition is accordingly allowed. There will be no order as to costs.

