
(1983) 02 MAD CK 0043

In the Madras High Court

Case No : T.C. No"s. 689 and 690 of 1977 (Revision No"s. 153 and 154 of 1977)

The State of Tamil Nadu

APPELLANT

Vs

Sree Alavoimani Industries

RESPONDENT

Date of Decision : 23-02-1983

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(1), 12(2), 12(3)

Citation : (1984) 57 STC 293

Hon'ble Judges : P. Shanmugam, J;G. Ramanujam, J

Bench : Division Bench

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

Judgement

Ramanujam, J.—The assessees in these cases are manufacturers and dealers in bricks. From 1st April, 1965, however, they did not register themselves as dealers under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the Act). The assessing authority taking note of an advertisement in Dhinathanthi paper dated 4th March, 1968, about the supply of bricks by the assessees to the Students Tutorial College and High School at Madurai, called upon the assessees to produce the accounts; but the accounts were not produced by the assessees as called upon. Thereafter, the assessing authority passed final assessment order of best judgment assessment by fixing the taxable turnover of Rs. 81,005 with reference to the coal purchases made during the year 1968-69 and also passed final orders to best judgment on a taxable turnover of Rs. 1,18,388 with reference to the coal purchases for the year 1969-70. The assessing officer also levied penalty of Rs. 3,645 for the year 1968-69 and Rs. 5,326 for the year 1969-70. The assessees filed appeals only against the levy of penalty and not against the assessment before the the Appellant Assistant Commissioner. The Appellate Assistant Commissioner felt that the levy of penalty was due to the fact that the appellants had not produced their accounts and did not file any return till the assessment notices were given and that would clearly amount to a case of evasion of tax and wilful non-disclosure of

the assessee's turnover which will attract section 12(3) of the Act.

2. Aggrieved by the order of the Appellate Assistant Commissioner, appeals before the Sales Tax Appellate Tribunal were preferred and the Appellate Tribunal felt that levy of penalty is not called for in the circumstances of the assessee's case and relying on the decisions of this Court in *State of Madras v. M. S. K. Shahul Hameed* [1967] 19 STC 288 and *T. P. Sokkalal Ramsait Factory Private Ltd. v. Deputy Commercial Tax Officer, Ambasamudram* [1967] 20 STC 419, cancelled the levy of penalty on the ground that there is no wilful non-disclosure as the assessing officer had proceeded to make assessment only on the basis of the figures found in the accounts. The State has challenged the said views taken by the Appellate Tribunal and seeks to sustain the levy of penalty in these two cases.

3. As already stated, the assessee has not registered himself as a dealer under the provisions of the Act and even when the assessing authority had found out that the assessee was dealing in bricks and he had a turnover in excess of the taxable limit, the assessee did not produce his accounts as called upon by the assessing authority and in those circumstances, the assessing authority had to make a best of his judgment assessment with reference to the coal purchases made by the assessee during the relevant years. Even in answer to the pre-assessment notice issued by the assessing authority, the assessee did not submit any return indicating his sales turnover. Nor did he produce the account books as called upon by the assessing authority. From these facts, we do not see how the Appellate Tribunal can say that there is no wilful non-disclosure by the assessee. The facts stated above will clearly indicate that the assessee purposely did not register himself as a dealer and did not submit any return as contemplated in section 12(1) of the Act; nor did he produce the account books as called upon by the assessing authority to enable him to make an assessment on the basis of the turnover recorded in the books. The fact that the assessee did not file any return nor produce the account books before the assessing authority to enable him to make an assessment will clearly indicate that the assessee was not inclined to disclose the turnover found in the books of account and the non-filing of the return will clearly attract section 12(3) of the Act. Rule 15(1) of the Tamil Nadu General Sales Tax Rules directs every dealer should submit an annual return in form A-1 showing the actual total and taxable turnover for that year on or before the 1st day of May of the succeeding year. Section 12(1) provides that the assessment of a dealer shall be made on the basis of the prescribed return relating to the dealer's turnover submitted in the prescribed manner within the prescribed period. Section 12(2) says that if no return is submitted by the dealer under sub-section (1) within the period prescribed or the return submitted by him appears to be incomplete and incorrect, the assessing authority is entitled to make a best judgment assessment. Section 12(2) says that in addition to the tax assessed under sub-section (2), the assessing authority may by the same order direct the dealer to pay by way of penalty a sum which shall not be exceeding one and a half times

the amount of tax due on the turnover that was not disclosed by the dealer in his return or, in the case of failure to submit a return one and half times the tax assessed. Thus, wherever the best judgment assessments were made u/s 12(2) of the Act, penalty is leviable under sub-section (3). As already seen, the best judgment assessment can be made under two contingencies : (i) if no return is submitted by the dealer within the prescribed period and (ii) if the return submitted is found to be incomplete and incorrect. In this case, the first contingency has arisen. Therefore, the assessing authority is entitled to invoke section 12(2) of the Act and levy penalty while making best judgment assessment under sub-section (2).

4. The decisions referred to by the Appellate Tribunal have no application to the facts of this case. In *State of Madras v. M. S. K. Shahul Hameed* [1967] 19 STC 288, a return was submitted by the assessee before the assessment order was made setting out correct turnover and in those circumstances, the assessing officer was not justified in levying penalty on the ground that there was wilful suppression of the turnover. In *T. P. Sokkalal Ramsait Factory Private Ltd. v. Deputy Commercial Tax Officer, Ambasamudram* [1967] 20 STC 419 the assessing authority had the assessee's return before him; but as he felt that the return was filed beyond the time-limit, he ignored the return and proceeded on the basis that there is no return at all and levied the penalty. In those circumstances, this Court felt that it is not open to the assessing authority to treat such return as no return and proceed to apply his best judgment. Since the return was filed before he made the assessment, he is bound to take note of the return and as the return contained the true turnover, there was no wilful suppression of any turnover. We are of the view that the above decisions may not have any application to the facts of these cases.

5. As already stated, we are satisfied that, on the facts, the application of section 12(2) by the assessing authority cannot be said to be unjustified. In this view of the matter, the above two tax revision cases are allowed and the orders of the Appellate Tribunal are set aside.