

(1983) 03 MAD CK 0051

In the Madras High Court

Case No : Tax Case No. 1670 of 1977 (Revision No. 359 of 1977)

The State of Tamil Nadu

APPELLANT

Vs

V.S. Nalla Ibrahim

RESPONDENT

Date of Decision : 30-03-1983

Acts Referred:

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

Citation : (1984) 56 STC 110

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

Bench : Division Bench

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

Judgement

Ramanujam, J.—The State is the petitioner in this tax case. It is aggrieved against the order of the Tribunal in so far as it vacated the order of penalty passed by the Appellate Assistant Commissioner.

2. For the assessment year 1975-76 the assessee reported a total turnover of Rs. 4,27,535.98 and taxable turnover of Rs. 99,843.63. The assessing authority, however, determined the total turnover at Rs. 4,70,289.57 and the taxable turnover at Rs. 1,42,902.58 on the basis of his best judgment. He also levied a penalty of Rs. 6,009 u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the Act). On an appeal, the Appellate Assistant Commissioner allowed relief on a turnover of Rs. 23,090.58 and reduced the penalty to Rs. 3,009.

3. When the matter was taken to the Tribunal by the assessee, the Tribunal sustained the addition of Rs. 20,000 by the Appellate Assistant Commissioner as possible suppression, but held that no penalty is leviable u/s 12(3) of the Act as the assessee has disclosed in the turnover submitted by him the actual suppressions found at the stage of surprise inspection. The order of the Tribunal cancelling the penalty of Rs. 3,009 imposed by the Appellate Assistant Commissioner has been challenged in this tax case.

4. According to the learned Government Pleader, once the Tribunal sustained the addition of Rs. 20,000 towards possible suppressions then it should have automatically sustained the levy of penalty. The Tribunal has referred to the decision of this Court in *Abdul Basheeth v. State of Tamil Nadu* [1976] 38 STC 590 as supporting its stand that no penalty is leviable u/s 12(3) on the facts of this case. But we are of the view that the decision in *Abdul Basheeth v. State of Tamil Nadu* [1976] 38 STC 590 does not apply to the facts of this case as that decision deals with the quantum of penalty to be levied. In this case, admittedly, the surprise inspection of the assessee's place of business disclosed considerable suppressed turnover. It is no doubt true that the assessee in his return filed before the assessing authority, has included the actual suppressed turnover detected at the time of the surprise inspection. But the assessing authority estimated the suppressions for the whole year. The appellate authority, however, sustained the addition only to the extent of Rs. 20,000. According to the Appellate Assistant Commissioner, even after the surprise inspection the assessee has been indulging in making suppressions and therefore a lump addition of Rs. 20,000 was called for the period subsequent to the date of the surprise inspection. In this case, the Appellate Tribunal has sustained the addition of Rs. 20,000 made by the Appellate Assistant Commissioner. Therefore, the Tribunal should be taken to have accepted the finding of the Appellate Assistant Commissioner that the assessee has been indulging in anamath account transactions even after the date of the surprise inspection. Therefore the said sum of Rs. 20,000 should be taken to represent the transactions of sale suppressed from accounts as well as the return submitted by the assessee. Once the return submitted by the assessee is not accepted and the best judgment assessment is made after making some additions to the returned turnover, then section 12(3) stands attracted. As a matter of facts while dealing with the addition of Rs. 20,000 the Tribunal observed :

"From the pattern of transactions suppressed by the appellant, as found from the numerous anamath accounts and slips recovered from the appellant's place of business and residence we are convinced that the small addition made by the Appellate Assistant Commissioner is justifiable and reasonable."

5. Having upheld the addition of Rs. 20,000 towards the estimated suppressions, we do not see how the Tribunal can say that section 12(3) is not attracted. Even if the assessee has brought in the actual suppressions which were detected at the time of the surprise inspection in the return submitted by him, the estimated suppressions for the period subsequent to the date of the inspection have been sustained by the Tribunal and this calls for the imposition of penalty u/s 12(3). However, we cannot agree with the view taken by the Appellate Assistant Commissioner that the suppressed turnover was to the extent of Rs. 76,543. We are of the view that the suppressed transactions can be taken to be only as Rs. 20,000 because that was the addition made to the turnover disclosed in the assessee's return. The tax payable on the said turnover of Rs. 20,000 at 4 per cent comes to Rs. 800 and therefore even if a penalty is to be levied it can be

only on the basis of the tax payable on the suppressed turnover of Rs. 20,000. We, therefore, set aside the order of the Tribunal and pass an order levying a penalty u/s 12(3) on the assessee in a sum of Rs. 800 being the tax leviable on Rs. 20,000 which is taken to be the suppressed turnover. The tax case is ordered accordingly. There will be no order as to costs.