

(2009) 12 MAD CK 0008

In the Madras High Court

Case No : Tax Case (Revision) No. 2256 of 2008

The State of Tamilnadu

APPELLANT

Vs

A. Shanthi

RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 22, 22(1), 22(2)

Citation : (2010) 30 VST 138

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Haja Naziruddin, Special Government Pleader, for the Appellant; P. Radhakrishnan, for the Respondent

Final Decision : Allowed

Judgement

K. Raviraja Pandian, J.—By formulating the substantial question of law, as to whether on the facts and in the circumstances of the case, the

Tribunal is right in law in confirming the order of the Appellate Assistant Commissioner in deleting the penalty u/s 22(2) of the Tamil Nadu General

Sales Tax Act, this revision has been filed.

2. The facts: The assessee is a dealer in tin containers. For the assessment year 1996-97 she has returned total turnover of Rs. 1,96,110/-. For

framing of the assessment, when accounts were called for and checked, the turnover reported is found to be in order. As the turnover falls less

than the minimum taxable turnover at Rs. 3.00 lakhs, the assessee's case has been closed as tax not leviable, but however found that the sum of

Rs. 9,999/- was collected towards tax and Rs. 425/- was collected towards surcharge. When the taxable turnover has not reached the minimum

taxable turnover at Rs. 3.00 lakhs, no tax liability was fastened on the assessee

and the assessee is not entitled to collect the tax and surcharge. On that basis, the assessing officer levied penalty u/s 22(2) of the Act, which provides that if any person or registered dealer collects any amount by way of tax or purporting to be by 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 which shall be - (i) where the excess amount has been collected in the bona fide belief that it had to be collected, one hundred per cent of the amount collected. (ii)....

3. That assessment order was agitated by way of appeal. The Appellate Assistant Commissioner by his order dated 31.03.1998 has held as follows:

I carefully examined the contentions of both the learned authorised representative and the learned Departmental representative. The appellant is a registered dealer under TNGST Act, 1959 and shall collect any amount by way of tax under the TNGST Act, 1959 in accordance with the provisions of the Act, and she had not made any such collection in contravention of the provisions of the Sub-section (1) of Section 22. In this instant case, the appellant has collected tax in anticipation of turnover would exceed the total turnover limit. Therefore, she has collected tax in accordance with the provisions of the Act. Therefore, the collection of tax by the appellant could not be considered in contravention of the provisions of Sub-section (1) of Section 22. Therefore, penalty could not be levied u/s 22(2) of the TNGST Act, 1959. Hence, the penalty of Rs. 10,424/- levied by the learned assessing officer is not in order and therefore deleted.

4. Aggrieved by the order of the first appellate authority, the revenue has taken up the matter on further appeal. The Tribunal by its order observed that the Appellate Assistant Commissioner, while disposing of these appeals, had considered the records produced before him and granted relief to that extent. The Tribunal was of the further view that the orders of the Appellate Assistant Commissioner are found to be in order and no further interference is called for in this case. The present revision is filed against that

order.

5. Heard the learned Counsel on either side and perused the materials available on record.

6. The reasonings stated by the first appellate authority that the collection of tax is not in contravention to Section 22 of the Act, is not correct. The

fact remains that a sum of Rs. 9,999/- has been collected towards tax and surcharge and that amount, which the assessee is not entitled to retain,

has to be paid over to the Government. That is precisely the reason for imposition of 100% penalty u/s 22(2) of the Act. Neither the first appellate

authority nor the Tribunal has given a factual finding that the said amounts collected as tax and surcharge has been paid over to the Government.

7. It is clear from the orders of the first appellate authority, the Appellate Assistant Commissioner and the Tribunal that the tax amount collected

has been retained by the assessee and not been paid over. In such circumstances, the levy of penalty, in our view, is proper. The view taken by the

authorities below is not correct. The appeal stands allowed. No costs.