
(2002) 11 MAD CK 0070

In the Madras High Court

Case No : Writ Petition No. 398 of 2001 and W.M.P. No. 509 of 2001

Uma Metal Industries

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 21-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 11 MAD CK 0070

Hon'ble Judges : N.V. Balasubramanian, J; K. Raviraja Pandian, J

Bench : Division Bench

Advocate : A. Thiyagarajan, for the Appellant; T. Ayyasamy, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The writ petition is filed against the order of the Tamil Nadu Taxation Special Tribunal dated 14.6.2000 made in Tax Case Revision No. 160 of 2000 on the file of the first respondent.

2. The brief facts of the case are as follows:

The petitioner is a dealer in Aluminium circle and vessels. By original assessment, for the assessment year, 1989-90, the petitioner was assessed to tax on a total and taxable turnover of Rs.17,71,016/- and RS.16,14,447/- respectively under assessment order dated 19.9.1991. That order was carried on appeal to the Appellate Assistant Commissioner, who by his order dated 31.8.1994 in A.P. No. 32 of 1993, set aside the assessment and directed the Assessing Officer, the second respondent to pass orders afresh after investigating the matter further and giving an opportunity to the petitioner. After remand, the Assessing Officer issued a revised notice calling upon the petitioner to file objections to the revised notice. In the pre-revision notice, the assessing Officer has stated that the petitioner has availed exemption in respect of a turnover of Aluminium in a sum of Rs.13,45,373/- on the ground the goods suffered tax at

the hands of one Mathuram Traders, No. 30, Jambulingam Main Road, Madras-82 i.e., second sale exemption at the hands of the petitioner assessee and on enquiry, it was found that the first seller, Mathuram Traders were not doing business and the Registration Certificate was cancelled from 23.8.1989. The said Mathuram Traders were only bill traders and never handled the goods and as such, the turnover shown as purchased from the Mathuram Traders in the petitioner's returns has been the goods purchased from unknown sources. In order to avoid tax, the assessee produced bogus bills in the name of non-existent dealer. The payment in respect of goods by the assessee was also not supported by any evidence. Therefore, the assessing officer proposed to determine u/s 16(1)(a) of the Tamil Nadu General Sales Tax Act, (hereinafter referred to as the Act), the turnover escaped from assessment to tax at Rs.16,14,447/- at 8% with other components of tax such as surcharge, additional surcharge and additional sales tax. The assessing Officer also proposed to levy penalty at 150 percent of the tax due u/s 16(2) for wilful failure to disclose the said assessable turnover in the return and paid tax due thereon.

3. The petitioner in their objection contended that the first seller Mathuram Traders was a registered dealer. The petitioner was not aware of the cancellation of the registration certificate of Mathuram Traders and made a request for the supply of the report of the Commercial Tax Officer, Perambur, who at the instance of the assessing officer conducted an enquiry as to the existence of the Mathuram Traders and their trading activity and reported that the said Mathuram Traders were non-existing dealer. It was further submitted that the purchase by the petitioners was bona fide and on that ground requested to drop the proceedings initiated u/s 16 for the purpose of re-assessment and also for levy of penalty. The Assessing Officer has, after taking into consideration of the objections, and the materials available before him, rejected the objections of the petitioner and ultimately completed the revised assessment u/s 16 by levying tax on the escaped turnover as above stated. In addition to that, the assessing officer also levied a penalty in a sum of Rs.1,97,369/- at 150 percent of the tax due.

4. The petitioner carried the matter again on appeal to the first appellate authority, the Appellate Assistant Commissioner, who confirmed the assessment of the turnover of Rs.6,14,447/-, however reduced the penalty to 100 percent from 150 percent.

5. The petitioner further carried the matter on Second Appeal to the Sales Tax Appellate Tribunal. The Tribunal by its order dated 22.9.1999 dismissed the appeal. As against the order of dismissal, the petitioner moved the Taxation Special Tribunal by way of revision. In that revision, as seen from the order of the Special Tribunal, the one and only point raised before the Special Tribunal was, the registration certificate was issued to the first seller Mathuram Traders and the renewal was also effected subsequently and hence there was a presumption that the seller was carrying on business and the assessee should not suffer on the

ground that he was not able to prove the existence of the dealer, who issued the bill for the sale of goods. However, the Tribunal rejected the contention of the assessee by giving reason that the presumption as contended by the petitioner has been rebutted properly by sufficient material and the authorities below have concluded that the sale at the hands of the petitioner in a turnover of Rs.6,14,447/- was the first sale is a purely a question of fact. As to the existence of the first seller cannot be a question of law to be decided by the Tribunal as on question of law alone a revision is maintainable and thereby non-suited the petitioner for any relief. That order is put in issue in the present revision petition.

6. However Mr. Thiagarajan, learned counsel appearing for the petitioner has argued the case and submitted that the revision of assessment u/s 16 of the Act is not at all maintainable and unwarranted and liable to be set aside since it was passed without furnishing the copy of materials, which formed basis for the revision. He further submitted that Section 16 of the Act speaks about best judgment assessment. If the turnover of an assessee is reflected in the return filed by him or is available in the books of accounts and the assessment is made either based on the return or on the basis of accounts, it cannot be treated as best judgment assessment. An assessment to be a best judgment, there must be some addition to the turnover by some guess work made by the assessing officer by rejecting the return or books of accounts. If the return filed by the assessee is accepted and assessment is made or an assessment is made based on books of accounts, it cannot be best judgment assessment. So far as the present case is concerned, no addition is made to the reported turnover and the reported turnover is accepted, but only tax has been levied on the turnover for which exemption has been claimed and allowed originally. Hence, the revisional assessment is not maintainable.

7. On the other hand, the learned Government Pleader has submitted that there is absolutely no reason, whatsoever for the petitioner to contend that the orders of re-assessment has been passed violating the principles of natural justice, in the sense, not providing copies relied on for the purpose of revision of assessment. The learned Government Pleader has contended that the alleged request of the petitioner of the copy of the statement given by the landlord of Mathuram Traders is not at all necessary. The order is not based on the statement given by the landlord of Mathuram Traders, but it is based on the report of the Commercial Tax Officer of Perambur Assessment Circle, within whose jurisdiction Mathuram Traders was said to have carried on business. The entire statement of the Commercial Tax Officer has been reproduced in the pre-revision notice and as such, the entire material, which forms the basis for the purpose of revision notice has been made available to the petitioner and as such he cannot contend that the order has been passed violating the principles of natural justice. He further contended that Section 12 of the T.N.G.S.T. Act and Section 16 of the T.N.G.S.T. Act, which provide for assessment and re-assessment are independent of each other. Section 12 provides for assessment in two contingencies viz., (1) that the assessment of the dealer shall be based on

the prescribed return filed by dealer, and (2) if no return is filed by the dealer as required in the provisions of the Act or if the return so filed by the dealer appears to be incomplete or incorrect, the assessing authority after making such enquiry as it considers necessary make an assessment to the best of his judgment. But Section 16, which provides for revision of assessment, is very clear in its purport to the effect that for any reason, the whole or any part of the turnover of the dealer has escaped assessment of tax, the assessing authority, subject to the provisions of sub-section (2) of Section 16, and within a period of five years from the expiry of the year to which the tax relates, determine to the best of its judgment, the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry.

Further, he contended that sub-section (2) of Section 16 provides that if the assessing Officer satisfied that the escape from assessment is due to wilful non-disclosure of the assessable turnover by the dealer, the authority can in addition to the tax assessed levy penalty as provided in the Section and contended that there is absolutely no infirmity or irregularity in the order passed, since the turnover brought to tax by means of revision is escaped from assessment to tax as provided u/s 16 and as such, there is absolutely no case for the petitioner to put forward that there must be some addition to the turnover reported so as to make an assessment u/s 16. It is his contention that if any turnover for any reason escaped for assessment to tax, that is enough for invocation of Section 16. As a matter of fact, in this case, the turnover in respect of Rs.16,14,447/- has escaped to assessment to tax on the ground that it is a second sale, which is ultimately found against the petitioner and such escapement of the turnover from being assessed to tax gives every jurisdiction to the authorities to invoke Section 16.

8. We heard the arguments of the learned counsel on either side and perused the materials on record.

9. In respect of the first contention that the reasons, which weighed the authorities concerned to come to the conclusion that the whole or any part of the turnover of the business of the dealer has escaped assessment of tax have been stated in the showcase notice, as also the reason for arriving at such a prima facie conclusion, need not detain us any longer since the issue has been considered by the Division Bench of this Court in MUTHURAJA TRADERS VS. DEPUTY COMMERCIAL TAX OFFICER, PARK ROAD ASSESSMENT CIRCLE, ERODE reported in (1997) 106 STC 283, though in the context of such reasons shown in the show cause notice would tantamount to pre-judging the issue, held as follows:

"Under section 16 of the act, where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (2) at anytime within a period of five years from the expiry of the year to which the tax relates, determine to the best of its judgment the turnover which has escaped

assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment. Therefore, the reasons which weigh with authority concerned to come to the conclusion that the whole or any part of the turnover of the business of the dealer has escaped assessment to tax have to be necessarily stated in the show cause notice as also the reasons therefore for arriving at such a prima facie conclusion to enable the assessing authority concerned to effectively issue show cause notice to the proposals contained in the notice. It is not correct to invoke the provision for revision of assessment u/s 16 of the Act on a mere statement of the facts alone and the reasons which made the assessing authority to initiate proceedings at least have to be disclosed to enable the assessee to file his objections and effectively show cause against the proposals."

Thus, the very purpose of giving show cause notice is to effectively show cause against the proposal. The entire materials, which formed basis for issuance of the show cause notice has been stated in the show cause notice itself so as to enable the petitioner to put forth his cause effectively.

10. So far as the present case is concerned, the revision of assessment is based upon the report of the Commercial Tax Officer, Perambur Assessment Circle, which stated that the seller to the petitioner ie., Mathuram Traders was a bogus dealer. They never dealt with the goods and their certificate was also cancelled on 30.10.1990 with effect from 23.8.1989. The entire content of the report was reproduced in the pre-revision notice calling for objection from the petitioner. When such being the position, there is absolutely no necessity for once again furnishing the statement of the Commercial Tax Officer, Perambur Assessment Circle, which is also an inter-Department communication. Nothing is concealed from the petitioner/assessee, which formed basis for issuance of the revised notice. The very purpose of furnishing the copy of the statement, which formed the basis for the notice, is to make known the affected party, the basis or reason for the issuance of notice. The materials are provided in the show cause notice itself.

11. Moreover, the petitioner herein filed an appeal before the Appellate Assistant Commissioner against the original order of assessment complaining that a copy of the statement given by the landlord was not furnished to him, and the Appellate Assistant Commissioner set aside the order of assessment and remitted the matter. The fresh order of assessment is based on the show-cause notice dated 10.4.1995 and the Deputy Commercial Tax Officer relied only on the letter received from the Commercial Tax Officer, Perambur-I Assessment Circle, and the show-cause notice dated 7.6.1995, as already observed by us, contains the full extract of the letter of the Commercial Tax Officer addressed to the assessing officer herein. We are therefore of the view that no prejudice has been caused to the petitioner. The submission of Mr. Thiyagarajan, learned counsel that the petitioner was granted no opportunity to cross-examine the landlord of

the premises lacks substance as the assessing officer in the subsequent order of assessment has not placed any reliance on the statement of the landlord, but solely relied upon the letter of the Commercial Tax Officer, Perambur-I Assessment Circle. Therefore the submission of the learned counsel made with reference to the additional typed-set filed by him enclosing the earlier show-cause notice dated 18.6.1991 does not carry any conviction and appeal to us as the fresh order of assessment is not based on the earlier show-cause notice dated 18.6.1991, but on the fresh show-cause notice dated 10.4.1995 issued pursuant to the order of the Appellate Assistant Commissioner.

12. So far as the second contention is concerned, Sections 12 and 16 of the T.N.G.S.T. Act are two different provisions, independent of each other, and are working in different fields and in different circumstances. Section 12 provides for procedure to be followed by the assessing authority while making assessment. As per Section 12, the assessment of a dealer shall be made on the basis of the prescribed return filed by the dealer relating to his turnover within the time prescribed. It also empowers that if the dealer failed to file return within the prescribed time, or if the return filed by the dealer appears to the assessing authority to be incomplete or incorrect, the assessing authority to assess the dealer to the best of its judgment after making such enquiry. However, Section 16 provides for revision of escaped turnover and operates in a totally different circumstance and in a totally different situation, which provides that where for any reason whatsoever, the whole or any part of the turnover of a dealer has escaped assessment to tax, the assessing authority, subject to the provisions of sub-section (2), which empowers the assessing authority to levy penalty to determine to the best of its judgment, the turnover which has escaped assessment to tax and assess the tax payable on such turnover. The scenario or situation for invocation of Section 16 is totally different from the scenario or situation for making assessment u/s 12. Section 16 applies or operates after the original assessment u/s 12 has been completed and for any reason, on the completed assessment, a whole or any part of the turnover has escaped assessment to tax, either by way of not being shown in the books of accounts or in the returns or shown in the returns and claimed exemption, that part of the turnover for which tax has not been assessed has become the escaped turnover and on such turnover, subject to sub-section (2) of Section 16, the assessing authority is empowered to determine to the best of its judgment. The expression "best of its judgment" employed in Section 12(2) and 16(1) are to be construed in the context in which the expression is employed.

13. The contention exactly similar to the one now raised by Mr. Thiagarajan has been raised before this Court in the case of SURYA FERTILISERS AND CHEMICALS VS. THE STATE OF TAMIL NADU reported in (1977) 40 STC 538 and the Division Bench of this Court repelled the contention. In order to appreciate the issue, it is but necessary to extract the same.

"Basing upon the language of these sub-clauses, the contention of the learned

counsel for the petitioners is twofold. One is that the section uses the expression "turnover of business of a dealer has escaped assessment to tax" and, according to the learned counsel, when the assessing authority, at the first instance, has actually applied his mind to a particular turnover and rightly or wrongly held that the turnover was not liable to be included as a taxable turnover, such turnover cannot be said to be an escaped turnover. According to the learned counsel, the expression "escaped turnover" will include only that turnover which was not at all noticed by the assessing authority, whatever the reason may be, but it will not include the turnover which was actually noticed and with reference to which the assessing authority has come to a conclusion one way or the other. The second submission based on the language of section 16(1) of the Act is that the section talks of the assessing authority determining to the best of judgment the turnover which has escaped assessment and the reference to the best of judgment will necessarily import into it the notion of an estimate of the turnover and when the turnover was actually before the authority originally and was decided not to be includible in the taxable turnover, the question of estimating such a turnover by way of rectification or reopening cannot arise and, therefore, to such a turnover section 16(1) cannot apply. We are of the opinion that there is no substance in either of these contentions. As far as the first contention based upon the notion of escaped turnover is concerned, the question has been considered by a Bench of this Court, to which one of us was a party, in *Yercaud Coffee Curing Works Ltd., Salem v. State of Tamil Nadu* represented by the Deputy Commercial Tax Officer, Salem (Rural) ((1977) 40 STC 531 (T.C.Nos.298 to 300, 305 and 314 of 1971 decided on 18th March, 1976). The Bench has taken the view that section 16 will apply even to a turnover which was originally considered by the assessing authority, which authority after applying its mind to the turnover has held that the turnover, ;for some reason or other, was exempt from tax or was not includible in the taxable turnover. Following that judgment, we must reject the first contention advanced by the learned counsel for the petitioners.

The second contention is the result of a confusion between the best judgment assessment provided for in section 12(2) of the Act and the determination to the best of judgment of the turnover provided for in section 16(1) of the Act. The language used in the two sections and the purpose for which the best judgment test is to be applied are different. Therefore, simply because section 16(1) uses the expression "best of its judgment", it cannot be held that section 16(1) can be invoked only in a case where an element of estimate of the turnover enters into the calculation and has no application to a case where a turnover is known and definite and only the liability of the same to tax is under consideration. Therefore, we reject the second contention also."

The above said judgment is in all fours answer the argument of the learned counsel Mr. Thiyagarajan against him.

14. In the case of *DINOD CASHEW CORPORATION VS. THE DEPUTY COMMERCIAL TAX OFFICER AND ANOTHER* reported in (1986) 61 STC 1, the

Division Bench of this Court has held that having regard to the expression employed for any reason in Section 16, it was clear that even where a turnover was disclosed, which was not subjected to tax, because at the relevant time, the assessing authority thought that a particular turnover was exempted under the provisions of Section 5(3) of the Central sales Tax Act, it would be permissible for the assessing authority to reopen the assessment u/s 16(1)(a) of the T.N.G.S.T. Act. Hence, we are of the view that the argument of the learned counsel for the petitioner has to be rejected as it contained neither any merit nor any substance.

15. In support of his contention, the learned counsel Mr. Thiagarajan appearing for the petitioner relied on the following decisions:

(1) THE STATE OF MADRAS VS. S.G.JAYARAJ NADAR AND SONS reported in (1971) 28 STC 700,

(2) APPOLLO SALINE PHARMACEUTICALS (P) LTD. VS. COMMERCIAL TAX OFFICER (FAC) AND OTHERS reported in (2002) 125 STC 505 and

(3) STATE OF TAMIL NADU VS. SRI SHANMUGHANANDA AND CO. reported in (1997) 104 STC 61.

16. The first of the judgment in THE STATE OF MADRAS VS. S.G.JAYARAJ NADAR AND SONS reported in (1971) 28 STC 700 is one rendered while construing Section 12(2) and 12(3) of the Madras General Sales Tax Act, in which the Supreme Court after taking into consideration of the provisions of the Act, as stood then, held that the penalty can be levied u/s 12(3) of the Madras General sales Tax Act, 1959 on the ground that the dealer submitted an incomplete or incorrect return only after the assessment had to be made to the best of its judgment by the assessing authority. Where certain items which are not included in the turnover are discovered from the dealer's own turnover, the assessment cannot be regarded as best judgment and penalty cannot be levied in respect of such item. The other decision relied on by the learned counsel is APPOLLO SALINE PHARMACEUTICALS (P) LTD. VS. COMMERCIAL TAX OFFICER (FAC) AND OTHERS reported in (2002) 125 STC 505, which is also a decision, which construe the provisions of Section 12(1) to 12(5) of the T.N.G.S.T. Act and on such construction of the said provisions, the Court held that except during the period from December 3, 1979 to May 27, 1993 penalty under T.N.G.S.T. Act, 1959 could be levied only in a case where the assessment is a best judgment assessment made on an estimate and not by relying solely on the accounts furnished by the assessee in the prescribed return. On and after April 1, 1996 an explanation has been added below section 12(3) which requires the turnover relating to the tax assessed on the basis of the accounts of the assessee, to be disregarded while determining the turnover on which the penalty is to be levied u/s 12(3). These two decisions are not applicable to the facts of the present case, since the said decisions construed the assessment provisions ie., Section 12, which provides for two kinds of assessments, as already stated, on two situations, when no return is filed or after rejecting the returns filed as incorrect

and incomplete and rejecting the books of accounts. However, in the present case, we are concerned with section 16 of the T.N.G.S.T. Act, which provides for re-assessment for any reason a taxable turnover is escaped of assessment from tax.

17. The other decision relied on by the learned counsel for the petitioner is STATE OF TAMIL NADU VS. SRI SHANMUGHANANDA AND CO. reported in (1997) 104 STC 61. So far as the case cited is concerned, the point in issue was not seriously disputed and no issue raised and which has been argued and ultimately a finding has been given. The same is evident from paragraph No. 5 of the said judgment, which proceeds as follows:

"In so far as the merits of case, in levying penalty u/s 16(2) of the Act, is concerned, it was represented that the turnover of Rs.1,12,664 was assessed on the basis of book turnover. The assessed turnover was stated to be found in the books of accounts and the accounts were accepted by the department. In such a case, the Appellate Assistant Commissioner pointed out that in view of the decision of the Supreme Court in State of Madras v. S.G. Jayaraj Nadar & Sons (1971) 28 STC 700 penalty is not exigible u/s 16(2) of the Act. This situation was not disputed seriously. Therefore, on merits, penalty u/s 16(2) of the Act is not exigible in the case of the assessee."

18. The Supreme Court in the case of MITTAL ENGINEERING WORKS (P) LTD. VS. COLLECTOR OF CENTRAL EXCISE, MEERUT reported in (1997) 106 STC 201 has held that a decision cannot be relied upon in support of a proposition that it did not decide. As already stated in 104 STC 61, where penalty be levied u/s 16(2) of the Act in respect of a turnover available in the books of accounts has not been discussed or decided, since the issue has not been disputed by the parties to the proceedings, the Division Bench deleted the penalty. Such a clear dispute has been raised and arguments at length on the side of both the parties were heard and finally the Division Bench in SURYA FERTILISERS AND CHEMICALS VS. THE STATE OF TAMIL NADU reported in (1977) 40 STC 538 has held against the assessee. Hence, it cannot be construed that 106 STC 201 has rendered a decision on consideration on the issue.

19. The other decision relied on by the learned counsel for the petitioner is DEPUTY COMMISSIONER OF COMMERCIAL TAXES, TRICHY DIVISION, TRICHY VS. V.R.KUPPUSAMY GOUNDER AND SONS reported in (1995) 98 STC 408, wherein the assessment of the dealer was made after examining relevant invoices, vouchers, accounts and records. The dealers' claim to exemption in respect of purchases of groundnuts in the State from various dealers was allowed, upon satisfaction that the groundnuts has earlier suffered tax. However, on the ground that some of the purchases on which exemption was allowed originally were based on forged bills obtained from non-existent dealers, the Deputy Commercial Tax Officer revised the assessment u/s 16(1) of the T.N.G.S.T. Act and also levied penalty u/s 16(2). On appeal, the dealers submitted statement showing the sellers' names and addresses, their

registration certificate numbers, G.L. numbers, cess permit numbers, bill numbers with dates, lorry freight paid and the relevant day book pages were also filed. However, the Appellate Assistant Commissioner upheld the Deputy Commercial Tax Officer's order. He further held that there was no evidence of movement of goods. The Appellate Assistant Commissioner also held that there was no positive evidence that the goods had suffered tax already in the hands of the sellers. On appeal, the Tribunal set aside the reassessments, which were questioned before this Court by the revenue. While taking into consideration of the facts of the case, this Court has held that while making the original assessments, the assessing authority had examined the relevant invoices, the cess permits and accounts and other relevant records relating to the claim of exemption in respect of groundnut purchased by the dealers and on being satisfied that the goods had earlier suffered tax, rightly allowed the exemption. On the basis of the documents produced by the dealers, the Tribunal came to the conclusion that the dealers had really moved the goods in furtherance of the purchases effected by them. The revenue had relied upon certain statements obtained from mill owners. Admittedly, at the time of purchase by the dealers, the registration certificates of the sellers were not cancelled. There was no explanation by the Revenue for not having examined the alleged sellers. The Revenue without examining the sellers had examined the mill owners who had no connection whatsoever with the purchases made by the dealers. There was no evidence to show that the sellers were not in existence. Further, there was proof to the effect that the groundnut purchased by the dealers had already suffered tax in the hands of the sellers. In those circumstances, it was held that simply because the dealers' claim to exemption was rejected by the Department, that did not mean the dealers have suppressed anything. Under those factual circumstances, this Court held that the Tribunal was right in holding that no penalty was exigible in any of the dealers' cases u/s 16(2) of the Act. The facts of the present case, as narrated above, are at variance in almost all facts, in the sense, that the registration certificate of the selling dealer has been cancelled with effect from 28.8.1989. The petitioner is not able to produce any evidence for payment of the sale price. There is absolutely no evidence whatsoever forthcoming on the transportation of the goods from the place of selling dealer to the place of the petitioner. None of the third parties' statement has been taken as the basis for revision. The revenue proved that the bills produced by the petitioner are all issued by a bogus/non-existent dealer. There is absolutely no evidence to prove that the goods has suffered tax at the hands of the selling dealer. On the other hand, it has been proved by the revenue that no tax was paid by the selling dealer. Hence, there are ocean of difference on facts between the case relied on by the petitioner and the case on hand and as such the case of Kuppusamy Gounder is not applicable to the facts of the present case. The Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in

which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. (vide Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another,

20. The other case relied on by the learned counsel for the petitioner is KALRA GLUE FACTORY VS. SALES TAX TRIBUNAL AND OTHERS reported in (1987) 66 STC 292, which is also a case in which on arriving at the conclusion that the transaction entered into by the appellant firm was in the course of inter-state trade, the sales tax Tribunal relied inter alia on a statement of a partner of another firm, which has not been tested by cross examination. In that factual situation, the Supreme Court set aside the order of the Sales Tax Tribunal, and order in revision of the High Court therefrom and remitted back the matter to the Tribunal. In that case, the Supreme Court allowed the appeal solely on the ground that the statement of one Banke Lal, which was not tested by cross examination was used in order to reach the conclusion that the transaction was an inter-state sale, but the facts are not similar to that of the present case, as stated above. No third party statement has been relied upon for revising the assessment. Hence, that case is also not applicable to the facts of the present case.

21. Mr. Thiagarajan, the learned counsel lastly contended that there is absolutely no finding by the authorities concerned that the assessee has wilfully non-disclosed the assessable turnover. We are afraid to accept such a contention, in the face of the factual findings as given by the authorities, viz., the assessing Officer has given reason that the petitioner produced bogus bills in the name of the non-existent dealer, who might perhaps be the stooge of the assessee, since it is the assessee themselves, who have benefited and the non-existent dealer. Further, it was found on fact that no payment has been made by the petitioner by way of cheque or demand draft when the turnover is as huge as Rs.16 lakhs, and failed to establish the genuine and bona fide nature of the transaction. The petitioner has also miserably failed to produce any iota of evidence for the transportation of the goods from the place of purchase to the petitioner's place and that the intention is deliberate to avoid the payment of tax by showing it as a second sale exemption. The first appellate authority also has given a finding to the effect that the appellant with a dishonest intention to defraud the revenue obtained bills to conceal his first sale as second sale.

22. The final fact finding authority, the Appellate Tribunal also in its order has stated that during the assessment year 1989-90, M/s. Mathuram Traders has not paid the sales tax for its alleged supply and the supply has not suffered tax at the point of first sale. Therefore, we feel that the appellant had not brought out any additional point for us to interfere with the orders of the Appellate Assistant

Commissioner. Before the revisional authority, as already stated, no question of law has been raised. Hence, there is absolutely no material for us to interfere with the levy of penalty also.

23. For the reasons stated above, we are of the view that the orders of the authorities below require no interference and the writ petition is dismissed. However, there is no order as to costs. Consequently, the connected W.M.P. is also dismissed.