

The State of Tamil Nadu Vs. Selvakumar Timber Traders

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Court : Chennai

Decided On : Oct-29-1981

Reported in : [1984]57STC69(Mad)

Judge : N.V. Balasubramanian and ;S. Padmanabhan, JJ.

Acts : Tamil Nadu General Sales Tax Act, 1959 - Sections 22, 22(1) and 22(2)

Appeal No. : Tax Case Nos. 1058 of 1977 and 914 of 1980 (Revision Nos. 253 of 1977 and 564 of 1980 respectively)

Appellant : The State of Tamil Nadu

Respondent : Selvakumar Timber Traders

Advocate for Def. : N. Inbarajan, Adv. for C.S. Chandrasekara Sastry, ;C. Venkataraman and ;C. Natarajan, Advs.

Advocate for Pet/Ap. : K.S. Bakthavatsalam, Additional Government Pleader

Judgement :

Balasubrahmanyam, J.

1. These two revisions filed by the State Government arise from one and the same proceedings, namely, penalty proceedings, taken by the assessing authority against the assessee for having collected sales tax from the customers on second

sales of timber and bamboo. Under entry 84 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, bamboo and timber are taxable only at the stage of first sale in the State. It follows, therefore, that not only are they not taxable at the stage of second sale but the person who effects the second sale is disentitled from collecting sales tax from the purchasers. Under section 22(1) of the Act, no person who is a registered dealer shall collect any amount by way of tax or purporting to be by way of tax under the Act. It is further provided that no registered dealer shall make any such collection except in accordance with the provisions of the Act and the Rules made thereunder. It is quite clear that where a dealer effects a collection of sales tax on a transaction which is not at that stage taxable under the provisions of the Act, then he violates the provisions of section 22(1) of the Act. Section 22(2) provides the consequence of an unwarranted collection of sales tax by a registered dealer. This sub-section provides that if any person or registered dealer collects any amount by way of tax or purporting to be final tax in contravention of section 22(1), then the assessing authority may, by order in writing, levy a penalty of a sum not exceeding one and a half times the amount so collected. This penalty will, however, have to be levied only after the dealer concerned is given a reasonable opportunity of being heard.

2. In this case the assessing authority levied a penalty of Rs. 1,512 after going through accepted procedure. The assessee appealed against the levy of penalty. The Appellate Assistant Commissioner found that the quantification of the penalty in the sum of Rs. 1,512 was based on a wrong calculation. He reduced the quantum of penalty to Rs. 463 on what he considered to be a correct calculation.

3. The assessee carried the matter in further appeal objecting to the retention by the Appellate Assistant Commissioner of the penalty of Rs. 463. Before the Tribunal the department for its part, filed an enhancement petition asking for the restoration of the penalty as originally levied by the assessing authority. The Tribunal considered the appeal of the assessee as well as the department's enhancement petition together, and held that there was no case for penalty at all under section 22 of the Act. As for the department's contention that the original calculation of the penalty by the assessing authority at Rs. 1,512 was correct, the Tribunal observed that the Appellate Assistant Commissioner was justified in

reducing the quantum on the basis of a correct calculation.

4. The State has now brought these matters before this Court in revision. We have earlier set out, in brief, the relevant provisions of section 22. Section 22(2) in terms, does not require that the levy of penalty should be based on any finding as to wilfulness or even neglect on the part of the assessee. Nor have the absence of these considerations been provided for by the statute as valid defences for the assessee in proceedings for levy of penalty. It would almost seem that the penalty under section 22(2) follows, as a matter of course, wherever it is found that an assessee has collected sales tax unauthorisedly and in contravention of the provisions of the Act. The Supreme Court had had occasion to consider the nature of a penalty of this kind for which provision was made in the Bombay Sales Tax Act, 1959. They held that barring cases where a dealer merely gathered a sum from his customers, and held that sum in suspense, in all other cases where the assessee purported to levy tax in situations in which he was not authorised so to collect, the penalty is leviable and mens rea is excluded from considerations in such cases.

5. The order of the Tribunal cancelling the penalty even as reduced by the Appellate Assistant Commissioner is not quite clear to understand. They, no doubt, refer to the 'nature of the collection' made by the assessee in this case as justifying the cancellation of the penalty. But beyond re-stating that the assessee did, in fact, collect tax on second sales of timber whereas the statute authorised the levy of sales tax only on the first sales, the Tribunal had not set out any other justifiable reason. Indeed, on the basis of the ruling of the Supreme Court there could be no possible answer to the levy of penalty in a case where the collection of tax in such a situation is admitted as fact. We are, therefore, satisfied that the Tribunal had no justification, whatever, to cancel the penalty.

6. The learned Government Pleader pressed his objection to the dismissal of the enhancement petition by the State before the Tribunal for restoration of the penalty to its original figure of Rs. 1,512. The contention of the learned Government Pleader was that the calculation of the penalty by the assessing authority did not disclose any error in computation. We do not wish to go into the arithmetic of the

penalty in this case, when the authorities invested with the requisite power and having the requisite leisure and professional assistance to go into the figures had come to the conclusion that even on the basis of the unauthorised collection of sales tax on second sales by the assessee the levy of penalty cannot exceed Rs. 463. This means the Tribunal was quite justified in dismissing the application made by the department for enhancement of the penalty from the figures at which it was sustained by the Appellate Assistant Commissioner. The result is that T.C. No. 1058 of 1977 is allowed and T.C. No. 914 of 1980 is dismissed resulting in the sustaining of the penalty in the sum of Rs. 463. In view of the mixed results of these two revisions, there will be no order as to costs.

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