

**State of Tamil Nadu Vs. Papco Offset Printing Works**

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**Court :** Chennai

**Decided On :** Jan-21-1998

**Reported in :** [2000]118STC160(Mad)

**Judge :** Janarthanam and ;P. Thangavel, JJ.

**Acts :** Tamil Nadu General Sales Tax Act, 1959 - Sections 12(4) and 12(5); ;  
[Central Sales Tax Act, 1956](#) - Sections 9(2A)

**Appeal No. :** Tax Case No. 326 of 1994 (Revision No. 149 of 1994)

**Appellant :** State of Tamil Nadu

**Respondent :** Papco Offset Printing Works

**Advocate for Pet/Ap. :** Raviraja Pandian, Special Government Pleader

**Judgement :**

ORDER

**Janarthanam, J.**

1. This tax revision case is directed against the order dated August 1'4, 1991 of the Tamil Nadu Sales Tax Appellate Tribunal, (Additional Bench), Madurai (for short 'the Tribunal') and made in M.T.A. No. 234 of 1991 relatable to the assessment year 1985-86 under the [Central Sales Tax Act, 1956](#) (for short 'the CST Act').

2. The assessee--Tvl. Papco Offset Printing Works, is having its place of business at 122, Reserve Line, Sivakasi. The assessee submitted a return for the assessment year 1985-86. In the return so filed, it appears the assessee had claimed exemption on a turnover of Rs. 2,59,135, representing the sales of reading books as covered by item No. 22 of the Schedule to the notification made in G.O. Ms. No. 976, Revenue, dated March 28, 1959 and G.O. P. No. 40, Revenue, dated January 6, 1969.

3. The assessing officer, viz., Commercial Tax Officer-I, Sivakasi, did not accept the claim of the assessee and included the said turnover of Rs. 2,59,135 in the assessable turnover. According to the assessing officer, the assessee simply printed certain materials according to the specification made by the publishers and recovered the cost of the paper and printing charges from them. The assessee, as a matter of fact, did not at all effect any sale of books. The assessing officer was, therefore, of the view that the assessee did not effect sales of reading books, and therefore, he was not a dealer in books.

4. The assessing officer also levied a penalty of Rs. 38,871 for the submission of incorrect and incompleted return. The quantum of penalty so levied, it appears, represents one and half times of the tax due on the escaped turnover levied Under Section 12(5)(iii) for refraction or violation of the provisions of Section 12(4)(iii) of the Tamil Nadu General Sales Tax Act, 1959, read with Section 9(2-A) of the CST Act, 1956.

5. The aggrieved assessee preferred an appeal in C.S.T. No. 10 of 1990 before the Appellate Assistant Commissioner (CT), Virudhunagar, who, in turn, dismissed the appeal by his order dated February 19, 1991.

6. The assessee did not leave the matter there. He filed further appeal before the Tribunal as stated above and the Tribunal in turn allowed the appeal giving rise to the present action--T.C. (R) No. 326 of 1994.

7. Notice had been served upon the assessee-dealer and the assessee-dealer, as a matter of fact, engaged a counsel of his choice to defend him in this action. P. Radhakrishnan and A. Chandrasekaran, learned counsel filed vakalath for the

assessee-dealer. None of the counsel so engaged was present in court. No representation has even been made by any one on their behalf, praying for any adjournment. In such situation, we are left with no option except to dispose of the matter on merits, of course, after hearing Mr. K. Raviraja Pandian, learned Special Government Pleader, representing the Revenue.

8. From the pith and submission of Mr. K. Raviraja Pandian, learned Special Government Pleader, representing the Revenue, and perusal of the order of the Tribunal, the one and only question that arises for consideration is as to whether the order of the Tribunal, on the facts and in the circumstances of the case, is sustainable in law ?

9. Item No. 22 of the Schedule to the notification reads as under :

'22. Sales of reading books including text books by any dealer.'

It is thus crystal clear that what is exempted under item No. 22 of the Schedule to the notification is 'sales of reading books, which includes text books by any dealer'. The assessee-dealer, as already adverted to, in the summation of facts of the case, had simply printed certain materials according to the specification of some publishers charging them with price with reference to the cost of paper and printing charges and that is all and nothing further. To put it otherwise, the assessee-dealer never compiled any books for reading, nor effected sales of such reading books. The assessee-dealer simply collected from the publishers Rs. 2,59,135 charging them with price with reference to the cost of paper and printing charges. The said turnover, can, by no stretch of imagination, be stated to be representing sales of reading books, so that it may fall under item No. 22 of the Schedule to the notification for claiming exemption from tax. This aspect of the matter had completely been lost sight of by the Tribunal and that, perhaps was the reason for its coming to the conclusion that the turnover of Rs. 2,59,135 represents sales of reading books falling under item 22 of the Schedule to the notification.

10. In this view of the matter, the order of the Tribunal, setting aside the assessment on a turnover of Rs. 2,59,135, as had been made by the assessing officer and laterly confirmed by the Appellate Assistant Commissioner (CT),

Virudhunagar, deserves to be set aside.

11. We may now advert to the order of the Tribunal relating to the setting aside of the penalty imposed upon the assessee-dealer. Section 12(5)(iii) of Tamil Nadu General Sales Tax Act empowers the assessing authority to levy a penalty in a sum not less than 50 per cent and not more than 150 per cent of the difference in tax payable on the turnover disclosed in the return and that determined by the assessing authority. In case the return submitted by the assessee-dealer is found to be incorrect and incomplete. It is not as if the assessee-dealer did not disclose the entirety of the transactions in his accounts. The admitted fact is that the assessee-dealer disclosed the entirety of the transaction in his turnover. But what was done was that a portion of the turnover was claimed to be exempted from tax, as if the said turnover represents sales of reading books falling under item No. 22 of the Schedule to the notification issued Under Section 17 of the Tamil Nadu General Sales Tax Act.

12. In such state of affairs, it cannot at all be stated that the assessee-dealer had refracted or violated the salient provisions adumbrated Under Clause (iii) of Sub-section (4) of Section 12, attracting penalty imposed Under Clause (iii) of Sub-section (5) of Section 12 of the TNGST Act read with Section 9(2-A) of the CST Act. We are, therefore, of the view that the order of the Tribunal, setting aside the penalty imposed upon the assessee-dealer cannot at all be stated to be not sustainable in law.

13. We want to state here that the order of the Tribunal setting aside the penalty imposed upon the assessee-dealer is confirmed for the reasons as we have given above, and not for the reason, on which the Tribunal set aside the penalty imposed upon the assessee-dealer. The Tribunal assigned the reason that the transactions representing a turnover of Rs. 2,59,135 are not at all assessable to tax in the sense of the same falling under item No. 22 of the Schedule to the notification issued Under Section 17 of the TNGST Act and therefore, the penalty imposed is not sustainable.

14. In fine, the order of the Tribunal setting aside the assessment on a turnover of Rs. 2,59,135 is set aside and the order of the assessing officer in that regard is

ordered to be restored. The revision in other respects shall stand dismissed.

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