

The State Of Tamil Nadu vs S.M. Baba Sahib on 3 October, 1977

Equivalent citations: [1979]44STC299(MAD)

JUDGMENT

P. Govindan Nair, C.J.

1. The very short question that has been raised before us by the revenue relates to the cancellation by the Tribunal of the imposition of penalty under Section 16(2) of the Tamil Nadu General Sales Tax Act, 1959, (for short the Act). We shall extract that Sub-section:

16. (2) In making an assessment under Clause (a) of Sub-section (1), the assessing authority may, if it is satisfied that the escape from assessment is due to wilful non-disclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed under Clause (a) of Sub-section (1), a penalty not exceeding one and a half times the tax so assessed:

Provided that no penalty under Sub-section (2) shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

2. The years of assessment are 1965-66 and 1966-67 and the appeals relating to those assessment years were disposed of by a common order by the Tribunal. The amounts of penalty imposed for the two years respectively are Rs. 1,388 and Rs. 2,550. The imposition of the penalty was set aside by the Tribunal on the only ground that a requisite finding for the application of Sub-section (2) of Section 16 of the Act that the escape from assessment "is due to wilful non-disclosure of assessable turnover" was not entered by the revisional authority. But the counsel for the revenue brought to our notice page 20 of the typed set of papers wherein the relevant part of the order of the Sales Tax Officer, who revised the earlier assessments is contained. He has made the following remarks (T.C. No. 317 of 1974):

Regarding the levy of penalty, the dealer's request to waive the levy of penalty completely cannot be accepted since the dealer has wilfully suppressed a huge turnover. However, considering the plight of the dealer, I reduce the penalty to 50 per cent of the tax due on the turnover actually suppressed.

3. The Learned Counsel, relying on the decision of this Court reported in State of Tamil Nadu v. Sri Swamy & Co. [1977] 39 S.T.C. 85, contended that the use of the word "suppression" would show the wilful nature of the non-disclosure. We are in respectful agreement with this decision. But we would like to add that the mere use of the expression "suppression" is not enough. A wilful non-disclosure of assessable turnover is a necessary ingredient to make out that part of the section, namely, a deliberate intention to suppress an assessable turnover which should, in fact, have existed. It is not

possible to say, merely from the fact that there has been a reassessment of escaped turnover on the basis of best judgment, that there has been a wilful non-disclosure of assessable turnover. There must be something to indicate that the turnover did in fact exist and that the assessee had wilfully not disclosed that assessable turnover.

4. In view of the finding rendered by the assessing officer, the Tribunal cannot set aside the penalty merely on the ground that there is no finding; but the Tribunal has to deal with the matter by reference to the wording of the section and on the basis of what we have stated in this order.

5. In the light of the above, we set aside the order of the Tribunal in so far as it relates to the cancellation of the penalties imposed for the two years 1965-66 and 1966-67 and direct the Appellate Tribunal to deal with the matter afresh and pass appropriate orders in accordance with law. We direct the parties to bear their respective costs.