

**(2010) 10 MAD CK 0240**

**Madras High Court**

**Case No:** T.C. (R) No. 18 of 2009

Murugan Trading Company

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

**Date of Decision:** Oct. 20, 2010

**Citation:** (2011) 38 VST 61

**Hon'ble Judges:** N. Kirubakaran, J; F.M. Ibrahim Kalifulla, J

**Bench:** Division Bench

**Advocate:** R. Venkataraman for Lakshmi Sriram, for the Appellant; Haja Naziruddin, SGP, for the Respondent

### **Judgement**

@JUDGMENTTAG-ORDER

F.M. Ibrahim Kalifulla, J.

This Tax Case Revision has been filed by the assessee. The assessment year pertains to 1988-89.

2. The petitioner is a dealer in groundnut and Groundnut Kernel at Palani. The petitioner reported its taxable turnover for the above assessment year and an order of assessment was also passed on 15.03.1990. Subsequently, there was an inspection of the petitioner's place of business by the officials of the respondent on 10.09.1990. In the said inspection, four numbers of Form XX-B declarations were recovered. According to the respondent, the verification of the said Form XX-B declarations revealed corrections in date, value and quantity of goods transported to the petitioner's place of business. The nature of corrections were also noted by the appellate Tribunal. In the light of the said discrepancy noted at the time of inspection in the above referred to four Form XX-B declarations, a notice for revising the assessment was issued to the petitioner. Thereafter, a revised order of assessment was passed on 25.11.1991. According to the respondent, the corrections found in Form XX-B declarations resulted in suppression of purchase of 14 bags of groundnut which were valued at a sum of Rs. 1,28,466/-.

While revising the taxable

turnover by adding the above alleged suppression to the value of Rs. 1,28,466/- an equal addition was made. The tax liability was therefore added on the additional value of Rs. 2,56,932, for which a penalty at the rate of 150% was also levied apart from surcharge. The petitioner, having lost its case before the Appellate Assistant Commissioner as well as the Tribunal, has come forward with this revision challenging the order of the Tribunal as well as the order of the Assessing authority and the Appellate Assistant Commissioner.

3. Mr. K. Venkataraman, learned Senior counsel appearing for the petitioner in his submissions fairly contended that even though the alleged suppression based on any discrepancy in Form XX-B declarations is to be taken as correct, there could not have been a value addition to the equal sum and also penalty imposed thereon. The learned Senior Counsel would contend that the leviability of tax is at the point of purchase by the petitioner. In the Form XX-B declaration, the quantity sold to the petitioner is noted by the concerned farmer, even though first part of statement is made by the petitioner and in the circumstances it was contended that the whole blame cannot be fastened on the petitioner.

4. The learned Special Government Pleader on the other hand contended that when Form XX-B is primarily issued to the registered dealer even though the declaration relating to the quantum of the purchase made is to be made by the farmer, it was the primary responsibility of the dealer to have ensured that what was purchased was duly reflected in Form XX-B declaration and since the petitioner has failed to fulfil the said statutory obligation, the revision made and the equal value addition as well as the penalty imposed cannot be interfered with.

5. Having heard the counsel for the respective parties and having perused the impugned orders, we are convinced that the action of the Assessing authority in having revised the turnover based on the corrections found in Form XX-B declarations cannot be faulted. We are convinced that though the quantities supplied and the nature of product supplied to the dealer has to be declared by the farmer in the second part of Form XX-B declaration, if there were any corrections found in regard to quantity supplied, it is for the petitioner to explain as to the genuineness of such corrections, as it will have consequential effect on the liability to tax. Therefore, if really such corrections were made as contended by the petitioner by the farmers themselves in Form XX-B declarations, that should have been ensured by the petitioner at the time of purchase itself by atleast getting necessary initials of the concerned farmer in Form XX-B declaration itself in order to rule out the possibility of any other allegations of such corrections said to have bee made by the petitioner/assessee at a later point of time. Therefore, in the absence of any other acceptable material, the revision of the taxable turnover made based on such corrections found in Form XX-B declaration at the instance of the respondent cannot be faulted. We are not therefore, inclined to interfere with the addition of suppressed value of turnover to the extent of Rs. 1,28,466/- made by the

Assessing Authority and confirmed by the Lower Appellate Authority as well as the Tribunal.

6. The other question relates to equal addition and imposition of penalty based on such suppression of turnover. As far as the said issue is concerned, we are of the view that for that purpose, further overt act should have been shown on the part of the assessee, in order to impose such onerous liability. We say so because, in Form XX-B declaration, as rightly contended by the learned Senior Counsel for the petitioner, it consists of two segments. In the first part of Form XX-B, the nature of declaration to be furnished by the registered dealer relates to Serial Number, Office of issue, name of the registered dealer with certificate number and the seal of the issuing authority. The declaration to be made by the dealer is to the effect that the goods transported by the farmer from the concerned village were intended for sale to him as a Commission Agent and the dealer undertakes to pay the tax due on the purchase/sale in respect of the said goods. The signature of the registered dealer is to be affixed below the said declaration. Thereafter, a declaration by the Agriculturists transporting the goods has to be made in which the concerned agriculturist should declare that the goods transported were so transported in the vehicle by furnishing the register number, the name of the driver, the nature of goods transported, quantity and approximate value of the goods, the place from which it was transported, the destination to which it was transported, the signature of the driver or other persons in-charge of the goods and the date of transport. The learned Special Government also stated that in the said declaration, the concerned Village Administrative Officer also makes an endorsement. Therefore, in the said part of the declaration, the contents of which are supposed to be entered by the concerned agriculturist who effect the sale to the dealer. Since the nature of product sold with the details relating to its quantity is furnished in the said part of the declaration vouched by the agriculturist concerned, in our considered opinion, any defect with regard to the said value cannot be wholly attributed to the registered dealer. Viewed in that respect, the conclusion of the Tribunal that there was no necessity to enquire the agriculturists who brought the goods for sale to the petitioner's place of business cannot be accepted. Therefore, where there was dual responsibility in regard to declaration to be made in Form XX-B viz., the dealer on the one part and the concerned agriculturist on the other part and the reference to quantity supplied is to be noted by the agriculturist concerned while making the declaration, it will have to be held that even while holding that there was every justification in revising the taxable turnover based on the alleged suppression, there is very little scope for making an equal addition or imposition of penalty. We therefore hold that the order of the Assessing authority in making an equal addition of the suppressed turnover of Rs. 1,28,466/- as well as the penalty at the rate of 150% on such suppressed turnover was not justified.

7. The revision petition therefore stands partly allowed and while sustaining the revision of the taxable turnover based on suppression to the tune of Rs. 1,28,466/-,

the imposition of penalty as well as equal addition stand deleted. No costs.