

(1963) 11 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 2165 of 1962

Abraham

APPELLANT

Vs

Sales Tax Officer and Others

RESPONDENT

Date of Decision : 29-11-1963

Acts Referred:

Central Sales Tax Act, 1956 — Section 1, 13(4), 13(4)(g), 2, 7
Constitution of India, 1950 — Article 226

Citation : (1964) KLJ 92

Hon'ble Judges : T.K. Joseph, J; T.C. Raghavan, J; P.T. Raman Nayar, J

Bench : Full Bench

Advocate : P. Karunakaran Nair, for the Appellant;

Final Decision : Allowed

Judgement

Joseph, J.—The petitioner was assessed to sales-tax u/s 8 of the Central Sales Tax Act (74 of 1956), in respect of his inter-State trade in cocoanut oil for the year 1959-60, and out of a total turnover of Rs. 2,30,990.57, tax was imposed at the rate of 1 per cent on Rs. 1,93,346 and at 7 per cent on the balance, namely, Rs. 37,645, on the ground that the relevant declarations in Form C were not filed before the prescribed authority-the Sales Tax Officer, before 16th February 1961. These were filed before the Sales Tax Officer only on 8th March 1961 but before the assessment was made, the delay being explained as due to late receipt of the same from the purchaser in Madras. Ext. P. 2 is copy of the order of assessment. The petitioner preferred an appeal to appellate Assistant Commissioner and a revision petition before the Deputy Commissioner of Agricultural income tax and Sales-tax, but these were unsuccessful. Exts. P. 3 and P. 4 respectively are the orders in appeal and revision. He has moved this Court for quashing the orders, Exts. P. 2, P. 3 and P. 4, under Article 226 of the Constitution. The first respondent is the Sales Tax Officer, Ponkunnam, and the second respondent, the Deputy Commissioner of Agricultural income tax and Sales-tax, Ernakulam. The petition was ordered to be placed before a Full Bench in view of the apparent

conflict between two decisions of this Court. The point pressed before the sales-tax authorities and considered by them was whether the delay in filing the C Forms could be condoned on sufficient cause being shown. Relying on the decision of this court in Deputy Commissioner of Agricultural Income Tax and Sales Tax Vs. A.M. Abdul Wasigh and Bros., it was held that the delay could not be condoned. The point advanced before us was slightly different, i.e., that the benefit or concession conferred by section 8(1) can be taken away u/s 8(4) only if the dealer failed to furnish C Forms to the prescribed authority in the prescribed manner and that the dealer cannot be deprived of the benefit by enacting a rule fixing a date for furnishing the C Forms, as the expression "the manner prescribed" in sub-section (4) of the section does not take in the time element. In other words, the argument was that the prescribed authority was bound to consider the C Forms, provided the same were furnished before the order of assessment was made.

2. It is useful to extract the relevant provisions of section 8 and rule 6 of the Central Sales Tax (Kerala) Rules, 1957, as it stood on the date of the assessment.

8. (1) Every dealer, who in the course of inter-state trade or commerce-

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government, goods of the description referred to in sub-section (3); shall be liable to pay tax under this Act, which shall be one per cent of his turnover.

x x x

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner-

(a) a declaration duly filled and signed by the registered dealer to whom the goods: are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government.

x x x

Rule 6:

6(1) Every dealer registered u/s 7 of the Act and every dealer liable to pay under the Act shall submit a return of all his transactions including those in the course of export of the goods out of the territory of India in Form II together with connected declaration forms so as to reach the assessing authority on or before the 20th of each month showing the turnover for the preceding month and the amount or amounts collected by way of tax together with proof for the payment

of tax duo thereon under the Act:

Provided that in cases of delayed receipt of declaration forms, the dealer may submit the declaration forms at any time before the assessment is made:

Provided further that the delay in submitting the declaration forms shall not exceed three months from the date of sale in question:

Provided also that all declaration forms pending submission by dealers on 2-5-1960 shall be submitted not later than 16-2-1961.

x x x

The first proviso was added by notification dated 3-1-1958, the second by notification dated 26-4-1960 and the third by notification dated 16-1-1961. The respondents rely on the last proviso according to which declarations in Form C had to be furnished before 16-2-1961.

3. The decision of the question depends on the construction of the expression "in the prescribed manner" in section 8(4) of the Act. The meaning of the words "manner and form" is given in Stroud's Judicial Dictionary in these terms:

The words in "manner and form" refer only to the mode in which the thing is to be done, and do not introduce anything from the act referred to as to the thing which is to be done or the time for doing it.

This is an extract from the judgment of Lord Campbell C. J. in *Acraman v. Hernia* (16 Q. B. 1003). The plaintiffs in that case had become the assignees in bankruptcy proceedings against Garrett who had executed on 4th March 1850 a warrant of attorney to the defendant Hernia on the strength of which the latter had obtained judgment against him and sold his goods. A copy of the warrant of attorney was filed with the officer acting as clerk of the dockets and judgments in the court of Queen's Bench on 11th March 1850, but no affidavit of the time of execution of such warrant of attorney was filed at any time. Stat. 12 and 13 Vic. c. 106 s. 136 provided that any warrant of attorney given by a trader to confess judgment in a personal action, not filed within twenty-one days after execution in manner and form provided by Stat. 3 G. 4 c. 39 should be deemed fraudulent, null and void. Section 1 of Stat. 3 G. 4 c. 39 required that such warrant of attorney should be filed together with an affidavit of the time of execution thereof, within twenty-one days of the execution of the warrant of attorney. Section 2 provided that if, after twenty-one days, the party giving such warrant of attorney shall be declared a bankrupt, then, unless the warrant or a copy thereof shall have been filed as aforesaid within 21 days from the execution or unless judgment shall have been signed or execution issued thereon within the same period, such warrant of attorney and the judgment and execution thereon shall be deemed fraudulent and void against the assignees. As stated earlier, judgment had been signed on 11th March 1850, i.e., within twenty-one days of the execution of the warrant of attorney, and it was contended that the judgment was therefore valid notwithstanding the failure to file the affidavit as required by

section 1. Lord Campbell C. J. said:

The enactment of Stat. 12 and 13 Vic. C. 106 S. 136 is very plain; and I cannot agree to put a forced construction upon it. The Legislature has held there that any warrant of attorney given by a trader to confess judgment in a personal action, not filed within twenty-one days after execution in manner and form provided by Stat. 3 G. 4 C. 39, shall be deemed fraudulent, null and void. The manner directed by that Act is, filing the warrant or copy, with an affidavit of the time of execution. Here are a judgment and execution on a warrant of attorney given by a trader, and the warrant filed, but without an affidavit. The plain meaning of the late Act is that such a warrant shall be null and void against the assignees. The words "in manner and form" refer only to the mode in which the thing is to be done, and do not introduce anything from the act referred to, as to the thing which is to be done or the time for doing it. There is no need here to imply an exception. The intention of the Legislature may be fully effected by a literal construction. The warrant of attorney may be filed, the moment it is obtained, with the affidavit as to the time of execution.

With great respect we adopt this interpretation of the expression "in the manner". Section 8 thus provided only that the manner of filing the declaration in Form C could be prescribed by the rules and not the time within which the same was to be filed. Non-compliance with the time prescribed by rule 6 may entail other penalties but not forfeiture of the benefit conferred by the section.

4. The above conclusion gains support from the fact that whenever, the rules were intended to prescribe the time within which an act was to be done, the relevant part of section 13(4) of the Act made specific provision for the same. Thus section 13(4) (g) provides:

13 (4) In particular and without prejudice to the powers conferred by sub-section (3), the State Government may make rules for all or any of the following purposes, namely:-

(g) the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished.

This makes it clear that the Legislature was conscious of the fact that the words "in the manner" would denote only the mode in which an act was to be done, that whenever the time for doing an act was to be prescribed by rules, the words "in the manner" or "the manner in which" were insufficient for that purpose but that specific words such as "the time within which" were also necessary.

5. It was argued on behalf of the respondents that rule 6 which requires the declaration forms to be filed together with the return in Form II only provides for the manner of filing the declaration forms. We are unable to accept the argument. The time within which the return as well as the declaration forms have to be filed is provided for by rule 6, the time for filing the latter having been

extended from time to time by the provisos.

6. In the view that we take, it is unnecessary to express any opinion on the decisions of this Court referred to in the order of reference. In the earliest of these, the State of Kerala v. N. K. Thomas (T. R. C. 1 of 1960) the declarations were produced before the Appellate Assistant Commissioner. It was not contended for the department that the sales-tax authorities had no authority to accept a return filed after the due date. It was held by this Court that there was sufficient cause for the delay in producing the declaration forms in time and that the Appellate Assistant Commissioner ought to have excused the delay. In Deputy Commissioner of Agricultural Income Tax and Sales Tax Vs. A.M. Abdul Wasigh and Bros., , the declaration forms were produced before the Sales

Tax Officer after the order of assessment was made, and it was held that the Appellate Tribunal, which allowed the declaration forms to be filed before it, committed an error. Palaniappa Match Works Vs. The State of Kerala, , which is not referred to in the order of reference, was a case in which the declaration forms filed by the assessee in time were found to be defective by the Sales Tax Officer. In appeal before the Appellate Assistant Commissioner as well as the Appellate Tribunal, the assessee sought permission to produce new declaration forms in accordance with rule 11(1), but the prayer was refused. The assessee produced new forms before this Court, and it was held that the assessee should have been given an opportunity to produce proper declaration forms. The order of Appellate Tribunal was accordingly quashed. In The Deputy Commissioner of Commercial Taxes, Madras Vs. Manohat Brothers, Madras, declaration forms in respect of part of the turnover were filed only before the Appellate Assistant Commissioner who declined to act on the same. The Sales-tax Appellate Tribunal upheld the assessee's claim in respect of one transaction. It was held by the High Court of Madras that the assessee who produced the declaration forms in appeal was not entitled to claim the benefit u/s 8(1) of the Act. This decision is based on an earlier decision in Deputy Commissioner (Commercial Taxes), Coimbatore Division Vs. Parekutti Hajee Sons, where it was assumed that the words "in the manner" in section 8(4) included the time within which the forms were to be filed as seen from the following observations:

The rule accordingly prescribes that along with the return of the turnover relating to any month, the connected declaration should be submitted so as to reach the assessing authority on or before the 25th of the succeeding month. Here is a rule setting out the manner in which the declaration should be furnished to the prescribed authority by the dealer selling the goods.

With great respect we are unable to accept the assumption made, for the reasons stated earlier.

7. In the case before us, the declaration forms had been produced before the Sales-tax Officer before the order of assessment was made. The question for decision in the three cases referred to in the order of reference does not arise

here, and we therefore decline to express any opinion on the question whether the appellate authorities have power to condone delay in cases where sufficient cause is shown. It follows that this original petition has to be allowed. We do so and quash the orders Exts. P. 2, P. 3 and P. 4. The first respondent is directed to pass a fresh order of assessment taking into consideration the declaration forms furnished by the assessee on 8th March 1961. The respondents will pay the costs of the petitioner including advocate's fee of Rs. 200/-.