
(1984) 07 RAJ CK 0034

In the Rajasthan High Court

Case No : Sales Tax Reference No. 43 of 1975

Assistant Commercial Taxes Officer

APPELLANT

Vs

Har Narain Mohan Lal

RESPONDENT

Date of Decision : 05-07-1984

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (1985) 59 STC 102

Hon'ble Judges : S.N. Bhargava, J;S.C. Agrawal, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant; V.K. Singhal and J.N. Sharma, amicus curiae, for the Respondent

Judgement

S.N. Bhargava, J.—This is a reference u/s 15 of the Rajasthan Sales Tax Act (hereinafter referred to as the Act) by the Board of Revenue referring the following question of law for our opinion :

Whether on the facts and circumstances of the case the Board was justified in holding that C forms in respect of inter-State sales can be entertained at the first appellate stage when the same are not produced before the assessing authority along with the return of turnover for the period concerned or before or at the time of assessment,

2. The Assistant Commercial Taxes Officer, Ajmer (hereinafter referred to as the assessing authority), imposed tax on inter-State sales at 2 per cent for the sales of Rs. 536 supported by C form, at 7 per cent for sales of Rs. 500 prior to 2nd March, 1963 not supported by C form and at 10 per cent for sales of Rs. 802 after 2nd March, 1963 not supported by C form. The assessee preferred appeals before the Deputy Commissioner (Appeals) which were allowed and the appellant was allowed to produce declaration under form C. The Department preferred a revision petition before the Board of Revenue, which held that the Deputy Commissioner was not at fault and could have allowed production of declaration under form C and admitted in evidence and considered the same while hearing

the appeal and the revision was dismissed. The Department filed an application for reference before the Board of Revenue, which has referred the above question of law to this Court for opinion.

3. We have heard the learned Counsel for the Department and since it involved an important question of law and the assessee did not put in appearance in spite of notice, we requested Shri V. K. Singhal and Shri J. N. Sharma, Advocates, to appear for the assessee and to help the Court in coming to a correct conclusion.

4. The learned Counsel for the Department has relied on Deputy Commissioner (Commercial Taxes) v. Parekutti 1962 13 STC 680, wherein the assessee had not submitted C form along with the monthly return within time and was not maintaining any register in form 9 and did not furnish C form even along with the last return for the year and not even at the time when the final assessment was made by the Deputy Commercial Tax Officer ; but produced the C form before the Appellate Assistant Commissioner. In these circumstances, the Madras High Court in the said case held that it was not open to the appellate authority or the Tribunal to condone the delay in the production of C form. Similar view was taken by the Madras High Court in Deputy Commissioner of Commercial Taxes, Madras Division v. Manohar Brothers 1962 13 STC 686, in which it was observed that the Act does not confer any power upon the appellate authority to receive C form produced before him for the first time by the assessee by condoning the failure on the part of the assessee to produce it before the assessing authority. Non-observance of the register by the assessee in the matter of production of C form will inevitably deprive the assessee of the benefit of favourable taxation u/s 8(1) of the Act. He also placed reliance on K. M. Chopra and Company v. Additional Commissioner of Sales Tax, Madhya Pradesh, Indore 1967 19 STC 46 , Mr. Bapna further submitted that where a dealer claims exemption he has to comply with the provisions strictly. Since the production of C form is mandatory its production before the assessing authority has to be strictly complied with and even if it causes hardship production of C form before the appellate authority, cannot be accepted and taken into consideration and placed reliance on a decision of the Supreme Court in Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others, This authority of the Supreme Court was relied on by the Andhra Pradesh High Court in State of Andhra Pradesh v. Bhoomi Reddy [1970] 26 STC 444, wherein it was observed that the benefit of Section 8(1) of the Act is conditional upon the assessee furnishing to the prescribed authority in the prescribed manner the declaration in C form. Furnishing of the C form before the appellate authority will not be sufficient compliance and it was further held that the assessee was not entitled to the benefit of taxation at the concessional rate. Mr. Bapna also placed reliance on Basta Colla Colliery Co. (P.) Ltd. v. State of Bihar 1969 23 STC 142, wherein the Patna High Court observed that the declarations and the certificates generally and ordinarily, have got and should be furnished before the assessment is made by the assessing authority. If the assessee is not able, for sufficient reason, to furnish the requisite declarations and the certificates before the assessing authority prior to the passing of the

assessment order, he may prefer an appeal to the appellate authority which may direct the assessing authority to give fresh opportunity to the assessee to furnish the declarations and the certificates. The assessee will have to show sufficient cause for not furnishing the declaration before the assessing authority. This authority was followed in *Hewitt Robine Incorporation v. State of Bihar* 1973 32 STC 146 by the Patna High Court.

5. On the other hand, Shri V. K. Singhal and Shri J. N. Sharma, Advocates, drew our attention to a number of decisions of different High Courts wherein contrary view has been taken and it has been observed that the powers of the appellate authority are co-extensive with that of the assessing authority. Therefore, the assessing authority was competent to allow the production of the declaration and take the same into consideration and decide the appeal on that basis. They relied on *Abraham v. Sales Tax Officer* 1964 15 STC 110 (FB), a Full Bench decision of the Kerala High Court, and *Madurai Mudaliar & Sons v. Commissioner of Commercial Taxes, Mysore* 1964 15 STC 900, another Full Bench (sic) decision of the Allahabad High Court *Murli Dhar Dharampal Daresi v. Sales Tax Officer* 1965 16 STC 21 and *Shirahatti v. Commercial Tax Officer, Haveri* 1967 19 STC 306 . They also placed reliance on *Sales Tax Officer Vs. K.I. Abraham*, wherein it was observed that since the assessee has furnished "a declaration in form C within a reasonable time there was compliance of the requirement of Section 8(4)(a) of the Act. The expression "in the prescribed manner" occurring in Section 8(4) of the Central Sales Tax Act only confers power on the rule-making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold and to which authority the form is to be furnished. But it does not take in the time element. This authority was followed in a later decision of the Madras High Court in *Tirukoilur Oil Mills Ltd. v. State of Madras* 1967 20 STC 388 wherein after referring to its earlier decision reported in *Deputy Commissioner (Commercial Taxes), Coimbatore Division, Coimbatore v. Parekutti Hajee Sons* 1962 13 STC 680 relied on by Shri Bapna, it was observed that fresh particulars were furnished before the Appellate Assistant Commissioner, which rectified the defects in C forms filed before the assessing authority, should have received and if they were found to be in order the Appellate Assistant Commissioner should have taken them into consideration, while deciding the appeal. Relying on a Supreme Court decision in *Sales Tax Officer Vs. K.I. Abraham*, the Madras High Court in *Gordon Woodroffe & Co. (Madras) Pvt. Ltd. v. State of Madras* 1968 21 STC 120, held that no time-limit could be prescribed for filing the declaration. The Orissa High Court in *Tata Iron & Steel Co. Ltd. v. State of Orissa* 1970 25 STC 171 has held that the declaration can be filed within a reasonable time before assessment is made ; but even if the declarations are filed for the first time at the appellate stage and sufficient explanation is furnished by the assessee as to why they were not filed before the order of assessment, the appellate Court should entertain the declarations if it is satisfied with the explanation furnished by the assessee. The Allahabad High Court in

Commissioner of Sales Tax, Uttar Pradesh, Lucknow v. Kanpur Dal and Rice Mills 1970 25 STC 511, relying on State of Orissa v. Babu Lal Chappolia 1966 18 STC 17 (SC) and after taking into consideration Deputy Commissioner of Commercial Taxes v. Manohar Brothers 1962 13 STC 686, relied on by Shri Bapna, has observed that the appellate authority may either set aside the assessment and remand the case to the assessing authority for fresh assessment after entertaining C form, which the assessee had not been able to file at the time of original assessment or he may himself entertain the C form and allow the assessee the necessary relief. The Orissa High Court has also taken the same view in Belpahar Refractories Ltd. v. State of Orissa 1970 26 STC 667, wherein it has been held that declaration can be accepted even at the appellate stage. The Bombay High Court in Commissioner of Sales Tax v. Minimax Ltd. 1975 35 STC 388, has held that it was permissible in law for the appellate authority to accept the declaration forms in exercise of his appellate jurisdiction and it followed Chopra and Company v. Additional Commissioner of Sales Tax 1967 19 STC 46. Even the Madras High Court in its Full Bench decision in State of Tamil Nadu v. Arulmurugan and Company 1982 51 STC 381 (FB) has observed that there is no provision in the Madras General Sales Tax Act and the Rules made thereunder which require that the certificate should be produced before any particular authority as a condition precedent for claiming the benefit and where the assessing authority rejected the certificate produced by the assessee on the ground that they were not in the proper form and the assessee applied afresh and obtained fresh certificate in the proper form and produced the same before the appellate authority, the appellate authority should not refuse to admit them and it had distinguished its earlier decision in K. M. Chopra and Company v. Additional Commissioner of Sales Tax, Madhya Pradesh, Indore 1967 19 STC 46, which was relied on by Mr. Bapna. Similar view was taken by the Calcutta High Court in Mohatta Brothers v. Board of Revenue 1975 36 STC 582. The Kerala High Court in Deputy Commissioner v. Calicut Company 1976 37 STC 296 has held that the appellate authority should remand the case to the assessing authority to apply its mind and to consider whether there was sufficient cause for non-production of the C form before the assessing authority at the initial stage and revise the assessment accordingly regarding the turnover covered by C form produced, if he is satisfied about the sufficiency of reasons. The Madras High Court in a later case State of Tamil Nadu v. Chellaram Garments (P.) Ltd. 1979 44 STC 239 has observed that ordinarily C form had to be furnished before the assessing authority ; but if C forms are filed before the appellate authority, the proper thing for the appellate authority would be to remand the matter to the assessing authority for the purpose of considering the entertainability of C form. Our attention was also drawn to the latest Full Bench decision of the Madras High Court in State of Tamil Nadu v. Arulmurugan and Co. 1982 51 STC 381 (FB), arguing that an appeal is continuation for the process of the assessment. The appellate authority can itself enter the arena of assessment, either by perusing further investigation or causing further investigation to be done. Whatever discretion is conferred on the assessing authority for the purpose of assessment

must be so regarded to have been conferred on the appellate authority. Even a Tribunal can set aside the assessment for enabling the assessee to file C form which he had omitted to file in the original assessment. The Tribunal itself has power to receive C form at the time of appeal for sufficient cause. The Tribunal may either itself apply the concessional rate of tax to the turnover covered by C form or remand the case.

6. We have considered the rival contentions made at the Bar and have also carefully gone through the numerous decisions cited before us. Even the Madras High Court has taken a different view in the later cases and so also the Madhya Pradesh High Court has taken a different view in the later decisions. All other High Courts, viz., Kerala, Allahabad, Orissa, Bombay, Calcutta, are of the view that the powers of the appellate authority are co-extensive with that of the assessing authority and therefore, even if the assessee had failed to produce and furnish C form before the assessing authority at the time of original assessment, the appellate authority can permit the assessee to file C form before it and it will consider the same if it finds that there were sufficient reasons for not filing C form before the assessing authority at the time of assessment. Failure to file C form at the stage of assessment before the assessing authority is not fatal. It can be filed even at the appellate stage after showing sufficient cause. In the instant case, the learned Deputy Commissioner (Appeals) has admitted the declaration form at the appellate stage and found it to be genuine and gave the assessee the advantage of concession. We do not find any error or illegality in that order.

7. In this view of the matter, our answer is in the affirmative in favour of the assessee and against the Department.