

(1975) 03 MAD CK 0022

In the Madras High Court

Case No : Tax Case No. 146 of 1970 and Revision No. 108 of 1970

Associated Electrical Industries (India) Ltd.

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 05-03-1975

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 6, 8

Citation : (1976) 37 STC 310

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : V. Natarajan, for King and Partridge, for the Appellant; K. Venkataswami, Additional Government Pleader No. I, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami, J.—The petitioners are dealers in electrical goods carrying on business at Madras with a branch at Coimbatore. They are

registered dealers under the Central Sales Tax Act. For the assessment year 1963-64, they submitted a return showing the total and taxable

turnovers at Rs. 21,79,561.66 and Rs. 15,07,263.32 respectively, claiming certain turnover as exempt on the ground that they are second sales

falling u/s 6(2) of the Central Sales Tax Act, 1956. They produced a certificate in form E-I from the selling dealer of Calcutta. But this certificate in

E-I form covered a period of over five months and more than one transaction. The assessing officer disallowed this claim on the ground that the E-

I form certificate produced was not in accordance with Rule 9-D of the Central Sales Tax (Madras) Rules, 1957, as it covered more than one

transaction of sale. This view was confirmed by the Appellate Assistant Commissioner, who had also stated that the E-I certificate not only

covered more than one transaction, but also sale to more than one purchaser. A further appeal to the Tribunal was also unsuccessful.

2. In this revision, the learned Counsel for the petitioners contended that E-I certificates are to be issued by the outside-State dealers and Rule 9-D

requiring separate certificates for each transaction is found only in the Madras Rules which could not be enforced as against the outside dealer and

that, therefore, had no application to the instant case. The declaration furnished by the assessee was not, therefore, defective and they are entitled

to the exemption. In support of this contention, the learned Counsel relied on the decision of the Supreme Court in *State of Madras Vs. R. Nand*

Lal and Co., Before dealing with the point in question, it is necessary to notice certain statutory provisions. u/s 6(2) of the Central Sales Tax Act,

1956, where a sale in the course of inter-State trade or commerce of goods of the description referred to in Sub-section (3) of Section 8 has

occasioned the movement of such goods from one State to another any subsequent sale to a registered dealer during such movement effected by a

transfer of documents of title to such goods, shall not be subject to tax under the Act. The proviso requires that in order to get the exemption in

respect of these second sales to a registered dealer by transfer of documents of title during movement of the goods, the assessee should produce a

certificate duly filled and signed by the registered dealer from whom the goods were purchased by him containing the prescribed particulars.

Section 13 of the Act confers a rule-making power on the Central Government and, in particular, Section 13(I)(d) enabled the Central Government

to prescribe the form and the particulars to be contained in any declaration or certificate to be given under the Act. In exercise of this power, the

Central Government have made Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957. Dealing with Section 6(2), Rule 12(4)

prescribed that the certificate referred to in that sub-section shall be in form E-I or form E-II, as the case may be. Section 13(3) and (4) also

enable the State Government to make rules for carrying out the purpose of the Act. Purporting to act under this power, the Government of Tamil

Nadu had prescribed Rule 9-D in the Central Sales Tax (Madras) Rules, 1957. This rule requires that the E-I certificate shall not cover more than

one transaction of sale. In other words, in order to get the benefit of exemption u/s 6(2), the dealer would have to produce the E-I certificate for

each transaction separately and not a consolidated certificate. The learned Counsel for the petitioners contended that the rules prescribed by the

Central Government did not impose any such condition of producing E-T certificate in respect of each transaction and that, therefore, the State had

no authority to impose a further condition that the E-I certificate should be produced in respect of each transaction separately. We are of the view

that the learned Counsel for the petitioners is well-founded in this contention.

3. A similar question arose for consideration before the Supreme Court in the decision in *State of Madras Vs. R. Nand Lal and Co.*, with

reference to the C form declarations. u/s 8(1), a registered dealer selling goods in inter-State trade or commerce of the goods specified in Sub-

section (3) of that section is liable to pay tax under the Act only at the rate of 3 per cent of his turnover. But this is subject to the condition that he

produces a declaration in form C or certificate in form D, as the case may be, as required u/s 8(4). While prescribing forms C and D in Rule 12 of

the Central Rules, as it originally stood, the Central Government had not imposed any condition that the declaration or certificate should not cover

more than one transaction but Rule 10 of the Madras Rules prescribed that such declarations or certificates in form C or D, as the case may be,

shall not cover more than one transaction in order to get the concessional rate of taxation u/s 8(1). In the case before the Supreme Court, the

assessee, who was a dealer in Madras State sold the goods coming within the description of Section 8(3) of the Act, to a registered dealer in

Punjab State and produced declaration in form C, but the declaration covered more than one transaction of sale. The assessing officer and the

appellate authorities rejected these forms as not being in accordance with Rule 10 of the Madras Rules. this court took the view that Rule 10 of the

Madras Rules would not bind the Punjab dealer and that the C forms produced by the assessee were in order. On a further appeal, the Supreme

Court held that the Madras Rules framed by the Government of Tamil Nadu were intended to apply only to dealers within the State of Tamil Nadu

and they would not apply to dealers outside the State. Therefore, Rule 10(1), which directed that no single declaration should cover more than one

transaction of sale, had no application to a purchasing dealer outside the State of Tamil Nadu. In that view, the Supreme Court affirming the

judgment of the High Court held that the declaration furnished by the assessee were not defective and the assessee was liable to pay tax only at the concessional rate as prescribed by Section 8(1).

4. The ratio of this judgment is clearly applicable to the facts of this case. Even in the instant case, the Central Rules only prescribed the form and

did not impose any condition that the certificate shall not cover more than one transaction. Rule 9-D, as Rule 10 of the Madras Rules, could not

impose any obligation on the outside-State seller to issue a single certificate for each one of the transactions, though that certificate has to be

furnished by such outside-seller. Such an obligation could be imposed only by a rule framed by the Central Government u/s 13(1)(d). Further the

scheme of the Act and the Rules relating to the applying for and obtaining of the forms, declarations and the certificates and the authority from

whom they have to be obtained also clearly indicate that proviso to Rule 9-D could not have been intended to apply to dealers outside the State of

Tamil Nadu. In fact, after holding that the conditions prescribed in Rule 10 requiring that the declaration in form C should be in respect of each

transaction separately are not intended to be applied in the case of outside purchaser, the Supreme Court further observed :

The situation which has arisen in this case could have been avoided, if instead of each State making its rules requiring that no single declaration shall

cover more than one transaction, the Central Government in exercise of the power u/s 13(1)(d) of the Act had made the Rules.

5. After this decision of the Supreme Court, a proviso was introduced by the Central Government to Rule 12(1) incorporating the condition that no

single declaration or certificate shall cover more than one transaction of sale except in cases where the total amount of sales made in a year

covered by one declaration or certificate, is equal to or less than Rs. 5,000. But they have not correspondingly amended Rule 12(4), which

prescribed a certificate referred to in Section 6(2). But the learned Counsel for the revenue relied on the particulars to be furnished in form E-I and,

in particular, columns B and D thereof and contended that the form prescribed itself suggests that for each individual purchaser and with respect to

each transaction, the dealer shall produce separate form E-I certificates. In column B, the name of the purchasing dealer and the address would

have to be furnished. This column indicates that at least the certificate should relate to an individual purchaser. It is true that, in the instant case, the Appellate Assistant Commissioner had observed that the certificate produced not only cover transactions of sale in favour of the petitioners but also others. But we have seen the certificate itself and we are satisfied that though the certificate covers a number of transactions, all of them deal with the same purchaser, namely, the petitioners herein. But column B in no way suggests that the certificate should be confined to each transaction separately. Of course, column D states that the invoice number and date will have to be mentioned and it uses the singular ; but from this we are unable to infer that the form prescribed was in any way intended to impose a condition that for each transaction there should be separate E-I forms. We must observe that the use of the word ""invoice"" in singular should also be taken to include invoices and not to be restricted to an invoice alone. We have to, therefore, hold that the form produced by the petitioners herein cannot be rejected as defective. It is not in dispute that the goods covered by the form are the goods that fall u/s 8(3) and that the transaction was one falling u/s 6(2). It follows that the petitioners are entitled to the deduction on the ground of exemption u/s 6(2).

6. The petition is accordingly allowed with costs. Counsel's fee Rs. 250