
(1994) 03 MAD CK 0120
In the Madras High Court
Case No : Writ Appeal No. 1351 of 1993

Ceat Ltd.

APPELLANT

Vs

State of Tamil Nadu and another

RESPONDENT

Date of Decision : 29-03-1994

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 13, 13(2), 24(3)

Citation : (1994) 03 MAD CK 0120

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : C. Hanumantha Rao, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

K.A. Swami, C.J.

This appeal is preferred against the order dated August 20, 1993 [See page 24 supra] passed by the learned single Judge in W.P. No. 15632 of 1993. As the learned single Judge has rejected the writ petition, the petitioner therein has come up in appeal.

2. In the writ petition, the petitioner sought for quashing the notice dated July 22, 1993, issued by the Assistant Commissioner (CT), Central Assessment Circle III, demanding a penalty of Rs. 7,720 from the petitioner on the ground that the tax was due on November 20, 1992, whereas it was paid on November 24, 1992; as such there was a delay of three days. Hence, the penalty of Rs. 7,720 was demanded as per sub-section (3) of section 24 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act"). The learned single Judge has held that as the petitioner had obtained permission and adopted the mode of self-assessment, it was required to file and pay the tax due for the month of October, 1992, on or before November 20, 1992, as per rule 18(2) of the Tamil Nadu General Sales Tax Rules, 1959 (hereinafter referred to as "the Rules"), which is in accordance with section 24(3) of the Act.

3. It is contended before us that, in the case of self-assessment, sub-section (2) of section 13 is attracted, that the tax under the said sub-section shall become due without any notice of demand to the dealer on the date of receipt of the return or on the last due date as prescribed, whichever is later, as such the sales tax becomes due on the date the return is filed; and the tax has been paid along with the return filed on November 24, 1992. Therefore, it is contended that there is no question of any delay either in filing the return or in payment of the sales tax. In short, it is submitted that rule 18(2) is not in conformity with section 13(2) of the Act, that as the date of filing the return is later than the date prescribed u/s 13(2), it is the date of filing of the return that determines the date for payment of the tax due. As such, the provisions of sub-section (3) of section 24 of the Act are not attracted, consequently, penalty demanded is without the authority of law.

4. On the contrary, it is contended by learned Additional Government Pleader (Taxes) that sub-section (2) of section 13 of the Act specifically provides the last date for filing the return and the date on which the tax becomes due, and rule 18(2) of the Rules prescribes such a date. It is submitted that as per sub-rule (2) of rule 18, the return for the previous month has to be filed on or before the 20th of the succeeding month. Hence, tax has to be paid on or before the date filing the return and a receipt for having paid the tax has also to be enclosed. Therefore, it is submitted that it is open to the dealer to pay the tax on any date on or before the 20th of the succeeding month and file the return on any one of the dates from 1st to 20th of succeeding month. As in the instant case, it is submitted that the return has been filed on November 24, 1992, along with the payment of tax on that date, there is undoubtedly a delay of three days in the payment of sales tax. Hence, the respondents are justified in imposing the penalty as per sub-section (3) of section 24 read with sub-section (5) of section 12.

5. In the light of these contentions, the following point arises for consideration :

Having regard to the provisions contained in sub-section (2) of section 13 of the Act, in the case of self-assessment, whether it is open to the dealer to file a return on any date subsequent to 20th of the succeeding month and claim that, on such date of filing of the return alone the tax becomes due and, therefore, the provisions of sub-section (3) of section 24 read with sub-section (5) of section 12 of the Act are not attracted ?

6. The following facts are not in dispute. The dealer has adopted the mode of self-assessment on obtaining permission from the assessing authority. He has filed the return for the month of October 1992, on November 24, 1992 and along with it he has paid the tax due in a sum of Rs. 38,60,198. The assessing authority, on accepting the return, has levied a penalty of Rs. 7,720 on the ground that the tax as well as the return ought to have been filed on or before November 20, 1992. As such, it is a case in which the return has not been filed within time, nor has the tax been paid on the last date due. Therefore, as per sub-clause (ii) of

section 12(5) of the Act, penalty has been levied equal to two per cent of the tax payable for every month or part thereof during which the default in submission of the return continued, subject to a maximum of fifty per cent of the tax. As already pointed out, the contention of the dealer is based upon the provisions contained in section 13(2), which reads as under :

"(2) In lieu of the tax provisionally determined under sub-section (1), a dealer may, at his option, pay tax in advance during the year on the basis of his actual turnover for each month or for such other periods as may be prescribed. For this purpose, he may be required to furnish returns showing his actual turnover for each month or other periods as may be prescribed and to pay tax on the basis of such returns. The tax under this sub-section shall become due without any notice of demand to the dealer on the date of receipt of the return or on the last due date as prescribed, whichever is later."

It is contended that, as per the aforesaid provision, it is open to the dealer to file the return on any date and not necessarily on the last date prescribed under rule 18(2) of the Rules, because the aforesaid section 13(2) of the Act specifically provides that the tax under the sub-section shall become due without any notice of demand to the dealer on the date of receipt of the return or on the last due date as prescribed, whichever is later. As the return has been filed on November 24, 1992, along with the tax paid receipt though it is later to the last due date prescribed under rule 18(2), it cannot be held, in the light of the provisions contained in section 13(2) of the Act that there is delay either in filing the return or in payment of the tax.

7. It may be relevant to notice that sub-section (2) of section 13 specifically provides that the last due date and the date for receipt of the return, are to be prescribed by the Rules. Accordingly, rule 18(2) of the Rules specifically provides the date for filing the return as well as the date for payment of the tax due. Sub-rules (2) to (5) of rule 18 read as follows :

"(2) Subject to the provisions of sub-rule (5), the dealer shall submit a return in form A-1 showing the total and taxable turnover for each month and the amount or amounts actually collected by him by way of tax or taxes during that month. The return for each month shall be submitted so as to reach the assessing authority on or before the 20th of the succeeding month. Along with the return, he shall also submit proof of payment as specified in sub-rule (1) of rule 55 for the full amount of tax or taxes payable under any of the section 3, 3A, 3B, 4, 5 or 7A for the month to which the return relates after deducting therefrom the amount, if any, claimed as refund due in the month under rule 23.

(3) The return in form A-1 so filed shall, subject to the provisions of sub-rule (4), be provisionally accepted. If the return is submitted without proof of payment as specified in sub-rule (1) of rule 55 for the full amount of tax payable after deducting therefrom the amount, if any, claimed as reimbursement or refund due in the month under rule 23, such amount of tax shall become due on the date of

receipt of the return or on the last due date as prescribed in sub-rule (2) whichever is later, and shall be recovered in accordance with the provisions of the Act without any notice of demand to the dealer.

(4) If no return is submitted in respect of any month on or before the date specified in sub-rule (2) or before the expiry of the period prescribed in sub-rule (5) or if the return submitted appears to be incorrect or incomplete, the assessing authority shall, after making such enquiry as he considers necessary and after giving the dealer notice as prescribed in rule 12, determine the turnover to the best of his judgment and provisionally assess the tax or taxes payable for the month and shall serve upon the dealer a notice in form B-2 and the dealer shall pay the sum demanded at the time and in the manner specified in the notice.

(4-A) Omitted by S.R.O. A-36/92 dated March 6, 1992.

(5) Every dealer who discontinues his business during the course of a year in which he is assessed under the method provided in this rule shall submit to the assessing authority concerned within thirty days of such discontinuance of business, a return in form A-1 in the manner prescribed in sub-rule (2) for the month in which his business was discontinued."

It is clear from sub-rule (2) of rule 18 that in the case of self-assessment, the return for each month shall have to be submitted so as to reach the authority on or before the 20th of the succeeding month, and along with the return, the tax-paid receipt has also to be enclosed. Thus, it is open to the dealer to pay the tax on any date from 1st of the succeeding month till the 20th and file the return either on the 20th of the succeeding month or on any date before that date, that is to say, from the 1st to 20th of the succeeding month. What is necessary is that along with the return, the proof of payment of the tax as specified in sub-rule (1) of rule 55, has also to be enclosed. As such, the last date prescribed for payment of tax due as well as for filing of the return is 20th only. Hence, it is not possible to hold that either sub-rule (2) of rule 18 is in any way contrary to sub-section (2) of section 13 of the Act, or that the return can be filed by the dealer on any date subsequent to 20th of the succeeding month without incurring penalty. The expression, "whichever is later" found in sub-section (2) of section 13 of the Act is only to give latitude to the dealer to pay the tax on any date from 1st to 20th of the succeeding month and file the return also on or before the 20th of the succeeding month along with a tax-paid receipt. Hence, it does not mean that the return can be filed later than 20th of the succeeding month. The tax can be paid earlier to the filing of the return, but in either case it shall not be later than 20th of the succeeding month.

7. Learned counsel for the appellant has placed reliance on a decision of the Supreme Court in Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others, wherein it has been laid down that the taxing statute has to be construed as it is and there is no equity about the tax and there is also

no presumption as to tax. It has been further laid down that nothing is to be read in; nothing is to be implied and one can only look fairly at the language used. Even applying the said rule of interpretation, it is not possible to hold that sub-section (2) of section 13 of the Act gives freedom to the dealer to file the return on any date subsequent to the date prescribed under the Rules. In the interpretation of a statute, what is also to be borne in mind, is the intendment of the legislation. The intendment of sub-section (2) of section 13 is to prescribe the due date for payment of the tax as well as the last date for filing the returns and give latitude to the dealer to pay the tax due on any date prior to the last date prescribed for filing of the return. If this intention has to be respected and enforced, it has to be necessarily held that sub-section (2) of section 13 of the Act does not give any latitude or freedom or liberty to the dealer to file the return on any date subsequent to the 20th of the succeeding month in the case of self-assessment. If the interpretation placed by learned counsel for the appellant on sub-section (2) of section 13 of the Act is accepted, the very object and intendment of sub-section (2) of section 13 of the Act, prescribing the last date for payment of the tax due, would be rendered nugatory. Consequently, it would become impracticable or not possible to enforce the very provisions contained in sub-section 13(2), as it would be open to the dealer to choose any date for filing the return subsequent to 20th of the succeeding month, which would result in not only taking away the effect of section 12(5) of the Act but also rule 18(2) of the Rules. Such an interpretation, which results in defeating the very provisions of the Act, cannot at all be countenanced.

8. Learned Additional Government Pleader (Taxes) placed reliance on a decision of a learned single Judge of this Court in *Godrej & Boyce Mfg. Co. Ltd. v. Joint Commissioner of Commercial Taxes* [1994] 93 STC 380; (1993) 4 MTCR 549. No doubt, in the aforesaid decision, rule 18(2) has been referred to and it has been stated that the return is required to be filed on the 20th of the succeeding month and that the tax becomes payable on the 20th, but the contention of the nature which has been raised in the instant case had not been raised therein.

9. Accordingly, the point raised for determination is answered in the negative and it is held that under any circumstance, in the case of provisional assessment, the last date for filing the return and payment of tax due is the 20th of the succeeding month.

10. For the reasons stated above, the appeal fails and the same is dismissed. There will be no order as to costs. However, the appellant is granted, as requested, two weeks' time for payment of the sum demanded as penalty.

11. Writ appeal dismissed.