(1976) 01 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 194 of 1972

Commissioner of Sales Tax APPELLANT

Vs

Bombay Textile Stores RESPONDENT

Date of Decision : 07-01-1976

Acts Referred:
Central Sales Tax Act, 1956 — Section 13, 8, 9

Citation : (1980) ILR (MP) 188 : (1978) 23 MPLJ 291 : (1978) MPLJ 291 : (1978) 41 STC 484

Hon'ble Judges : Shiv Dayal Shrivastava, C.J;S.S. Sharma, J

Bench : Division Bench

Advocate : K.K. Adhikari, for the Appellant;

Judgement

S.S. Sharma, J.

The Board of Revenue, Madhya Pradesh, Gwalior, has sent a statement of the case and referred the following question to this court for its decision :

Whether, under the facts and circumstances of the case, the Tribunal is justified in holding that regarding the date of registration, which was not mentioned in the C forms originally produced, evidence should have been accepted in the reassessment proceedings ?

The relevant facts, briefly stated, are as follows :

The assessment of the non-applicant for the assessment year Diwali 1960-61 was reopened under Sub-section (3) of Section 9 of the Central Sales Tax Act read with Sub-section (1) of Section 19 of the Madhya Pradesh General Sales Tax Act, 1958, as some of the C forms, which had been filed by the assessee in his original assessment case, did not contain the date of registration. The C forms, which did not contain the date of registration, were Nos. 197014, 366140, 393767, 377143, 198700, 80897, 198601 and 397755. In pursuance of a notice, which was issued to the assessee, an application along with the letters of the concerned parties mentioning the date of registration was filed. On the strength of these letters it was prayed that the date of registration as mentioned in those letters be incorporated in the relevant C forms which had earlier been filed. The Sales Tax Officer rejected the prayer and, accordingly, rejected the C forms also and held that the assessee was not entitled to the reduced rate of taxation. He, therefore, reassessed the non-applicant.

From amongst the eight C forms that were rejected, the argument in appeal with regard to the C forms bearing Nos. 366140, 377143 and 80897 issued by Kailash Brothers, Kanpur, was that since a C form bearing No. 294351 issued by the same purchasing dealer was on record, which mentions the date of registration, on the basis of the date mentioned in this C form, that should be taken to be the date in the other three C forms issued by the same purchasing dealer in which the date of registration was not mentioned. With regard to the two C forms bearing Nos. 393767 and 397755 issued by Kisan Bhandar, Bhao Nagar, the contention was that a C form bearing No. 393770 issued by the same purchasing dealer, which bears a date of registration, should be made use of for finding the date of registration, which was not mentioned in the two rejected C forms.

The learned Assistant Commissioner of Sales Tax accepted this contention and accepted the five C forms, three of Kailash Brothers, Kanpur and two of Kisan Bhandar, Bhao Nagar, because there was a C form of each of the two purchasing dealers on record wherein the date of registration was mentioned.

As regards the remaining three C forms bearing Nos. 197014, 198700 and 198601, the assessee filed a certificate issued by the Sales Tax Officer, Orai, in which the date of registration of the purchasing dealer was mentioned. On the basis of this certificate it was urged that since the assessee had given out the date of registration of the purchasing dealer, the three C forms issued by the purchasing dealer, which did not give out the date of registration, should be accepted. The Assistant Commissioner of Sales Tax, relying on the order of the Madras High Court in Deputy Commissioner (Commercial Taxes), Coimbatore Division Vs. Parekutti Hajee Sons, and that of this court in K.M. Chopra and Co. v. Additional Commissioner of Sales Tax [1967] 19 S.T.C. 46 Mad, rejected the contention holding that, apart from the C forms that had been filed, no further evidence could be considered to make good the deficiency in the C forms that were filed by the assessee.

Against this order the assessee preferred an appeal before the Board of Revenue, Madhya Pradesh, Gwalior. Before the Board of Revenue the only question was in respect to the three C forms which were rejected by the Appellate Assistant Commissioner. There also the assessee contended that the certificate from the Sales Tax Officer, Orai (U.P.), wherein the date of registration was mentioned, should have been accepted to supplement the deficiency in the C forms that were initially filed by him before the taxing authorities. The learned Member, Board of Revenue, observed that:

The principles of natural justice demand that the assessee should have been given an opportunity either to file correct C forms or to rectify the defect noted therein. Since the appellant had filed a letter from the Sales Tax Officer, Orai (U. P.), giving the date of registration certificate of the purchasing dealer, who had issued the C form, there was no justification not to accept this letter and treat the said C form as invalid.

He consequently set aside the order under appeal and remanded the case to the assessing authority for accepting the said C forms as valid on the basis of the letter issued by the Sales Tax Officer, Orai and to make an assessment accordingly.

On an application submitted on behalf of the Commissioner of Sales Tax, Madhya Pradesh, the Board of Revenue has referred the aforesaid question of law for the decision of this court.

A selling dealer shall not be entitled to the benefit as is provided in Sub-section (1) of Section 8 of the Central Sales Tax Act unless he furnishes to the prescribed authority in the prescribed manner a declaration duly filled in and signed by a registered dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority. As provided in Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, framed in exercise of the powers conferred by Sub-section (1) of Section 13 of the Central Sales Tax Act, 1956, the declaration and the certificate referred to in Sub-section (4) of Section 8 of the Act has to be in forms C and D respectively. The form of declaration in form C, as appended to the Rules, has to be in triplicate, namely, the original, the duplicate and the counterfoil. The columns in that form C, amongst others, are "name of the purchasing dealer to whom issued along with registration certificate No." and "date from which registration is valid". This form also requires the declarant to mention the registration certificate number with its date issued under the Act.

Admittedly, the three C forms bearing Nos. 197014, 198700 and 198601 were not completely filled in inasmuch as neither of them made a mention of the date of registration. The assessee wanted to supplement these C forms by the certificate issued by the Sales Tax Officer, Orai, District Jalaun, U. P., certifying the date of registration of the purchasing dealer. According to the learned Member, Board of Revenue, this certificate should have been accepted as evidence to prove the date of registration in respect to which the columns in the three C forms were left blank.

Rule 8 of the Madhya Pradesh Sales Tax (Central) Rules, 1957, requires a registered dealer, who wishes to purchase goods from another such dealer on payment of tax at the rate applicable under the Act to sale of goods by one registered dealer to another, for the purposes specified in the purchasing dealer''s certificate of registration, to obtain from the authority the blank declaration form in form C as prescribed under Sub-rule (1) of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, for furnishing it to the selling dealer. Before furnishing the declaration to the selling dealer, the purchasing dealer or any responsible person authorised by him in this behalf has to fill in the form and has also to affix his usual signature in the space provided therein for the purpose.

In The Deputy Commissioner of Commercial Taxes, Madras Vs. Manohat Brothers, Madras, , a Division Bench of the Madras High Court considered the various defects in the various C forms that were in issue in that case. In that case, one of the C forms suffered from a similar defect as we have in the instant case. At page 693 of the said Reports, it was observed as follows :

What remains is only S. No. 4 relating to a turnover of Rs. 350 which has been subjected to tax at the rate of 7 per cent on the ground that the C form does not mention the date of registration. The C form is admittedly lacking in a material particular by reason of this omission. This should therefore attract tax only at the rate of 7 per cent u/s 8(2) of the Act.

In our opinion, when the statute gives a concession to an assessee subject to his compliance with certain provisions of the Act or the Rules, then, in that event, the assessee, to get the benefit given to him by the statute, has to strictly comply with the conditions which entitle him to that benefit. The reasoning, which weighed with the learned Member, Board of Revenue, is the principle of natural justice which, in our opinion, in the circumstances would be inapplicable. A declaration form, which leaves the column of date of registration blank and thus is not completely filled in, would not give the requisite information and details to the assessing authority as has been contemplated by the Act and the Rules in that behalf. In view of this, the assessing authority will have no option but to ignore such an incomplete C form. In this view, the three declaration forms in question being incomplete in themselves as they did not mention the date of registration, the assessee was not entitled to have the benefit of Section 8(1) of the Central Sales Tax Act. The letters filed in the reassessment proceedings were thus of no avail.

That apart, in the instant case, the certificate from the Sales Tax Officer, Orai, District Jalaun, U. P., mentioning the date of registration was filed at the time of hearing of the appeal. In our opinion, the filing of this certificate at the appellate stage was also of no avail.

In K.M. Chopra and Co. Vs. Additional Commissioner of Sales Tax and Others, , a Division Bench of this High Court has held that it is implicit in Section 8(4) of the Act that for claiming the benefit of the rate of tax prescribed by Sub-section (1), the declaration must be produced before the taxing authority and before assessment. The production of the declaration form before the higher authority after assessment is of no avail. The declaration form claiming the benefit of the lower rate of tax has to be produced before assessment and not afterwards. In K.M. Chopra and Co. Vs. Additional Commissioner of Sales Tax and Others, , the production of the declaration form before the Additional Commissioner of Sales

Tax was held to be of no avail. This was the view taken by the Madras High Court in Manohar Brothers'' case [1962] 13 S.T.C. 686 MP. There also it was held that there is no scope for the assessee to claim the benefit of Section 8(1) of the Act by producing the C form before the appellate authority after the assessment order was made against him, because the Act does not confer any power upon the appellate authority to receive the C forms produced before it for the first time by the assessee by condoning the failure on his part to produce them before the assessing authority. It was further observed that non-observance of the Rules by the assessee in the matter of production or C forms will inevitably deprive him of the benefit of favourable tax under Sub-section (1) of Section 8 of the Act.

In view of the principles laid down in K.M. Chopra''s case [1967] 19 S.T.C. 46 mad by this court and in Manohar Brothers'' Case [1962] 13 S.T.C MAD. 686 by the Madras High Court, the obvious result is that the certificate filed before the appellate authority, wherein the date of registration was mentioned, could not be used to supplement the deficiency in the C forms that were filed before the assessing authority. We, therefore, answer the question referred to us as follows:

On the facts and circumstances of the case, the Tribunal was not justified in holding that regarding the date of registration, which was not mentioned in the three C forms originally produced, evidence should have been accepted in the reassessment proceedings.

A copy of this judgment under the seal of this court and signature of the Registrar shall be sent to the Tribunal for disposing of the case accordingly.

In the circumstances of the case, we shall leave the parties to bear their own costs.