
(1978) 04 MP CK 0027

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 222 of 1972

Commissioner of Sales Tax

APPELLANT

Vs

Shivnarayan Jagatnarayan

RESPONDENT

Date of Decision : 03-04-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 6

Citation : (1981) ILR (MP) 255 : (1978) 42 STC 315

Hon'ble Judges : A.P. Sen, C.J.;J.S. Verma, J

Bench : Division Bench

Advocate : M.V. Tamaskar, for the Appellant; H.S. Shrivastava and A.K. Khaskalam, for the Respondent

Judgement

This Judgment has been overruled by : Phool Chand Gupta Vs. State of Andhra Pradesh, AIR 1997 SC 914 : (1997) 1 JT 700 : (1997) 1 SCALE 419 : (1997) 2 SCC 591 : (1997) 1 SCR 420 : (1997) 104 STC 601 : (1997) AIRSCW 805 : (1997) 2 Supreme 18

J.S. Verma, J.—This is a reference u/s 44 of the M. P. General Sales Tax Act, 1958, made by the Board of Revenue at the instance of the Commissioner of Sales Tax to obtain the opinion of this court on the following question, namely :

Whether a subsequent sale to be entitled for exemption u/s 6(2) of the Central Sales Tax Act, 1956, must be supported by the production of C form declarations (in addition to form E-I) as required by Rule 8-D of the Madhya Pradesh Sales Tax (Central) Rules, 1957, or whether the assessing authority is bound to grant exemption on production of E-I form from the selling dealer even though no C form declarations from the purchasing dealer are produced?

This question arises out of the Tribunal's order dated 28th October, 1969, passed in Appeal No. 247-IV/68, which was an appeal u/s 38(2) of the M. P. General Sales Tax Act, 1958. The relevant period of assessment is 1963-64.

2. The assessee, M/s. Shivnarayan Jagatnarayan of Raigarh, is a dealer in

foodgrains, oil-seeds and forest produce, etc. During the relevant period, the assessee purchased oil-seeds and sold them by endorsing the railway receipts in favour of the purchasers. The turnover involved is about Rs. 2,00,000. It is not in dispute that this turnover represents "subsequent sale" within the meaning of Section 6(2) of the Central Sales Tax Act, 1956 and, as such, is exempt from payment of Central sales tax. The relevant provisions applicable to the facts of the present case, as they then stood, read as follows:

Proviso to Section 6(2) of the Central Sales Tax Act, 1956: "Provided that no such subsequent sale shall be exempt from tax under this Sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner a certificate duly filled and signed by the registered dealer from whom the goods were purchased, containing the prescribed particulars.

Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957: "The certificate referred to in Sub-section (2) of Section 6 shall be in form E-I or form E-II, as the case may be.

Rule 8-D of the M. P. Sales Tax (Central) Rules, 1957 : "The exemption provided in Sub-section (2) of Section 6 of the Act shall not be granted unless the dealer making the sales referred to in Rules 8-B and 8-C, furnishes to his appropriate Sales Tax Officer the "Original" of the declaration form C received from the registered dealer to whom he sold the goods together with the portion marked "Original" of the certificate in form E-I or E-II, as the case may be.

3. Admittedly, the assessee complied with the requirement of Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957, inasmuch as the requisite certificate in form E-I was furnished by it but it did not literally comply with Rule 8-D of the M. P. Sales Tax (Central) Rules, 1957, inasmuch as the declaration in form C prescribed therein was not furnished by the assessee in addition to giving the certificate in form E-I, The question which arose for determination was whether the assessee was entitled to the exemption from payment of Central sales tax on these facts, in accordance with Section 6(2) of the Central Sales Tax Act, 1956, full compliance with which is found proved.

4. The Tribunal has held that since Section 6(2) does not require production of declarations in form C, Rule 8-D of the M. P. Sales Tax (Central) Rules, 1957, framed by the State Government, can only be directory and not mandatory. Taking this view, the Tribunal came to the conclusion that the assessee was entitled to the exemption claimed by it u/s 6(2) of the Central Sales Tax Act, 1956.

5. Aggrieved by the aforesaid view taken by the Tribunal on the nature of Rule 8-D of the M. P. Sales Tax (Central) Rules, 1957, the Commissioner of Sales Tax applied for and was granted a reference to this court for answering the aforesaid question. This is how the question comes up for our decision.

6. In substance, the only point for our decision is whether Rule 8-D of the

Madhya Pradesh Sales Tax (Central) Rules, 1957, is directory or mandatory. The question of validity of this rule does not arise for our consideration and, therefore, we express no opinion on the validity of the rule and our decision is confined only to the nature of that rule, assuming it to be validly made.

7. Section 6 of the Central Sales Tax Act, 1956, imposes the liability to tax on inter-State sales. Sub-section (1) lays down that "subject to the other provisions contained in this Act" every inter-State sale effected by every dealer is exigible to the payment of tax. Section 8 provides for the rate of tax on these inter-State sales. Sub-section (2) of Section 6 then provides for an exemption "notwithstanding anything contained in Sub-section (1)" in respect of any "subsequent sale" where it is to a registered dealer in the manner laid down in the Sub-section, of goods of the description referred to in Sub-section (3) of Section 8. The proviso contained in Sub-section (2) of Section 6 lays down the condition precedent to be fulfilled by the dealer effecting the subsequent sale so as to entitle him to the exemption granted by Sub-section (2) of Section 6. The only requirement of the proviso is that the dealer effecting the subsequent sale should furnish to the prescribed authority "in the prescribed manner a certificate duly filled and signed by the registered dealer from whom the goods were purchased" containing the prescribed particulars. In short, the only requirement of the proviso is that the selling dealer effecting the subsequent sale should furnish to the prescribed authority the prescribed certificate duly filled and signed by the registered dealer from whom he had purchased the goods, i. e., the seller to the selling dealer effecting the subsequent sale. There is no further requirement of this proviso. There can be no doubt that a provision granting an exemption from tax requires strict compliance with the same and there is no entitlement to the exemption claimed unless the condition laid down therein has been fulfilled by the dealer. All the same, it is implicit from what has already been stated about the contents of the proviso to Sub-section (2) of Section 6, that it does not contain a further requirement that the selling dealer effecting the subsequent sale should also furnish to the prescribed authority a certificate obtained by him from the registered dealer to whom the goods are sold by him or, in other words, declaration in form C given by the purchaser to such subsequent seller. The word "prescribed" used in this proviso undoubtedly means as provided in the rules framed under the Act.

8. Section 13 of the Central Sales Tax Act, 1956, contains the power to make rules. Section 13(l)(d) enables the Central Government to make rules providing for "the form in which and the particulars to be contained in any declaration or certificate to be given under this Act". Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, is obviously framed by the Central Government in exercise of this power. Sub-rule (1) of Rule 12 prescribes the declaration and the certificate referred to in sub-section (4) of Section 8 to be in forms C and D respectively. It will be seen that form C prescribed by these Rules is in relation to Sub-section (4) of Section 8, which deals with the concessional rate of tax in the case of an inter-State sale and does not cover the field of

exemption from tax for which Sub-section (2) of Section 6 has been enacted. Sub-rule (2) of Rule 12 prescribes certificates in forms E-I and E-II, as the case may be, for the certificate referred to in Sub-section (2) of Section 6. Reading the proviso to Sub-section (2) of Section 6 along with Rule 12, there can be no doubt that the requirement, according to these provisions, to entitle the selling dealer effecting the subsequent sale to claim exemption is only the furnishing of a certificate in form E-I or E-II, as the case may be, obtained by him from his seller, i. e., "the registered dealer from whom the goods were purchased" by him. The further requirement of furnishing a declaration in form C is not prescribed by the Central Sales Tax (Registration and Turnover) Rules, 1957, for the purpose of claiming exemption under Sub-Section (2) of Section 6 of the Central Sales Tax Act, 1956.

9. Sub-section (3) of Section 13 of the Central Sales Tax Act, 1956, enables the State Government to make rules not inconsistent with the provisions of this Act and the rules made under Sub-section (1), to carry out the purposes of the Act. Sub-section (4) then enumerates, without prejudice to the powers conferred by Sub-section (3), certain specific purposes in respect of which the State Government may make rules. Clause (e) of Sub-section (4) is one such specified purpose, viz., matters relating to "any. form of declaration prescribed under Sub-section (4) of Section 8". The Madhya Pradesh Sales Tax (Central) Rules, 1957, have been framed by the State Government in exercise of the powers conferred on it u/s 13 of the Central Sales Tax Act, 1956. Rule 8-D therein, with the construction of which we are concerned in the present case, finds place in these State Rules. The requirement of this Rule 8-D clearly is that the selling dealer effecting the "subsequent sale" and claiming exemption under Sub-section (2) of Section 6 of the Central Sales Tax Act, 1956, in addition to furnishing the certificate in form E-I or E-II, as the case may be, to the prescribed authority, should also furnish to the prescribed authority a declaration in form C received from the registered dealer to whom he sold the goods, i. e., the purchaser from the seller effecting the subsequent sale. As already indicated, this further requirement laid down in Rule 8-D of the Rules framed by the State Government is not a requirement contained either in the proviso to Sub-section (2) of Section 6 of the Central Sales Tax Act, 1956, or the Rules framed by the Central Government thereunder, viz., the Central Sales Tax (Registration and Turnover) Rules, 1957. May be, Rule 8-D contained in the State Rules requiring in addition the production also of form C is not inconsistent with the provisions of the Central Sales Tax Act, 1956 and the Rules made thereunder by the Central Government and also helps to carry out the purposes of the Act inasmuch as it enables proving the fact that the subsequent sale was effected to a registered dealer in the course of an inter-State sale and for that reason its validity cannot be questioned. However, we express no concluded opinion on this point because, as earlier stated, the question of validity of this Rule does not arise for our consideration in the present case. The question then is whether Rule 8-D framed by the State Government is mandatory so that its strict compliance is necessary

or it is merely directory so that its substantial compliance is enough to fulfil its requirement.

10. In our opinion, the requirement of furnishing a declaration in form C obtained from the purchasing dealer by the selling dealer effecting the subsequent sale, not being a condition precedent prescribed in Sub-section (2) of Section 6 or the proviso therein, as also in the Rules framed by the Central Government prescribing the manner of the certificate required, Rule 8-D framed by the State Government cannot be construed to be mandatory. The effect of treating Rule 8-D as mandatory would obviously be to introduce a new condition for grant of exemption from tax which does not find place either in Sub-section (2) of Section 6 or the Rules framed by the Central Government to prescribe the manner in which the exemption can be claimed under Sub-section (2) of Section 6. Assuming this rule made by the State Government as valid, it follows necessarily that the same must be construed merely as a directory provision so that its substantial compliance is sufficient.

11. The object of furnishing a declaration in form C in the context of a claim for exemption under Sub-section (2) of Section 6 of the Central Sales Tax Act, 1956, has already been indicated earlier. Ordinarily, the declaration in form C prescribed by Clause (1) of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, is in connection with Sub-section (4) of Section 8, i. e., for getting the benefit of a concessional rate of tax. This requirement in the case of an exemption claimed under Sub-section (2) of Section 6 can be only for the purpose of showing that the subsequent sale was an inter-State sale made to a registered dealer. Thus, the satisfaction of the assessing authority of the subsequent sale being made to a registered dealer during the course of an inter-State sale is the total requirement of Rule 8-D framed by the State Government. Ordinarily, the furnishing of declaration in form C obtained from the purchasing dealer would prove this fact beyond controversy. However, substantial compliance of this directory provision may be made by satisfying the assessing authority of this fact even by any other mode. The only requirement is that the assessing authority should be satisfied of the fact that the subsequent sale was to a registered dealer in the course of an inter-State sale. The condition precedent for claiming exemption from tax is only of furnishing a certificate in form E-I or E-II, as the case may be, as laid down in the proviso to Sub-section (2) of Section 6 read with Clause (2) of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957. The requirement of Rule 8-D framed by the State Government cannot be placed on the high pedestal of a condition precedent as earlier stated and, consequently, this rule has to be treated only as directory and not mandatory.

12. From the statement of case submitted by the Tribunal and some of the material facts already stated above, it is not in dispute that substantial compliance with Rule 8-D of the Madhya Pradesh Sales Tax (Central) Rules, 1957, has been found proved in the present case notwithstanding the failure to

produce the declaration in form C obtained from the purchasing dealer inasmuch as there is no dispute that the subsequent sales were effected by the assessee to registered dealers by transfer of documents of title during the course of their movement from one State to another.

13. We shall now refer to some of the authorities relevant for deciding the question referred to us which would show that the view taken by us is in consonance with that expressed in most of them while construing similar provisions.

14. In *State of Orissa Vs. M.A. Tulloch and Co.*, their Lordships were required to construe Section 5(2)(a)(ii) of the Orissa Sales Tax Act, 1947 and Rule 27(2) of the Orissa Sales Tax Rules, 1947. Rule 27(2) contained a further requirement of production of a declaration which was not a condition imposed by Section 5(2)(a)(ii) of the Orissa Sales Tax Act, 1947. The question before their Lordships was whether Rule 27(2) was mandatory so that in case of its breach the selling dealer was not entitled to get the deduction allowable u/s 6(2)(a)(ii). The contention on behalf of the assessee in that case was that in spite of the imperative language used in Rule 27(2), that rule must be treated as directory so as to avoid any conflict with the provisions of the Act. Their Lordships accepted the assessee's contention and held that production of declaration under Rule 27(2) is not always obligatory on the part of a selling dealer when claiming the exemption and it was open to him to claim exemption by adducing other evidence so as to bring the transaction within the scope of Section 5(2)(a)(ii) of the Act to the satisfaction of the assessing authority. While reaching that conclusion, their Lordships observed as follows:

In our opinion, Rule 27(2) must be reconciled with the section and the rule can be reconciled by treating it as directory. But the rule must be substantially complied with in every case. It is for the Sales Tax Officer to be satisfied...if he is satisfied from other facts on the record, it is not necessary that the selling dealer should produce a declaration in the form required in Rule 27(2), before being entitled to a deduction.

In *Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others*, their Lordships reiterated the above view while distinguishing their earlier decision in the *State of Orissa Vs. M.A. Tulloch and Co.*, on the ground that the presence of the proviso in one case and its absence in the other made all the difference. Their Lordships in that connection stated as follows :

The decision of this court in *State of Orissa Vs. M.A. Tulloch and Co.*, does not help the appellant. That decision was concerned with Section 5(2)(a)(ii) of the Orissa Sales Tax Act, 1947. That section was similar in terms to Section 5(2)(a)(ii) of the Act in question, but there was no proviso to that section in the Orissa Act similar to the one found in the present section. That makes all the difference, for it is the proviso that imposes the condition. But under Rule 27(2) made under the Orissa Act "a dealer shall produce a true declaration in writing by the

purchasing dealer or by such responsible person as may be authorised in writing in this behalf by such dealer that the goods in question are specified in the purchasing dealer's certificate of registration as being required for resale by him or in the execution of any contract". This court held that the said mandatory provision was inconsistent with Section 5(2)(a)(ii) of the Orissa Sales Tax Act; and to avoid that conflict it reconciled both the provisions by holding that the rule was only directory and, therefore, it would be enough if it was substantially complied with.

Their Lordships pointed out that a provision prescribing the exemption has to be construed strictly; the substantive clause gives the exemption and the proviso qualifies the substantive clause but the language of the provision cannot be rewritten to read therein something which the legislature has not said. In our opinion, the ratio of these two decisions clearly supports our conclusion that the proviso to Sub-section (2) of Section 6 of the Central Sales Tax Act, 1956, Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957 and Rule 8-D of the Madhya Pradesh Sales Tax (Central) Rules, 1957, can be harmoniously construed giving effect to all of them and avoiding any inconsistency between them only by treating Rule 8-D of the Madhya Pradesh Sales Tax (Central) Rules, 1957, as directory and not mandatory.

15. A question similar to that with which we are concerned arose for decision of the Madras High Court. A Division Bench of that Court in *State of Madras v. P. Subbiah Pillai* [1967] 20 S.T.C. 263 construed a similar rule framed by the State Government in the context of exemption claimed u/s 6(2) of the Central Sales Tax Act, 1956, requiring production of declaration in form C for claiming exemption from tax. The Madras High Court treated the rule framed by the State Government as merely directory and not mandatory in order to avoid inconsistency with Section 6(2) of the Act and the Rules framed by the Central Government. In doing so, it was observed as follows:

But it is quite another matter to insist upon the dealer producing declarations in form C and to lay down a rule that unless he does so he will be disentitled to the exemption. That certainly is not the effect of Sub-section (2) of Section 6 or of the proviso. The conditions for the exemption under the Sub-section are only that the sales must be second sales and effected by transfer of documents during movement of goods to a registered dealer and that further certificates in form E-I obtained from the dealer from whom the assessee has purchased, are produced. Nowhere is any indication to be found in Sub-section (2) or the proviso thereto, that C forms as such should be obtained and produced.

Since we are not called upon to decide the validity of such a rule framed by the State Government, it is not necessary for us to express any opinion on that question as earlier stated. We, however, with respect, express our agreement with the view of the Madras High Court that such a rule should be treated as directory and not mandatory in order to avoid any inconsistency with the Act. The Gujarat High Court in *State of Gujarat v. Yakubhai Hajihakumutdin and Co.*

[1969] 23 S.T.C. 117 , took the same view in a similar situation treating the rule framed by the State Government prescribing the additional requirement of producing form C as merely directory and not mandatory. The above Madras decision [1967] 20 S.T.C. 263 was also quoted with agreement. On this point, with respect, we are in full agreement with the view expressed by the Division Bench of the Gujarat High Court. The relevant portions from that decision are as follows:

The relevant form C is, therefore, prescribed under Rule 12(1) and it must be produced only when the exemption is claimed u/s 8(1). On the other hand, where the exemption is claimed u/s 6(2), the relevant form is prescribed under Rule 12(2) and it is in form E-I, so far as the present case is concerned.

The proviso, no doubt, lays down a condition for availing of this exemption and that condition is that the dealer effecting the subsequent inter-State sale must furnish to the prescribed authority in the prescribed manner a certificate duly filled in and signed by the registered dealer u/s 6(2), i. e., form E-I or E-II only. There would be no question of the certificate in form C being furnished in such a case as the dealer does not claim any exemption u/s 8(1). The dealer claims complete exemption from liability to tax itself u/s 6(2) and, for this purpose, as per the proviso in Section 6(2), the certificate in form E-I only has to be furnished. Section 6 is the charging section which provides a complete exemption on production of the relevant certificate E-I, while Section 8(1) provides a limited exemption by providing taxation at a reduced rate, when the declaration in form C is submitted. The two sections are totally different in their ambit and scope.... In the case of a subsequent sale there would be a complete exemption when the certificate in form E-I is furnished, which is the only relevant condition in the proviso to Section 6(2), when all other conditions are admittedly fulfilled.

16. Reliance was placed by the learned Government Advocate, appearing on behalf of the department, on the decision of a learned single Judge of the Andhra Pradesh High Court in *Noone R. S. Govindarayulu and Bros. v. Sales Tax Appellate Tribunal, A.P., Hyderabad* [1974] 33 S.T.C. 580. That case is clearly distinguishable. That was a writ petition filed challenging the validity of a similar rule framed by the State Government requiring further the production of a declaration in form C for claiming the exemption under Sub-section (2) of Section 6 of the Central Sales Tax Act, 1956. That being so, validity of that rule was the only question which arose for decision in that case. It was held therein that there was no inconsistency between the rule framed by the State Government and the Central Act or the rule made thereunder by the Central Government on account of which validity of the rule framed by the State Government was upheld. As earlier indicated, we are not called upon to decide that question and we have assumed the State rule to be valid. No doubt, while deciding that question, the learned single Judge did make certain observations to the effect that the rule prescribes only one mode of proof, i. e., production of the declaration in form C and that the same must be strictly complied with. If these

observations were made to indicate that such a rule framed by the State Government is mandatory and not merely directory, then, with respect, we are unable to agree with that view for the reasons already given.

17. In *Commissioner of Sales Tax, Madhya Pradesh, Indore v. Girja Prasad Sunderlal of Satna* [1968] 21 S.T.C. 360, the question which arose for decision by this court was about the enforceability of the proviso to Rule 8(1) of the Madhya Pradesh Sales Tax (Central) Rules, 1957, which laid down that no single declaration shall cover more than one transaction of sale, except in cases where the total amount covered by one declaration is equal to or less than Rs. 5,000 or such other amount as may be specified. One of us (A. P. Sen, J., as he then was), speaking for the Division Bench, held that the proviso to Rule 8(1) of the Madhya Pradesh Sales Tax (Central) Rules, 1957, is unenforceable, being inconsistent with the provisions of the Act. In reaching that conclusion, reliance was placed on the decision in *State of Madras Vs. R. Nand Lal and Co.*, wherein the extent of the rule-making power of the State Government u/s 13 of the Central Sales Tax Act, 1956, was considered.

18. The above cases indicate that inconsistency between a rule framed by the State Government and the Act or the Central Rules renders the State rule unenforceable. This consequence is avoided by treating the State rule to be directory and not mandatory in spite of the imperative language of the State rule. This is the course we have adopted in the present case to avoid any inconsistency between the relevant provisions.

19. The result, therefore, is that the view taken by the Tribunal that Rule 8-D of the Madhya Pradesh Sales Tax (Central) Rules, 1957, is merely directory and not mandatory is correct and we uphold that conclusion for the reasons already given. In view of the facts found, as stated in the statement of case, we hold that the assessee was entitled to get the exemption u/s 6(2) of the Central Sales Tax Act, 1956, in the present case even without production of declarations in form C obtained from its purchasing dealer.

20. Accordingly, the reference is answered in favour of the assessee and against the revenue. The parties will bear their own costs of this court.