
(1983) 02 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 2659 of 1980 N

C.P.K. Trading Company

APPELLANT

Vs

Additional Sales Tax Officer and Another

RESPONDENT

Date of Decision : 24-02-1983

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 13(1), 13(3), 13(4), 13(4)(e)

Citation : (1983) 2 ILR (Ker) 746 : (1983) 54 STC 222

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : S. Gopalakrishna Iyer, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T. Kochu Thommen, J.—Exhibits P3 and P4 which are impugned are orders of assessment made under the Central Sales Tax Act, 1956 (the "Act"), for the assessment years 1976-77 and 1977-78. The petitioner had claimed exemption u/s 6A of the Act. The exemption was not granted for the reason that the petitioner failed to furnish the details under Rule 5A of the Central Sales Tax (Kerala) Rules, 1957, made by the State Government (I shall call it the "State Rules") u/s 13(3) and (4) of the Act. The contention of the petitioner-assessee is that the said rule made by the State Government has been superseded by Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, made by the Central Government (I shall call it the "Central Rules") u/s 13(1) in respect of transactions falling within Section 6A and accordingly insistence on compliance with the provisions of Rule 5A of the State Government is unjustified.

2. It has to be stated that the petitioner approached this Court without resorting to an effective alternative remedy by way of appeal before the competent authorities. Be that as it may, I see no justification in the contention that the State rule has been superseded or repealed by the Central rule. I shall now examine the relevant provisions. Section 6A provides :

6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale:-(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods.

(2) If the assessing authority is satisfied after making such enquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under Sub-section (1) are true, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.

The case of the petitioner is that the goods were sent by him to an agent or dealer in another State for the purpose of effecting a sale in that State. The movement of the goods was not occasioned by or pursuant to any sale here. In other words there was no sale in the course of inter-State trade.

3. The burden to show that the movement of the goods took place otherwise than by way of sale to attract Section 6A is upon the dealer. If the burden is not discharged by him, such movement is liable to be treated as in the course of inter-State sale. That is what has been done by the impugned orders.

Rule 5A of the State Rules reads :

5A. Every principal, who claims exemption on the sales of goods on consignment account through agents outside the State shall maintain the ; following records, namely :-

(a) A register showing the name and full address of the agent to whom goods were consigned together with description of the goods so despatched for sale, on each occasion and their quantity and value ;

(b) The originals of authorisations sent to the agent for the sale of the goods ;

Note :-Copies of these authorisations and description of goods despatched for sale on each occasion with particulars of their quantity and value should be simultaneously furnished to the assessing officer concerned.

(c) The originals of the written contract, if any, entered into between the

principal and the agent;

(d) Copies of bills issued by the agents to the purchasers;

(e) Pattials, namely, accounts rendered by the agents to the principals from time to time showing the gross amount of the bill and deduction on account of commission and incidental charges;

(f) Extract of the ledger account of the principal maintained in the books of the agents duly signed by such agents ;

(g) Copies of railway receipts or lorry receipts under which the goods were so despatched; and

(h) A register showing the date and mode of remittance of the amount to the principal.

These are the particulars that the petitioner was required to furnish for the purpose of considering his claim for exemption u/s 6A. The petitioner did not furnish those details contending that he was not bound to do so as he had already complied with the requirements of Rule 12 of the Central Rules;

4. The Central Rules are made under Sub-section 13(1). That Sub-section reads:

13. Power to make Rules.-(1) The Central Government may, by notification in the official Gazette, make rules providing for-

(a) . . . ;

(b) . . . ;

(c) . . . ;

(d) the form in which and the particulars to be contained in any declaration or certificate to be given under this Act, the State of origin of such form or certificate and the time within which any such certificate or declaration shall be produced or furnished ;

(e) . . . ; 1

(f) . . . ; 1

(g) . . .

Clause (d) refers to the form and the particulars relating to the declaration or certificate given under the Act. The Central Rule 12(5) made u/s 13(1) says :

12. (5) The declaration referred to in Sub-section (1) of Section 6A shall be in form F :

Provided that a single declaration may cover transfer of goods, by a dealer, to any other place of his business or to his agent or principal, as the case may be, effected during a period of one calendar month:

Provided further that if the space provided in form F is not sufficient for making the entries, the particulars specified in form F may be given in separate annexures attached to that form so long as it is indicated in the form that the annexures form part thereof and every such annexure is also signed by the person signing the declaration in form F:

Provided further that form F in force before commencement of the Central Sales Tax (Registration and Turnover) (Second Amendment) Rules, 1973, may continue to be used up to 31st day of December, 1977, with suitable modifications.

Form F contains various particulars required to be furnished by a person making a declaration u/s 6A. Section 6A imposes an obligation on the dealer to make a declaration containing the particulars prescribed by the prescribed authority.

5. Section 13(3) provides :

(3) The State Government may make rules, not inconsistent with the provisions of this Act and the Rules made under Sub-section (1) to carry out the purposes of this Act.

Section 13(4) provides :

(4) In particular and without prejudice to the powers conferred by Sub-section (3), the State Government may make rules for all or any of the following purposes, namely:-

(e) the authority from whom, the conditions subject to which and the fees subject to payment of which any form of certificate prescribed under Clause (a) of the first proviso to Sub-section (2) of Section. 6 or of declaration prescribed under Sub-section (1) of Section 6A or Sub-section (4) of Section 8 may be obtained, the manner in which such forms shall be kept in custody and records relating thereto maintained and the manner in which any such form may be used and any such certificate or declaration may be furnished.

Section 13(4)(e) thus refers to a declaration prescribed under Sub-section (i) of Section 6A. The effect of Sub-sections (1), (3) and (4) of Section 13 is that while the Central Government may by rules prescribe the particulars required in any declaration to be made under the Act, the State Government may also by rules prescribe the particulars for declaration to be made u/s 6A provided that such rules of the State Government shall be consistent with the Act and the Central Rules. Section 13, therefore, confers power both on the Central Government and the State Government to prescribe particulars in regard to declarations. While the power of the Central Government is wider, that is, it can prescribe particulars in regard to any declaration made under the Act, the power of the State Government is limited to what is stated under Clause (e) of Section 13(4), namely, declaration in regard to Sub-section (1) of Section 6A or Sub-section (4) of Section 8. This means that the State Government may prescribe particulars for the declaration u/s 6A and the Central Government may also prescribe particulars for a declaration in regard to the very same matter. The legislature

has thus simultaneously conferred power upon two authorities in respect of the very same matter. The only restriction on the power of the State Government in the area earmarked is that it shall not be inconsistent with the Act or the Central Rules.

6. The complaint of the petitioner is that in so far as the Central Government has already prescribed particulars in respect of declaration relating to Section 6A the entire field is occupied by the Central Government as a result of which there is no scope for any other rules. I do not agree. The legislature has clearly evinced an intention to confer power on the two authorities, namely, the Central Government and the State Government, at the very same time in respect of the very same matter. It is by virtue of this simultaneous conferment of power that the State Government made the rules. The rule made by the State Government prescribing certain particulars is in no way inconsistent with the rule made by the Central Government requiring particulars to be furnished in form F. The petitioner is not in a position to show that it would not be possible to comply with the State rules without disobeying the Central rule. All that the petitioner's counsel says is that the State Rules are unnecessary and are deemed to be superseded. He has no case that it is impossible to obey one without disobeying the other. His contention is that the Central rule is meant to occupy the entire field and that Central Rule 12 has therefore impliedly repealed State Rule 5A. There is, in my view, no justification to warrant that conclusion either from the wording of the statute or the rules. They in fact indicate to the contrary. In a case such as the present where the legislature has conferred power simultaneously on two authorities and where the Central Government called for certain particulars and the State Government called for certain additional particulars in regard to the very same matter, I see no inconsistency or repugnancy or conflict. In the circumstances, there is no merit in the contention that the authorities are unjustified in requiring the petitioner to supply the particulars prescribed under Rule 5A. In so far as the petitioner has been called upon to comply with the legal requirements, exhibits P3 and P4 are impeccable and the challenge against them fails. The original petition is dismissed. No costs.