
(1989) 06 KL CK 0013
In the High Court Of Kerala
Case No : Writ Appeal No. 498 of 1983

C.P.K. Trading Company

APPELLANT

Vs

Additional Sales Tax Officer and Another

RESPONDENT

Date of Decision : 07-06-1989

Acts Referred:

Central Sales Tax (Kerala) Rules, 1957 — Rule 11C, 5A
Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12
Central Sales Tax Act, 1956 — Section 13, 6A, 6A(1)

Citation : (1989) 2 ILR (Ker) 699 : (1990) 76 STC 211

Hon'ble Judges : K.S. Paripoornan, J; K.A. Nayar, J

Bench : Division Bench

Advocate : C. Natarajan and A.K. Jose, for the Appellant; L.G. Potti, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.S. Paripoornan, J.—The petitioner in O.P. No. 2659 of 1980 N is the appellant in this writ appeal. The first respondent is the Additional Sales Tax Officer, III Circle, Mattancherry, and the second respondent is the State of Kerala. The appellant is a firm dealing in pepper, ginger, betelnuts, etc. We are concerned with the assessment years 1976-77 and 1977-78. The appellant/assessee claimed that transactions to the tune of Rs. 1,21,971.91, for the year 1976-77, and transactions to the tune of Rs. 1,05,822.42, for the year 1977-78, are only consignment sales effected through agents and so not exigible to sales tax under the Central Sales Tax Act. They were only despatched to commission agents outside the State. The plea was that those inter-State transactions were only consignment sales. For both these years, the appellant/assessee produced sale pattials and F forms in support of the claim. The assessing authority took the view that the documents prescribed under Rule 5A of the Central Sales Tax (Kerala) Rules, 1957, were not produced by the appellant and so there was a failure to prove the principal-agent relationship between the appellant and the dealers in other States. The case made out was that copies of bills issued by the

agents to the purchasers were not produced, as required by Rule 5A(d) of the Central Sales Tax (Kerala) Rules, It was held that in view of the failure to produce the documents prescribed under Rule 5A of the Central Sales Tax (Kerala) Rules, the appellant failed to prove the relationship of principal-agent and so the sales by the appellant to the dealers at the other end should be treated as inter-State sales and assessments were completed accordingly. On this basis, exhibits P3 and P4 assessment orders were passed, for the years 1976-77 and 1977-78, on 15th February, 1980.

2. The appellant filed O.P. No. 2659 of 1980 and assailed exhibits P3 and P4 on various grounds. Rule 5A of the Central Sales Tax (Kerala) Rules was attacked as ultra vires, unauthorised and inapplicable to cases governed by Section 6A of the Central Sales Tax Act. A learned single Judge of this Court, by judgment dated 24th February, 1983 C.P.K. Trading Company Vs. Additional Sales Tax Officer and Another, upheld exhibits P3 and P4 as legal and valid. The challenge against Rule 6A of the Central Sales Tax (Kerala) Rules was also negated. The petitioner in the O.P. has come up in writ appeal.

3. We heard counsel for the appellant, Mr. C. Natarajan as also the Special Government Pleader, Mr. L.G. Potti. In our opinion, the facts of this case are in a narrow compass and the question of law that arises for consideration is simple. We are of the view, that for disposing of this appeal, it is unnecessary to consider the vires of Rule 6A of the Central Sales Tax (Kerala) Rules. We refrain from doing so.

4. In order to arrive at a satisfactory solution to the controversy raised in this case, it will be useful to extract Section 6A of the Central Sales Tax Act, Sections 13(1), 13(3) and 13(4)(e) of the Central Sales Tax Act, Rules 12(5) to 12(9) of the Central Sales Tax (Registration and Turnover) Rules, 1957, Rule 5A of the Central Sales Tax (Kerala) Rules, 1957 and Rule 11C of the Central Sales Tax (Kerala) Rules.

Section 6A of the Central Sales Tax Act :

"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.

Explanation,--In this section, "assessing authority" in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act."

Sections 13(1), 13(3) and 13(4)(e) of the Central Sales Tax Act :

"13. Powers to make rules.--(1) The Central Government may, by notification in the Official Gazette, make rules providing for--

..... (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.

(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 ; "

Rules 12(5) to 12(9) of the Central Sales Tax (Registration and Turnover) Rules :

"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 the commencement of the Central Sales Tax (Registration and Turnover) (Second Amendment) Rules, 1973, may

continue to be used up to 31st day of December, 1980, with suitable modifications.

(6) Form C referred to in Sub-rule (1), or as the case may be, form F referred to in Sub-rule (5), shall be the one obtained by the purchasing dealer or, as the case may be, the transferee in the State in which the goods covered by such form are delivered.

Explanation.--Where, by reason of the purchasing dealer not being registered u/s 7 in the State in which the goods covered by form C referred to in Sub-rule (1) are delivered, he is not able to obtain the said form in that State, form C may be the one obtained by him in the State in which he is registered under the said section.

(7) The declaration in form C or form F or the certificate in form E-1 or form E-II shall be furnished to the prescribed authority up to the time of assessment by the first assessing authority :

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit.

(8) (a) The person referred to in Clause (a) of Sub-rule (1) of Rule 3 shall alone be competent to sign the declaration in form C or form F or the certificate in form E-I or form E-II :

Provided that where such person is a proprietor of any business or a partner of a firm or a karta or manager of a Hindu undivided family, any other person authorised by him in writing may also sign such declaration or certificate :

Provided further that in the case of a company, such declaration or certificate can also be signed by any other officer of the company authorised under the Memorandum or Articles of Association of the company or under any other special or general resolution of the company or under a resolution passed by the Board of Directors of the company, to authenticate any document on behalf of such company.

(b) Such person shall signify on such declaration or certificate his status and shall make a verification in the manner provided in such declaration or certificate.

(9) The provisions of the second and third provisos to Sub-rule (1), Sub-rule (2) and Sub-rule (3) shall, with necessary modifications, apply to the declaration in form F or the certificate in form E-I or form E-II."

Rules 5A and 11C of the Central Sales Tax (Kerala) Rules :

"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.

11C. (1) A dealer who claims that he is not liable to pay tax 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 business, or his agent or principal, as the case may be, and not by reason of sale in the course of inter-State trade or commerce shall obtain a declaration in form F in duplicate duly filled and signed by the principal officer of the other place of business or his agent or principal, as the case may be, and shall attach to his return to the assessing authority the portion marked "original". The assessing authority may in its discretion, also direct the dealer to produce for inspection the portion of the declaration marked "duplicate".

(2) When goods are received on transfer, and not by reason of sale or purchase in the course of inter-State trade or commerce, from a head office, branch, agent or principal in another State by the branch, head office, principal or agent within the State, the person empowered under Sub-section (1) of Section 6A or Clause (a) of Sub-rule (7) of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, as the case may be, shall issue a declaration in form F obtained from the registering authority and duly filled and signed by him to the head office, branch, agent or principal, as the case may be, in the other State.

(3) The blank declaration in form F shall be issued by the registering authority, only to dealers registered under the Act on payment of a fee at the rate of

rupees twelve per book of twenty-five forms and rupees forty per book of one hundred forms.

(4) No registered dealer shall give nor shall a dealer accept any declaration in form F except in a form obtained from the registering authority and not declared obsolete and invalid by the Government of Kerala under the provisions of Sub-rule (10) of Rule 11 read with Sub-rule (5) of this rule.

(5) The procedure for the supply, use, custody, maintenance and validity of declaration forms, prescribed in Sub-rules (4) to (11) of Rule 11 shall apply mutatis mutandis to the supply, use, custody, maintenance and validity of declaration forms in form F."

5. Section 6A of the Central Sales Tax Act was inserted in the statute by Act 61 of 1972 with effect from 1st April, 1973. The scope of Section 6A of the Central Sales Tax Act came up for consideration before us. In *Vijayamohini Mills v. State of Kerala* [1989] 75 STC 63 ; (1989) 1 KLT 515, we held that u/s 6A(1) of the Central Sales Tax Act, the burden of proof is on the dealer to prove that the movement of the goods was occasioned not by reason of sale, but was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal. The burden so cast on the dealer may be discharged by furnishing the declaration as prescribed (F forms) along with the evidence of despatch of such goods. Furnishing of the declaration (F forms) is not compulsive or mandatory. It is only permissive. It is open to the dealer to discharge the burden of proof cast on him, in any other manner, by adducing other evidence. In other words, it is open to the dealer to discharge the burden of proof cast on him either by furnishing the declaration (F forms), as enjoined by Section 6A(1) of the Central Sales Tax Act or by adducing necessary proof in accordance with law and show that the movement of the goods was occasioned not by reason of sale, but was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal. In other words, production of the declaration (F forms), as enjoined by Section 6A(1) of the Central Sales Tax Act, is not compulsive ; it is permissive. It is optional.

6. In the instant case, it is common ground that the appellant/ dealer produced the sale pattials and the declarations (F forms). As stated by us, in *Vijayamohini Mills*" case [1989] 75 STC 63 (Ker) ; (1989) 1 KLT 515, even after the production of F forms, it is open to the assessing authority to make further enquiry to satisfy himself that the particulars contained in the declaration (F forms) are "true". It is only then, the assessing authority is enjoined to pass an order in the matter. A plain reading of Section 6A(2) of the Central Sales Tax Act points out that in cases where the dealer exercises the option of furnishing the declaration (F forms), the only further requirement is that the assessing authority should be satisfied, after making such enquiry, as he may deem necessary, that the particulars contained in the declaration furnished by the dealer are "true". The scope or frontiers of enquiry, by the assessing authority u/s 6A(2) of the central Sales Tax Act is limited to this extent, namely, to verify whether the particulars

contained in the declaration (F forms) furnished by the dealer are "true". It means, the assessing authority can conduct an enquiry to find out whether the particulars in the declaration furnished are correct, or dependable, or in accord with facts or accurate or genuine. That alone is the scope of the enquiry contemplated by Section 6A(2) of the Act. On the conclusion of such an enquiry, he should record a definite finding, one way or the other. As to what should be the nature of the enquiry, that can be conducted by the assessing authority u/s 6A(2) of the Act, is certainly for him to decide. It is his duty to verify and satisfy himself that the particulars contained in the declaration furnished by the dealer are "true". As a quasi-judicial authority, the assessing authority should act fairly, and reasonably in the matter. During the course of the enquiry, u/s 6A(2) of the Act, it is open to him to require the dealer to produce relevant documents or other papers or materials which are germane or relevant, to find whether the particulars contained in the declaration (F forms) are "true". It is not possible to specify the documents or other materials or papers that may be required, to be furnished in all situations and in all cases. It depends upon the facts and circumstances of each case. The power vested in the officer is a wide discretionary power, to find, whether the particulars contained in the declaration (F forms) are "true". It is not possible or practicable to lay down the exact documents or materials that may be required in all the cases, by the assessing authority, to come to a proper and just finding as required by Section 6A(2) of the Act.

7. In the above perspective, on a perusal of exhibits P3 and P4 in this case, we find that the assessing authority failed to apply his mind to the terms of Section 6A(2) of the Central Sales Tax Act. The assessing authority was obliged to peruse the declarations (F forms) and after making such enquiry, as he may deem necessary, find whether the particulars contained in the declarations (F forms) are true. Instead of doing so, the assessing authority relied solely on Rule 5A(d) of the Central Sales Tax (Kerala) Rules, and held that the dealer has failed to produce copies of bills issued by the agents to the purchasers, and so failed to prove the principal-agent relationship and so the sales by the dealer to persons at the other end should be treated as inter-State sales. In entering such a finding, the assessing authority failed to apply his mind to Section 6A(2) of the Central Sales Tax Act ; when the declarations (F forms) were produced, he should find whether the particulars contained in the declarations (F forms) furnished by the dealer are true. In this case, he has failed to do so. If for finding whether the particulars contained in the declarations (F forms) are true, any one of the matters mentioned in Rule 5A of the Central Sales Tax (Kerala) Rules are found to be relevant or germane to the enquiry, he should have substantiated the necessity for the production of such documents or papers, in the particular case, in exercising his powers u/s 6A(2) of the Central Sales Tax Act and then for non-production of such documents or papers in the enquiry, entered appropriate findings as specified in Section 6A(2) of the Act. This has not been done at all in this case. We find from exhibits P3 and P4 that the assessing authority has

totally failed to apply his mind to the only requirement of Section 6A(2) of the Act, namely, to find whether the particulars contained in the declarations (F forms), furnished by the dealer, are "true". That question alone arose for consideration before the assessing authority. On that aspect, there is no discussion or finding in exhibits P3 and P4. On this short ground, exhibits P3 and P4 orders are infirm. There is a total non-application of the mind to the crucial question or aspect that arose for consideration before the assessing authority ; also the scope of his jurisdiction u/s 6A(2) of the Central Sales Tax Act was misunderstood.

8. On this short ground, we hold that exhibits P3 and P4 are illegal. We quash exhibits P3 and P4. To this extent, we set aside the judgment C.P.K. Trading Company Vs. Additional Sales Tax Officer and Another, of the learned single Judge. We would repeat, that it is not necessary, for the purpose of this case, to pronounce upon the validity of Rule 6A of the Central Sales Tax (Kerala) Rules and we refrain from doing so.

9. Before concluding, we should stress one aspect. In cases where the dealer exercises his option to discharge the burden of proof cast on him, by adducing evidence without producing F forms, the important aspect to be borne in mind by the assessing authority is that the dealer is discharging the burden of proof cast on him to substantiate that the movement of the goods was occasioned not by reason of sale, but was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal outside the State. The burden of proof is not to the hilt. It is to be evaluated on probabilities. In evaluating the evidence adduced by the dealer, in this behalf, the assessing authority should focus his mind only on those aspects or facts which will be relevant to find, whether the movement of the goods was occasioned not by reason of sale, but otherwise. Only production of those documents or papers or materials relevant or germane to find that vital aspect, should be insisted.

10. The writ appeal is allowed. We direct the assessing authority to pass fresh orders of assessments, in the light of the observations contained in this judgment, after giving sufficient opportunity to the dealer in the matter.