

(1988) 04 AP CK 0011

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 5 of 1985

Jadhavjee Laljee

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 25-04-1988

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(1)

Citation : (1989) 74 STC 201

Hon'ble Judges : M. Jagannadha Rao, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : P. Venkatarama Reddy, for the Appellant; A. Venkataramana, The Government Pleader for C.T., for the Respondent

Judgement

Jeevan Reddy, J.—This tax revision case involves the interpretation of the words "or, as the case may be, could have obtained" occurring in the proviso to sub-section (1) of section 9 of the Central Sales Tax Act. We shall first state the facts which give rise to the said question.

2. The petitioner Jadhavjee Laljee is a registered dealer in Andhra Pradesh. He purchased a consignment of horse-gram (kulthi) from a Maharashtra dealer. He purchased the same while the goods were in inter-State movement, by obtaining an endorsement on the concerned railway receipts. In turn, he sold it to another dealer in Andhra Pradesh. Horse-gram is wholly exempt from sales tax under the Maharashtra Sales Tax Act. The petitioner did not furnish form E-I prescribed by the Central Sales Tax (Registration and Turnover) Rules, 1957, nor did he obtain the C form prescribed by section 8(4)(a) of the Central Sales Tax Act, from his purchaser. On these facts, the Commercial Tax Officer, Nirmal, included the relevant turnover in a sum of Rs. 1,25,067.40, in the turnover of the petitioner and levied Central sales tax thereon at the rate of 10 per cent. An appeal preferred to the Assistant Commissioner failed, as also a further appeal to the Sales Tax Appellate Tribunal. The Tribunal held, relying upon the language of the proviso to section 9(1) of the Act, that inasmuch as the petitioner has failed to

obtain the C form from his purchaser, tax has to be, and can be levied on the sale effected by him (second sale in the course of inter-State trade) and collected by the State of Andhra Pradesh for the reason that the petitioner is a registered dealer within this State. It was observed that the petitioner could have obtained the C form in connection with the purchase of horse-gram from this State and, therefore, this State is the appropriate State to levy the tax.

3. Mr. P. Venkatarama Reddy, learned counsel for the petitioner, contended that inasmuch as horse-gram is exempt from sale tax under the Maharashtra Sales Tax Act, the first inter-State sale effected by the Maharashtra dealer is equally exempt by virtue of sub-section (2-A) of section 8. In such a case, there is no occasion or necessity for the petitioner to obtain a C form in respect of the said purchase by him, and hence the proviso to section 9(1) is not attracted. According to the learned counsel, the proviso applies to, and contemplates two situations :

(i) where the dealer effecting the second sale has obtained and furnished the C form in respect of the purchase of the said goods, and (ii) where such dealer could have obtained the C form but failed to do so. According to the learned counsel, the proviso does not contemplate, and does not apply to a situation where it is wholly unnecessary for such dealer to obtain a C form. To such a situation the words "or, as the case may be, could have obtained" do not apply. Counsel, therefore, submits that the State of Andhra Pradesh is not the appropriate State to levy tax upon the petitioner.

4. On the other hand, Sri A. Venkataramana, the learned Government Pleader for Commercial Taxes, supports the reasoning and conclusion of the Tribunal and submits that the aforesaid words in the proviso to section 9(1) were put in to take in precisely a case of this nature and that, therefore, the levy of Central sales tax by the State of Andhra Pradesh is perfectly valid and competent.

5. Section 3 of the Act sets out when a sale or purchase of goods shall be deemed to have taken place in the course of inter-State trade or commerce. Section 6 is the charging section. All sales of goods, other than electrical energy, effected by a dealer in the course of inter-State trade or commerce are liable to Central sales tax at the prescribed rates. Section 7 provides for the registration of dealers, and section 8 prescribes the rates at which the Central sales tax shall be levied on sales effected in the course of inter-State trade or commerce. Section 9 deals with levy and collection of tax and penalties. Sub-section (1) thereof reads as follows :

"9. Levy and collection of tax and penalties. - (1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced :

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods and being also a sale which does not fall within sub-section (2) of section 6, the tax shall be levied and collected -

(a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods, and

(b) where such subsequent sale has been effected by an unregistered dealer, in the State from which such subsequent sale has been effected."

6. Sub-section (2) of section 6 provides that a second sale effected in the course of inter-State trade or commerce shall be exempt from tax, provided the sale is (a) to the Government, or (b) to a registered dealer, other than the Government, if the goods are of the description referred to in section 8(3). The exemption is, however, subject to two further conditions, viz., (i) the second seller furnishes E-I/E-II form to the prescribed authority, and (ii) a declaration in C form is obtained from the purchaser as provided in section 8(4)(a), if the sale is to a registered dealer; if, however, the sale is to the Government not being a registered dealer, a certificate referred to in section 8(4)(b), has to be obtained.

7. Now coming back to section 9(1), its object is twofold. Firstly, it provides that the tax on inter-State sale shall be levied by the Government of India and collected by the Government of the State from which the movement of goods commenced. Secondly, it specifies the appropriate State competent to levy tax on second and subsequent sales effected during the movement of goods from one State to another, where such second and subsequent sales are exigible to tax. As pointed out above, the second and subsequent sales effected during the movement of goods from one State to another are exempt subject to certain conditions provided in section 6(2). If those conditions are not satisfied, even the second, third, or any subsequent sale attracts Central sales tax. Since at the time such second or subsequent sale takes place, the goods are in movement from one State to another, the proviso to section 9(1) specifies the State which is competent to levy the tax on such sale. The proviso contemplates two situations, viz., (a) where such subsequent sale (second or subsequent sale, as the case may be) is effected by a registered dealer, and (b) where such second or subsequent sale has been effected by an unregistered dealer. In respect of the first situation, it provides that the appropriate State competent to levy tax on such subsequent sale shall be the State from which the registered dealer effecting such sale "obtained or, as the case may be, could have obtained" a declaration in C form in connection with the purchase of such goods. In the second situation, it provides that the appropriate State competent to levy tax shall be the State from which such subsequent sale has been effected. In this case, we are concerned with the first situation, i.e., with clause (a) in the proviso to section 9(1) which, for the sake of convenience, may be set out again :

"(a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods"

8. It may be noted that the words "or, as the case may be, could have obtained", were inserted by Amendment Act 28 of 1969. It is indeed these words which fall for consideration in this case. The argument of Mr. P. Venkatarama Reddy, learned counsel for the assessee - which we have already set out hereinabove - is that clause (a) in the proviso to section 9(1) contemplates a situation where it was expected of the second seller to have obtained a declaration in C form in connection with the purchase of the said goods, but not a situation where such a declaration in C form need not be obtained for the reason that the sale in his favour (i.e., purchase of the said goods by him) is exempt from tax by virtue of section 8(2-A). The contention is that where the sale in his favour is exempt, there is no occasion, nor any necessity for him to obtain a declaration in C form. According to him, clause (a) in the proviso contemplates a situation where it is necessary, or possible, to obtain such declaration and a dealer has either obtained, or could have obtained it. In such a case, the State from which he did obtain, or could have obtained such form, becomes the appropriate State.

9. On the other hand, the contention of the learned Government Pleader for Commercial Taxes is that even where obtaining such form is not called for because the sale in favour of the second seller is exempt by virtue of section 8(2-A), the said proviso has to be applied and followed for the purpose of determining which is the appropriate State to levy tax upon the second sale. For a proper appreciation of this controversy, it would be relevant to briefly notice the circumstances in which, and the reasons for which the said words were inserted by Act 28 of 1969.

10. On 31 August, 1967 the Madras High Court delivered its judgment in *State of Madras v. K. Nandagopal Chetty* [1968] 22 STC 290. The goods concerned therein moved out from the State of Gujarat to the assessee (a dealer in the State of Madras) under an inter-State sale. While the goods were in transit, the assessee transferred the documents of title to a buyer in the State of Madras. The said goods were exempt from sales tax under the Gujarat Sales Tax Act, if the sale was effected within that State. For that reason, the first sale effected in the course of inter-State trade or commerce was also exempt. For this reason, the assessee neither issued the declaration in C form to the Gujarat seller, nor the Gujarat seller issued form E-I. The question then arose whether the subsequent sale effected by the assessee, which was not exempt u/s 6(2), could be taxed by the State of Madras under the proviso to section 9(1) of the Act. It may be remembered that the words "or, as the case may be, could have obtained" were not there in clause (a) of the proviso at that time. On the language of the proviso to section 9(1), the Madras High Court held that inasmuch as the assessee in that case had not issued the declaration in C form

to the Gujarat seller, the proviso did not empower the State of Madras to tax the second sale. This is what the Court observed :

"In our opinion, both the conditions of this part of the proviso will have to be satisfied in order to invest the taxing State with jurisdiction. Not only the C form should be obtained from the taxing State, but it should also be in connection with the purchase of the goods involved in the second sale. The whole purpose of the proviso is to identify the State which is invested with jurisdiction to tax particular subsequent sales. It is, therefore, reasonable to construe the proviso as that, when it speaks of obtaining the form prescribed for the purposes of clauses (a) of sub-section (4) of section 8 in connection with the purchase of such goods, it means that the C form certificate has been obtained in respect of a particular first sale of the goods. The concluding phraseology in the proviso is not used in the abstract; but since the jurisdiction is to be localized with reference to particular transactions, the form spoken of must necessarily relate to such transactions. So much, as it appears to us, is clear from a reading of section 8(4) (a) with the proviso to section 9(1)."

11. The court recognised that the construction it was placing upon the proviso would give rise to a lacuna in the proviso, and that in case of sale of goods which are exempt from tax in the State from which they emanate and consequently in respect of which sale no declaration in C form is obtained, the second sale, even though not exempted u/s 6(2), would still be exempted; but, the court was of the opinion that in view of the actual language employed in the proviso to section 9(1), it had to conclude that the State of Madras cannot levy the tax. It was evidently to rectify this situation that the aforesaid words were inserted in clause (a) of the proviso to section 9(1) by Amendment Act 28 of 1969. In the "Notes on Clauses" appended to the Bill, the following note was appended with respect to clause 6 (section 6 of the amending Act) which indeed substituted the entire section 9. [We may state in this connection that the proviso to section 9(1) was again substituted by the amending Act 103 of 1976, which added clause (b) in the proviso; but so far as clause (a) is concerned, it practically remained untouched.] The note on clause 6 reads as follows :

"This clause seeks to substitute with retrospective effect section 9 of the principal Act by a new section . In respect of first inter-State sale, tax will be payable in the State wherefrom the movement of the goods commenced. In the case of a second or subsequent sale not covered by sub-section (2) of section 6, the tax will be levied and collected in the State where the registered dealer effecting the subsequent sale has his place of business"

12. Though this clause says that the appropriate State to tax the second or subsequent sale will be the State wherein the registered dealer who effected such sale has his place of business, the language employed in clause (a) of the proviso is not the same. The language used in the proviso is "the State from which the registered dealer effecting the subsequent sale obtained or, as the case may be, could have obtained, the form prescribed for the purpose of clause

(a) in connection with the purchase of such goods." In other words, the second sale shall be taxed by that State from which the registered dealer effecting such second sale obtained, or could have obtained the declaration in C form in connection with the purchase of such goods, i.e., in connection with the purchase of the said goods by him. Where a dealer obtains such certificate, no difficulty arises, and the State competent to tax such second sale is clearly denoted. The difficulty arises in a case where the sale in favour of such second or subsequent seller is exempt from tax and therefore he does not issue a declaration in C form to his seller, nor does his seller furnish form E-I. The said words, no doubt, take in a case where the dealer fails to obtain the C form; they also take in, in our opinion, a case where obtaining such a C form is not necessary and hence not obtained. By adopting this interpretation, there will be no lacuna in the provision - the lacuna pointed out by the Madras High Court. If the said words are capable of being understood in a manner leaving no lacuna, they should be so construed, rather than construing them the other way. This rule is as valid in the case of a taxing statute as in the case of any other statute. We are not adding any words in the statute; we are only construing it in a reasonable manner, i.e., so as to avoid a lacuna in the Act.

13. The object of the proviso to section 9(1), it must be understood, is only to determine or specify the appropriate State competent to tax such second or subsequent sale. For this purpose, even where the sale in favour of a dealer effecting such second or subsequent sale is exempt, one has to see from which State he could have obtained the declaration in C form, had it been necessary for him to furnish such a declaration. Thus, the said words would take in not only a situation where a dealer, who could have obtained such form, fails to obtain, but also covers a situation where it is not necessary for him to obtain such a declaration.

14. Mr. P. Venkatarama Reddy, learned counsel for the assessee, placed strong reliance upon the decision of the Madhya Pradesh High Court in *Bhojmal & Sons v. Commissioner of Sales Tax* [1982] 50 STC 36. In this case, oilcake was sold by certain dealers in Uttar Pradesh and Rajasthan in the course of inter-State trade or commerce. While the goods were in movement from one State to another, they were purchased by the assessee from the dealers in U.P. and Rajasthan. The assessee, in turn, sold them to Maharashtra and Madras dealers, by endorsing the documents of title. Sale of oilcake was exempt from sales tax in the States of Rajasthan and Uttar Pradesh, which means that the first inter-State sale of such goods in favour of the assessee (Madhya Pradesh dealer) was exempt from tax, and hence there was no occasion for the assessee to obtain a declaration in C form from the State of Madhya Pradesh and furnish it to his seller, nor was it necessary for the dealers of U.P. and Rajasthan to issue E-I forms. The State of Madhya Pradesh sought to tax the second sale effected by the assessee. The question arose whether the levy of tax was valid and competent? The Madhya Pradesh High Court referred to, and followed the decision of the Madras High Court in *Nandagopal Chetty's case* [1968] 22 STC 290 and observed that the

addition of words "or, as the case may be, could have obtained" does not make any difference to the principle and scope of the said proviso. The court observed :

"The contention of the learned counsel for the department cannot be upheld. The introduction of the words "could have obtained" in the proviso to section 9(1) of the Central Act does not make any difference in the present case. As stated above the purpose of obtaining form C is to have the sales taxed at concessional rate u/s 8(1) of the Central Act. If no tax was leviable on the sales of oil-cakes in the States of Rajasthan and Uttar Pradesh there was no question of having the sales taxed at concessional rate and, therefore, there was no necessity of obtaining the C form as provided u/s 8(4) of the Central Act. In the circumstances, it cannot be said that the assessee could have obtained form C as prescribed u/s 8(4) of the Central Act because no purpose was to be served by obtaining such form. The Statement of Objects and Reasons also does not help the department because the language of the proviso is clear and there is no ambiguity which may be sought to be resolved by having recourse to the Statement of Objects and Reasons. Moreover, in the Statement of Objects and Reasons it is stated that the tax will be levied and collected in the State where the registered dealer effecting subsequent sales has his place of business. But the language of the proviso is not to that effect"

15. On the above reasoning it was held that the proviso is not attracted to the sales effected by the Madhya Pradesh dealers to the dealers in Maharashtra and Madras and that the State of Madhya Pradesh was not competent to levy and collect tax on such sales.

16. With great respect, we are unable to agree with the reasoning of the Madhya Pradesh High Court. The logical consequence flowing from the ratio of the said decision is that all second and subsequent sales will be exempt from tax where the first inter- State sale of such goods is exempt. If the State of Madhya Pradesh is not competent to tax the second sale effected by the assessee in that case (a dealer registered in that State), it cannot be taxed by any other State, which means that that sale will be exempt from tax. If that is so, even a subsequent sale would equally be exempt by the same parity of reasoning, and so on. In our opinion, that could not have been the intention underlying the Act.

17. If the Act wanted to say that in cases where the first inter- State sale is exempt from tax, all subsequent sales will be equally exempt from tax, nothing was easier than to say so. It is true that the Statement of Objects and Reasons appended to the Bill, which became Act 28 of 1969, or the note on clause 6 thereof, does not expressly say that the object behind adding the said words was to override the decision of the Madras High Court, yet it would be reasonable to presume that Parliament was aware of the lacuna in the provision pointed out by the Madras High Court and wanted to remedy it. Otherwise, there is no discernible reason for the Parliament to add the said words in clause (a) of the proviso. Evidently, the Parliament wanted to tax the second and subsequent sales, if they do not fall within section 6(2), even where the first sale of such

goods is exempt by virtue of section 8(2-A). It must be remembered that section 9 was substituted by Amendment Act 28 of 1969 with retrospective effect, from the date of commencement of the Act. The insertion of the said words in clause (a) of the proviso could not have been without any purpose.

18. For the above reasons, the tax revision case fails and is, accordingly, dismissed. But, in the circumstances of the case, there shall be no order as to costs. Advocate's fee Rs. 200.

19. Petition dismissed.