(1966) 09 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 448 of 1965

K.M. Chopra and Co. APPELLANT

Vs

Additional Commissioner of Sales Tax and Others RESPONDENT

Date of Decision : 15-09-1966

Acts Referred:
Central Sales Tax Act, 1956 — Section 8(1), 8(4), 9(2)
Madhya Pradesh Sales Tax (Central) Rules, 1957 — Rule 8(2)

Citation : AIR 1967 MP 124 : (1970) ILR (MP) 31 : (1966) 11 MPLJ 1115 : (1967) 19 STC 46

Hon'ble Judges : P.V. Dixit, C.J;R.J. Bhave, J

Bench : Division Bench

Advocate : C.P. Sen, for the Appellant; K.K. Dube, Government Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

The petitioner-firm in this case seeks a writ of certiorari for quashing an order passed by the Sales Tax Officer, Jabalpur. on 31st March 1961 assessing it to sales tax under the Central Sales Tax Act, 1956 (hereinafter called the Act), in respect of its turnover for the period from 12th November 1958 to 31st October 1959. An appeal preferred by the applicant before the Appellate Assistant Commissioner of Sales Tax was rejected by the Appellate Assistant Commissioner as the petitioner failed to deposit the requisite amount of tax assessed before the admission of the appeal The petitioner''s revision petition before the Additional Commissioner of Sales Tax also failed The applicant prays that the orders of the Appellate Assistant Commissioner and the Additional Commissioner of Sales Tax bo also quashed.

The applicant-firm carries on the business of buying and selling Umber and is a "dealer" registered u/s 7 of the Act. For the period from 12th November 1958 to 31st October 1959 the assessor''s turnover of inter-State; sales, as per its return. was Rs 1,91.787.94 The Sales Tax Officer accepted this turnover and assessed sales tax on it at the rate of seven per cent. As the petitioner-firm did not put in an appearance before the Sales Tax Officer, the assessment proceedings were ex parte.

The petitioner-firm now contends, as it did before the Additional Commissioner of Sales Tax. that on ils turnover of inter-State sales it was liable to pay tax only at the rate of one per cent of its turnover as laid down u/s 8(1) of the Aet inasmuch as the sales were to registered dealers: and that the declarations of the sales having been made to registered dealers, which it did not file before the Sales Tax Officer but filed before the Additional Commissioner of Sales Tax, should have been acted upon. While rejecting the revision petition preferred by the applicant, the Additional Commissioner of Sales Tax observed that the declarations in ''C'' Form filed by the petitioner could not be admitted at that stage "especially when more than sufficient opportunity was given at the assessment stage".

The question of the rate at which the petitioner is liable to pay tax under the Act on its turnover turns on Sub-sections (1) and (4) of Section 8 of the Act. They are as follows:

"8 (1). Every dealer who, in the course of inter-State trade or commerce sells to a registered dealer goods of the description referred to in Sub-section (3) shall be liable to pay tax under this Act, which shall be one per cent of his turnover:

xx xx xx xx The provisions of Sub-section (1) shall not apply to any sale in the course of inter- State trade or commerce unless the dealer sel ling the goods furnishes to the prescribed authority in the prescribed manner a declara tion duty filled and signed by the registered dealer to whom the goods are sold, containing the prescribed particulars on a prescribed form oblained from the prescribed authority."

Rule 8 (2) of the Madhya Pradesh Sales Tax (Central) Rules. 1957, which has also a bearing on the matter, is in the following terms:

"8 (2). A registered dealer who claims to have made a sale to another registered dealer shall, in respect of such claim, attach to his return in Form V the portion marked ''original'' of the Declaration received by him from the purchasing dealer, and a list of such sales signed and verified by him. This list shall be in Form VI. dealer-wise, as far as possible. The assessing authority may, in ils discretion, also direct the selling dealer to produce for inspection the portion of the declaration marked ''duplicate''."

It will be seen that the provisions of Sub-section (1) of Section 8 do not come into play unless the ''dealer'' selling the goods furnishes to the prescribed authority in the prescribed mannerthe declaration referred to in Sub-section (4). According to Sub-rule (2) of Rule 8 of the M. P. Sales Tax (Centra!) Rules. 1957 a registered dealer, who claims that the sales have been to another registered dealer is required to attach to his return in Form V the portion marked "original" of the declaration received by him from the purchasing dealer, and a list of such sales signed and verified by him.

Shri C. P. Sen. learned counsel appearing for the petitioner, argued that Sub-section (4) of Section 8 of the Act authorised the State Government to prescribe only the manner or the mode in which the declaration spoken of by Sub-section (4) was to be filed and did not empower the Government to frame a rule prescribing the lime for the filing of such a declaration; and that, therefore, Rule 8 (2) of the aforesaid Rules, which fixed a time-limit for the filing of a declaration in C Form by providing that the declaralion should be annexed to the return, was inconsistent with Section 8(4) and, therefore, invalid. It was said that the declaration required by Sub-section (4) of Section 8 could be filed even before the revising authority.

There i.s no doubt considerable force in the contention of the learned counsel for the petitioner that the words "in the prescribed manner" used in Sub-section (4) of Section 8 only empowered the Government to lay down by rules the manner of filing a declaration in Form-C and not the lime within winch it is to be filed. The words "in manner and form" were construed by Lord Campbell, C. J. in Acraman v. Herniman. (1881) 16 QB 998: 117 ER 1164 as referring only to "the mode in which the thing is to be done" and not the time for doing it. This construction put by Lord Campbell on the words "in manner and form" was accepted in K.I. Abraham Vs. Sales Tax Officer, Ponkunnam and Another, and Murli Dhar Dharampal Vs. The Sales Tax Officer, . and it has been held in those cases that a rule framed under the Central Sales Tax Act. 1956, prescribing lime limit for submission of declarations spoken of by Sub-section (4) of Section 8 is repugnant to Section 8(4) of the Act. Rule 8(2) of the Madhya Pradesh Sales Tax (Central) Rules. 1957. in so far as it lays down that the declaration must be attached to the return, cannot, therefore, be held to be valid. In any case, it cannot be construed as having a mandalo force so as to deprive the dealer of the benefit of the rate of tax u/s 8(1) if he omits to attach to his return the declaration but files it before the assessment.

The time-limit for the thing of the declaration required by Sub-section (4) of Section 8 is to be found in that provision ilself. Sub-section (4) of Section 8 requires that the declaration has to be furnished "to the prescribed authority" and the prescribed authority is the one u/s 9(2) empowered to assess the tax. The declaration must, therefore, he produced before the taxing authority. It is plain enough that when a dealer claims that his turnover is liable to tax at the rate of one per cent of his turnover, then the declaration for claiming the benefit of the lower rate of tax must be produced before the assessment and not afterwards. It is thus implicit in Sub-section (4) of Section 8 that for claiming the benefit of the rate of tax prescribed by Section 8(1) the de claration must be producerd before the taxing authority and before the assessment.

In the present ease admittedly the petitioner did not produce before the Sales Tax Officer the declarations which it should have produced for claiming the benefit of the rate of tax laid down in Section 8(1) of the Act. The production of the declarations before the Additional Commissioner of Sales Tax was of no avail and the Additional Commissioner was right in not taking any notice of the C-Form declarations produced before him. If he had given effect to those declarations, he would have acted contrary to the provisions of Subsection (4) of Section 8 requiring that the declarations must be furnished before the taxing authority and before the assessment.

For these reasons, the assessment order made against the petitioner-firm must be upheld. The result is that this application is dismissed with costs of the respondents. Counsel''s fee is fixed at Rs. 150. The outstanding amount of security deposit, if any after deduction of costs, shall be refunded to the petitioner.