

(1974) 09 CAL CK 0014
In the Calcutta High Court
Case No : Matter No. 498 of 1967

Mohatta Brothers

APPELLANT

Vs

Additional Member, Board of Revenue

RESPONDENT

Date of Decision : 16-09-1974

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 8
Civil Procedure Code, 1908 (CPC) — Section 41

Citation : (1975) 36 STC 582

Hon'ble Judges : Sabyasachi Mukharji, J; Pyne, J

Bench : Division Bench

Advocate : R.N. Bajoria, for the Appellant; B.P. Banerjee and S. Pal, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this reference under the Central Sales Tax Act, 1956, read with Section 21(3) of the Bengal Finance (Sales Tax) Act, 1941, we are concerned with two questions which have been referred to this court as directed by this court. The questions are as follows :

(i) Whether, on the facts and in the circumstances of the case and on a proper construction of Rule 4(4) of the Central Sales Tax (West Bengal) Rules, 1958, the learned Member, Board of Revenue, was right in holding that neither the Assistant Commissioner nor the Additional Commissioner was empowered to accept and consider the declaration form filed by the assessee along with the petition of appeal ?

(ii) If the answer to question (i) be in the negative then whether the learned Member, Board of Revenue, was right in holding that the merits of the case were not affected although the said declaration forms had not been considered by either the Assistant Commissioner or the Additional Commissioner ?

2. We are concerned in this case with the assessment under the Central Sales Tax Act for the dealer's assessment in respect of four quarters ending with

Kartick Badi 15, 2016 S. Y. The Commercial Tax Officer, Esplanade Charges, Commercial Tax Directorate, West Bengal, issued a notice on 19th January, 1960, in form No. 3 fixing 3rd May, 1960, as the date of hearing and asking the dealer to produce books of account for the said period of four quarters for the purpose of assessment as the dealer had failed to furnish quarterly returns for the said period. On 3rd May, 1960, the case was adjourned to 10th August, 1960. On 10th August, 1960, the dealer's lawyer appeared and prayed for time as the books of account were not fully adjusted. The case was, therefore, adjourned to 18th August, 1960. The dealer's lawyer appeared on the date and again prayed for time on the same ground. The Commercial Tax Officer, Esplanade Charge, did not grant the dealer further time and proceeded to assess the dealer ex parte to the best of his judgment. In his assessment under the State Act for the same period the dealer was allowed exemption u/s 5(2)(a)(v) of the State Act for Rs. 7,20,000 being inter-State sales. Hence the Commercial Tax Officer by his order dated 23rd August, 1960, assessed the taxable turnover at Rs. 7,20,000 and charged the same to tax at 7 per cent. A penalty of Rs. 500 was also imposed for non-submission of returns. The dealer then filed an appeal before the Assistant Commissioner, Commercial Taxes, Chowringhee Circle, against the assessment order. The Assistant Commissioner by his order dated 25th May, 1960, reduced the taxable turnover to Rs. 5,00,000 keeping in view the fact that the dealer's gross turnover and taxable turnover under the State Act was reduced in appeal and charged 50 per cent of the said amount at 7 per cent and the rest 50 per cent at 1 per cent. The order for penalty assessment was not interfered with. Thereafter, the dealer filed petition for revision before the Commissioner, Commercial Taxes, West Bengal. The Additional Commissioner, Commercial Taxes, West Bengal, who dealt with the revision petition for reasons mentioned in his order dated 22nd January, 1964, rejected the said petition and confirmed the order appealed from. The Additional Commissioner of Commercial Taxes, inter alia, decided that the estimate of the taxable turnover by the Assistant Commissioner was reasonable and the contention of the dealer that the sales were to registered dealers was not substantiated. The dealer then filed a revision petition before the Board of Revenue. At the time of hearing before the Additional Member, Board of Revenue, who dealt with the case, it was urged, among other points, that both before the Assistant Commissioner and the Additional Commissioner mention had been made about the declaration forms which had been enclosed with the petition of appeal. Nevertheless, neither the Assistant Commissioner nor the Additional Commissioner mentioned a word, according to the assessee, about the said grounds or forms as to whether they accepted or rejected these. It was, therefore, urged that their orders were defective under the law and on the principles of natural justice should be set aside, and the case remanded for reassessment. The Additional Member, Board of Revenue, observed as follows:

I find that it is a fact that the declaration forms were filed with the petition of appeal and they are in fact in the appeal file of the Assistant Commissioner. I

have also seen them myself. I have also found that it is a fact that both the Additional Commissioner and the Assistant Commissioner failed to discuss the grounds dealing with the said declaration forms and record their decision regarding them. However, I have already held in Case No. 240 of 1963 decided by me on 17th October, 1966, that the law does not permit acceptance of such declaration forms at a stage later than at the time of assessment. This was in regard to declaration forms under the Bengal Finance (Sales Tax) Act, 1941, but the same principle applies in this case also because Rule 4(4) of the Central Sales Tax (West Bengal) Rules, 1958, dealing with declaration in form C also lays down that the selling dealer concerned shall produce at the time of assessment both portions of the declaration before the prescribed authority, i.e., the Commercial Tax Officer in this case. Admittedly, the said declaration forms were not produced at the time of assessment as required under Rule 4(4) and, therefore, the law does not permit their acceptance at a later stage. In the result it is clear that neither the Assistant Commissioner nor the Additional Commissioner was empowered under the law to accept the declaration forms in question. In my view, therefore, the merits of the case are not affected because they did not record their decision on the grounds dealing with these declaration forms. Furthermore, though the declaration forms are mentioned in the grounds I am not convinced that the said grounds were specifically urged before the said officer. This point is, therefore, rejected.

3. The Additional Member, Board of Revenue, by his order dated 21st December, 1966, rejected the revision petition. Thereafter, the dealer filed an application for reference to this court which was rejected, and by an order made by this court the questions mentioned were directed to be referred. We are concerned in this case with the question whether the declaration forms which were admittedly filed by the dealer should have been considered by the Assistant Commissioner or the Additional Commissioner.

4. In this connection a reference may be made to Section 8 of the Central Sales Tax Act, 1956. Sub-section (1) of Section 8 deals with the rates of tax on sales in the course of inter-State trade or commerce. Sub-section (4) of Section 8 is in the following terms :

The provisions of Sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner-

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority ; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government.

5. Rule 4 of the Central Sales Tax (West Bengal) Rules, 1958, deals with the

declaration in form C and Sub-rule (4) of Rule 4 is in the following terms:

For the purposes of Sub-sections (1) and (4) of Section 8 of the Act, the selling dealer, to whom the two portions of the form of declaration are made over by the purchasing dealer under Sub-rule (3), shall produce at the time of assessment both the portions marked "duplicate" and "original" of the declaration before the prescribed authority, who may, at his discretion, retain the original portion or return both of them after getting them mutilated or defaced in such manner as he may think fit:

Provided that when goods are delivered in instalments against one purchase order and a declaration in form C covering the entire order is furnished along with the return for one period, declarations need not be furnished along with the returns for subsequent periods in respect of the same transaction, if reference to previous return and declaration is given in the statement furnished with subsequent returns.

6. The question in this case is whether the declaration forms that were given before the Assistant Commissioner and Additional Commissioner admittedly should have been taken into consideration by these officers. Reading the rule it appears to us that the rule enjoins that the declaration forms should be produced "at the time of assessment". The assessment for sales tax, in our opinion, involves essentially the determination of the taxable turnover of the dealer. Under the Central Sales Tax Act, 1956, Section 8 of the Act provides for the determination of the rate of tax payable in the course of inter-State trade or commerce and, for that purpose, it is enjoined that such sales would not be considered to be such sales if Clauses (a) and (b) are not complied with. Clause (a) enjoins that the declaration form duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority should be filed. Therefore, in order to determine this question it is necessary to get the declaration forms duly filled and signed by the registered dealer containing the prescribed particulars in a prescribed form. It is further enjoined that the dealers selling the goods must furnish to the prescribed authority the declaration form containing the prescribed particulars in the prescribed manner. Therefore, there is an obligation for the selling dealers to furnish to the prescribed authority in the prescribed manner, the declaration form pursuant to the prescription contemplated under Sub-section (4) of Section 8. Rule 4 of the Central Sales Tax (West Bengal) Rules was enacted and Sub-rule (4) of that rule enjoins that the declaration form should be produced by the selling dealer "at the time of the assessment". So, at the time of assessment the declaration forms are required for the determination of rate of tax in respect of sales in compliance of Section 8. The section empowers the rule-making authority to prescribe the authority and the manner of filing of the declaration form. This power under the section came up for consideration by the Supreme Court. In the case of Sales Tax Officer Vs. K.I. Abraham, , the Supreme Court held that the phrase "in the prescribed

manner" occurring in Section 8(4), Central Sales Tax Act, 1956, only conferred power on the rule-making authority to prescribe a rule stating what particulars were to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom these were sold, and to which authority the form was to be furnished. But the phrase "in the prescribed manner" in Section 8(4) did not take in the time-element. In other words, the section did not authorise the rule-making authority to prescribe a time-limit within which the declaration forms were to be filed by the registered dealer. The Supreme Court in that case dealt with the third proviso to Rule 6(1) of the Central Sales Tax (Kerala) Rules, 1957, which provided that all declaration forms pending submission by dealers on 2nd May, 1960, should be submitted not later than 16th February, 1961, and held the same rule to be ultra vires Section 8(4) read with Section 13(3) and (4) of the Central Sales Tax Act, 1956. But the Supreme Court observed that it was the duty of dealers to furnish the declarations in form C within a reasonable time. In that case, for the year 1959-60 the assessee did not file the declaration in form C on or before 16th February, 1961, as prescribed by the third proviso to Rule 6(1) of the Central Sales Tax (Kerala) Rules, 1957, but he actually filed the declaration forms before the order of assessment was made. It was held that the assessee had furnished the declarations in form C within a reasonable time and there was compliance with the requirements of Section 8(4)(a) of the Act. Following this decision, several High Courts have held the rules specifying a particular time as beyond the authority of the section and, as such, ultra vires. For instance, we may refer to the decision in the case of Tirukoilur Oil Mills Ltd. v. State of Madras [1967] 20 S.T.C. 388. In the case of State of Orissa v. M.A. Tulloch and Co. Ltd. [1964] 15 S.T.C 641 (S.C.), the Supreme Court was dealing with Rule 27(2) of the Orissa Sales Tax Rules, 1947. In the above case, the Supreme Court held that the production of a declaration under Rule 27(2) of the Orissa Sales Tax Rules, 1947, was not always obligatory on the part of a selling dealer when claiming the exemption u/s 5(2) (a) (11) of the Orissa Sales Tax Act, 1947. 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). The Supreme Court observed that Rule 27(2) must be reconciled by treating it as directory. But the rule must be substantially complied with in every case. It was for the Sales Tax Officer to be satisfied that in fact the certificate of registration of the buying dealer contained the requisite statement, and if he had any doubts about it the selling dealer should satisfy his doubts. But if he was satisfied from other facts on the record it was 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 the case of Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others, the Supreme Court was dealing with Rule 27A of the Bengal Sales Tax Rules, 1941. The Supreme Court held that where a dealer claimed exemption with regard to sales to a registered dealer, the furnishing of the declaration forms u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, issued by the purchasing dealer was a condition for claiming the exemption. The dealer had to strictly comply with the provision and could not produce other

evidence to prove that the sales to the registered dealers were for the purposes mentioned in the sub-clause. The dealer could not get the exemption unless he furnished the declaration in the prescribed form. Further the Supreme Court observed that Section 21A could not be availed of by a dealer who had lost declaration forms issued to him by registered dealers for the purpose of asking the Commercial Tax Officer to summon the dealers to produce the necessary documents in order to prove that they had issued the declaration forms to him. The expression "on demand" in Rule 27A of the Bengal Sales Tax Rules, 1941, only fixed the point of time when the declaration forms were to be produced. Sub-rules (3) and (4) of Rule 27A did not enable the selling dealer either to directly apply or to compel the purchasing dealers to apply for duplicate declaration forms; nor did they enjoin the appropriate authority to give the selling dealer a duplicate form to replace the lost one. The facts of the present case are quite different. Here the statute itself does not require production of the declaration within any specified time and here declaration forms were In fact produced before the Assistant Commissioner before whom this question was again pending. The assessment as regards the imposition of Central sales tax, in our opinion, involves proper application, rates and taxes in connection with the sales as provided in Section 8 of the Act and that involves the question of determining whether the provision of Sub-section (1) of Section 8 would apply to any sale in the course of inter-State trade or commerce and also involves the question of examining whether declaration forms as enjoined by Clause (a) to Sub-section (4) of Section 8 were furnished or not. These questions will have to be determined at the first stage by the first assessing authority. When Sub-rule (4) of Rule 4 of the Central Sales Tax (West Bengal) Rules enjoined production ""at the time of the assessment", the time of the assessment contemplated in the proper context, In our opinion, must include all the stages of assessment and necessarily permits production of declaration forms before any appellate or revisional authority before whom the question of assessment is pending. Therefore, the dealer was entitled to produce and rely on the said declaration forms before the Assistant Commissioner and the Additional Commissioner. In this connection, we may here point out significantly that in the amended Central Sales Tax (Registration and Turnover) Rules, 1957, by notification dated 28th February, 1957, (sic) Rule 12, Sub-rule (7), is to the following effect:

The declaration in form C or form F or the certificate in form E-I 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.

It is significant to note that in this case the rule with which we are concerned does not use the expression "up to the time of assessment by the first assessing

authority".

7. Counsel for the revenue authority submitted before us that in this case there was no express power authorising the Assistant Commissioner or Additional Commissioner to admit additional evidence like the provisions similar to Section 41 of the Code of Civil Procedure. That is true, but there is also no express prohibition on the appellate authority to consider such evidence which would be necessary for determination of the question under Sub-section (4) of Section 8 of the Central Sales Tax Act, 1956, which has to be determined by the appellate authority, as that question is before the appellate authority.

8. We are not concerned with what would have been the effect if the Assistant Commissioner or Additional Commissioner had considered these declaration forms. But it could not be said that by not considering the declaration forms and by not dealing with them the dealer had not been affected as the learned Member, Board of Revenue, has stated in his order. In the aforesaid view of the matter, question No. (1) must be answered in the negative and in favour of the dealer and question No. (2) is also answered in the negative. In the facts and circumstances of the case, each party will pay and bear its own costs.

Pyne, J.

9. I agree.