

(1964) 04 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1039 of 1964

Murli Dhar Dharampal

APPELLANT

Vs

The Sales Tax Officer

RESPONDENT

Date of Decision : 15-04-1964

Acts Referred:

Central Sales Tax (Uttar Pradesh) Rules, 1957 — Rule 5A, 8, 8(2)
Central Sales Tax Act, 1956 — Section 13(3), 13(4), 13(5), 8(1), 8(4)
Constitution of India, 1950 — Article 226

Citation : AIR 1965 All 483 : (1965) 16 STC 21

Hon'ble Judges : S.C. Manchanda, J

Bench : Single Bench

Advocate : Ashoke Gupta and B. Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.C. Manchanda, J.—This is a writ petition under Article 226 of the Constitution. The prayer is for the issue of a writ in the nature of certiorari quashing the assessment order dated, 80th of December, 1983 whereby the benefit u/s 8(1) of the Central Sales Tax Act (hereinafter referred to as C. S. T. Act) in respect of the inter-State sales was denied because of the petitioner's failure to file the declaration in form "C" by the 31st March 1963, in accordance with the Circular issued by the Commissioner Sales Tax, Uttar Pradesh, dated 31st January 1963.

2. The facts leading up to this petition lie in a very narrow compass. They are: that the petitioner was a dealer in Khali Oil, Kirana and Food grains and carried on business on his own account as well as on behalf of U. P. and Ex- U. P. Principals. In the relevant assessment year 1959-60, the total sales were of Rs. 21, 94,416. 78 np. out of which the sales outside U. P. were of Rs. 16. 7, 212-98 np. The petitioner filed all the quarterly returns showing his gross sales and net sales made to Ex.-U. P. dealers as required by the C. S. T. Act read with Rule 5 of the Central Sales Tax (U. P-) Rules (hereinafter referred to as C. S.T. (U. P.)

Rules); but did not file the declaration in form "C" along with the returns as required by Rule 8 (2) of the C. S. T. (U. P.) Rules. The reason given for the failure to attach form "C" with the quarterly returns was that those forms had not been received from the Ex-U. P. dealers by that time. 235 "C" forms, however, were admittedly filed by the petitioner on 21-12-1963 covering the inter-State Ex-U. P. sales of Rs. 16,1601-81 np.

The assessment was made on the 30th December 1962. In regard to the remaining sales of Rs. 5811.17 op, no form "C" was submitted as those sales were made to unregistered dealers. The Sales Tax Officer, however, by his assessment order dated, 30th December, 1963 considered that as the "C" forms were not filed within the time prescribed, which according to him meant the Circular of the Commissioner, whereby the time for acceptance of "C" forms was extended upto the 31st March, 1963. As the "C" forms were filed on the 21st December, 1963, which was after the date prescribed in the said Circular the petitioner was denied the benefit of the provisions of Section 8(1) of the C. S. T. Act and was taxed on inter State sales to registered dealers at 7 per cent instead of 1 per cent which otherwise would have been levied. The writ petition challenges the assessment order.

3. The main contention of the learned counsel for the petitioner is that the Circular issued by the Commissioner of Sales Tax, which the Sales Tax Officer considered to prescribe the time limit for accepting "C" forms has no statutory force and even Rule 8 (2) of the C. S. T. (U. P.) Rules is ultra vires Section 8(4) of the C. S. T. Act. It was further contended that Rule 8 (2) of the C. S. T. (U. P.) Rules is inconsistent with Rule 5A of the same Rules. The former requires the "C" forms to be attached to the quarterly returns, which have to be filed within a month of the expiry of the particular quarter, whereas Rule 5A requires the same to be filed at any time before the assessment is completed. The reasonableness of Rule 8 (2) of the C. S. T. (U. P.) Rules is also challenged. Reliance is placed on a Full Bench decision of the Kerala High Court in K.I. Abraham Vs. Sales Tax Officer, Ponkunnam and Another,).

4. The Kerala Full Bench was concerned with the vires of the third proviso to Rule 6 of the Central Sales Tax (Kerala) Rules as it then stood, which provided on 2nd May, 1960, for the extension of time for filing "C" forms for submission up to the 16th of February 1961. The "C" forms in that case were submitted on the 8th March, 1961 and were, therefore, not entertained by the Sales Tax Officer. That dealer thus was deprived of the concession conferred by Section 8(1) of the C. S. T. Act by the Sales Tax Officer. The appeal and revision having proved infructuous, the dealer without going in reference appears to have moved the High Court of Kerala, under Article 228 of the Constitution, praying for the quashing of the assessment, appellate and revisional orders on the ground that Rule 6 of the C. S. T. (Kerala) Rules and the provisions thereto, in so far as it laid down a time limit went beyond Section 8(4) of the C. S. T. Act which only permitted the State to make Rules as to the "prescribed manner" of making of

such a declaration and there is no mandate in Section 8(4) which would permit the State to lay down a time limit as had been attempted to be done in Rule 6. Reference was made to a decision of the House of Lords and the observations of Lord Campbell, C. J., in *Acraman v. Heraiman* (1851) 16 Q B 999 at p. 1003, where the words "in manner and form" were held to refer only to the mode in which the thing is to be done, and not to the thing which is to be done or the time for doing it. It was also pointed out in the Full Bench case that Section 13(4) (g) of the C. S. T. Act, indicated that the Legislature was conscious of the two different concepts as that of "the time within which" and "the manner in which" as both these expressions were used in Sub-clause (g) to Sub-section (4) of Section 23 of the C. S. T. Article The Full Bench further distinguished the Madras case where *Acraman's case* (1851) 16 Q B 999 was referred to by saying that the words "in the manner prescribed" was assumed as including the "time within which" the "C" form was to be filed. The Full Bench, therefore, held that "in the manner prescribed" in Section 8(4) of C. S. T. Act, does not take in the time element and as such Rule 6 of the C. S. T. (Kerala) Rules went beyond Section 8(4) of the C. S. T. Act and as "C" forms were filed before the assessment was completed they had to be accepted. The assessment, appellate and revisional orders which had deprived the assessee of the benefit of Section 8(1) of the C. S. T. Act. were therefore directed to be quashed. Apart from the Full Bench of the Kerala High Court the learned counsel for the petitioner added that in the General Clauses Act, Central as well as that of U. P. by Section 22, made a clear distinction between "time "when" or the "place where" or the "manner in which", anything is to be done under the Act. The legislature would not have used these several expressions in the General Clauses Act unless they meant different things and this clearly indicated that each one of them intended to cover a different situation.

5. The learned Junior Standing Counsel attempted to distinguish the aforesaid Full Bench decision on various grounds ; (1) that in the Kerala decision the notice issued was under Sub-clause (g) of Sub-section (4) of Section 13 and not under Clause (e) of the C. S. T. "Act, which according to him had given specific and general powers to the prescribed authority to make rules, to lay down conditions subject to which "any form of declaration prescribed under Sub-clause (4) of Section 8 may be obtained". (2) the general rule making power u/s 13(3) of the C. S. T. Act, had also not been considered. Reliance was also placed on a decision of this Court in Writ Petn. No. 237 of 1963, D/- 28-1-1964 (All), where the question was whether u/s 7.E of the U. P. Sales Tax Act, a time limit could be fixed by the State Government for making of an application for composition ? It was there observed :

"Section 7-E (2) expressly empowers the State Government to notify the manner in Which the amount by way of composition shall be determined and the manner in which it shall be paid. The manner in which the amount shall be determined includes the procedure in accordance with which the amount must be computed and this procedure would include the making of an application within a

specified period."

Reliance was also placed on three Supreme Court decisions in Chandrakant Krishnarao Pradhan and Another Vs. The Collector of Customs, Bombay and Others, Afzal Ullah Vs. The State of Uttar Pradesh, and State of Kerala v. M. Appukutty AIR 1968 S C 796, for the proposition that Section 13(3) of the C. S. T. Act which is a general provision for making rules, would enable the State Government to frame a rule specifying a time within which the "C" forms were required to be produced.

6. In order to appreciate the contentions it is necessary to set out the relevant provisions of C. S. T. Act and C. S. T. (U- P.) Rules ;-

C.S.T Act:

"Section 8(1) Every dealer who in the course of interstate trade or commerce.....

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government 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 turn-over.

(4) The provision 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."

Section 13(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 payment of which any form of declaration prescribed under Sub-section (4) of Section 8 may be obtained, the manner in which the form shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such declaration may be furnished."

C. S. T. (U. P.) Rules :--

"5. Every dealer liable to pay tax under the Act shall furnish a return of his turnover in respect of sales made by him in the course of inter-State trade or commerce in the manner prescribed for return of turnover in Rule 41 of the U. P.

Sales Tax (Temporary) Rules, 1948, in form 1,

5-A. If any dealer having furnished a return of his turnover in respect of sales made by him in the course of inter-State trade or commerce in the manner , prescribed in Rule 5, discovers any omission or wrong statement therein, he may furnish a revised return at any time before the assessment is made."

Rule 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 1 the portion marked "Original" of the Declarations received by him from the purchasing dealer."

7. It is by virtue of Rule 5 read with Rule 8 (2) of the C. S. T. (U. P.) Rules and Rule 41 of the U. P. Sales Tax (Temporary) Rules, 1948 that the declaration in form "C" has to be attached to the quarterly returns which are required to be filed within 30 days of the end of each quarter. In other words, the impugned rule attempted to lay down that if the forms are not attached with the quarterly returns the petitioner will lose the benefit of Section 8(1) of the C. S. T. Act. Now, that is indeed a very drastic penalty to impose and the question to be considered is whether the rule-making authority has the necessary power to do so u/s 8(4) of the C. S. T. Act. If the latter section does not authorise the State Government to make a rule fixing a time limit and intended that the normal time limit which prevails for the making of an assessment would also apply to the production of "C" forms, there will be no alternative but to hold that Rule 8 (2) was repugnant to Section 8(4) of the C. S. T. Act.

7a. The words in Section 8(4) which require consideration are "In the prescribed manner."

Now what could be prescribed is only the mode in which the "C" forms were required to be produced and not the time for filing such forms. I am inclined to agree, with respect, with the interpretation placed on these words by the Full Bench of the Kerala High Court, when it holds that the words "prescribed manner" do not give the State Government any authority to fix a time limit. It may be open to the State Government u/s 13(5) to make rules for providing a penalty for breach of rules but it is not possible to deprive the holder of the benefit provided u/s 8(1) of the C. S. T. Act by fixing a rigid rule of limitation within which the "C" forms must be produced. Section 8(4) does not give the rule, making authority the necessary power to do so.

8. The case relied upon by the learned Junior Standing Counsel, is a decision u/s 7,-E of the U. P. Sales Tax Act and is distinguishable, as there the words used in Sub-clause (1) of Section 7, clearly gave the power to impose conditions in respect of an application for composition. Section 13(3) of the C. S. T. Act, again, is of no avail to the Department as the opening words made it abundantly clear that the State Government can only make such rules as are not inconsistent with the provisions of the Act and if the laying down of a time limit is inconsistent with the provisions of Sub-section (4) of Section 8 of the C. S. T. Act and the object

behind Section 8(1) of that Act, then such a rule cannot possibly be framed. Similarly, Sub-clause (e) to Sub-section (4) of Section 13 would not give any power to the prescribed authority to lay down conditions of time within which the declaration forms must be furnished, other than the time prescribed for the making of an assessment. That sub-clause would only authorise the State Government to lay down conditions subject to payment of which any form of declaration prescribed under Sub-section (4) of Section 8 may be obtained, the manner in which the form may be kept in custody and the records relating thereto maintained, the manner in which any form may be used and any such declaration may be furnished. This sub-clause gives no power to fix a time limit for the filing of the declaration in "C" Form.

9. The decisions of the Supreme Court relied upon are also decisions given on the particular provisions of these particular Acts, which came up for consideration in those cases. Greatest reliance was placed by the Junior Standing Counsel on State of Kerala Vs. Shri M. Appukutty, That was a case where the validity of the Madras Sales Tax Act was challenged. The Rule provided for re-assessment and fixing of the time limit of 3 years within which re-assessment proceedings could be taken. The contention was that as the Act itself did not make any provision for re-assessment no rule could be framed which would enable re-assessment proceedings to be taken. This contention was repelled by the Supreme Court observing :

"Section 19 gives power to the Government to make rules and the relevant provisions of that Section 19(1) and 19(2)(f) are as under :

- (1) The State Government may make rules to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of foregoing power such rules may provide for
- (f) the assessment to tax under this Act of any turnover which has escaped assessment and the period within which such assessment may be made, not exceeding three years."

Under the rule making power conferred by Section 19, Rule 17 was framed permitting re-assessment within a period of three years. In those circumstances Rule 17 of the Madras General Sales Tax Rules was held by the Supreme Court to be intra vires. This case therefore is of little or no avail to the Department and the position is not any better in respect of the other two cases relied upon which as already observed were decisions on their own peculiar facts and special provisions of law.

9a. Apart from the vires of the impugned Rule 8, it would also suffer from the vice of inconsistency with Rule 5-A of the C. S. T. (U. P.) Rules, The laying down of a rigid time limit under Rule. 8(2), when a right is given to a dealer to file a revised return at any time before the assessment is completed would serve no useful purpose. If a revised return can be filed showing that there was some

omission in the turnover it reasonably must follow that the declaration in "C" form can also be attached to the revised return. If that can be done there is no reason why a rigid time limit of 30 days from the end of every quarter should be fixed for filing of the "C1 forms. There are, undoubtedly practical difficulties in the way of dealers in filing "C" forms as that is something which is to be obtained from the purchasers in respect of inter-State sales and where the purchasers obviously, reside outside the State. The dealer is inevitably, to a considerable extent, at the mercy of such purchasers. It is true that if a rigid time limit is not fixed there is the danger of manipulation of "C" Forms, as suggested by the Junior Standing Counsel. But such danger can always be overcome by a proper investigation into the "C" forms furnished. If bogus "C" forms are furnished the arm of the Sales Tax Department is certainly long enough to catch and punish such a dealer.

10. It only remains to consider, the question of an alternative remedy. It has repeatedly been laid down by the Supreme Court that the existence of an alternative remedy is not an absolute bar. In the present case as the vires of the rule is under challenge it is not possible to consider the alternative remedy as an Equally adequate or efficacious remedy. The Kerala Full Bench decision is a case directly in point and if in that case not only the assessment but also the appellate and revisional orders could have been quashed, there is no reason why the present assessment order should not be quashed as the "C" forms were admittedly filed before the assessment was completed and there would be no justification in depriving the petitioner of the benefit of Section 8(4) of the C. S. T. Act and subject him to tax at seven times the amount provided u/s 8(1) of the C. S. T. Act.

11. For the reasons given above a writ in the nature of certiorari will issue quashing the assessment order dated, 30-12-1993, and the Sales Tax Officer is directed to make the assessment afresh in accordance with law. The Counsel for the petitioner has undertaken not to raise any question of the bar of limitation to the making of such an assessment.

12. The writ petition is accordingly allowed with costs.