
(1962) 04 KL CK 0006

In the High Court Of Kerala

Case No : Tax Revision Case No. 3 of 1962

Palaniappa Match Works

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 13-04-1962

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (1962) 13 STC 904

Hon'ble Judges : M.S. Menon, C.J;P. Govindan Nair, J

Bench : Division Bench

Advocate : K.N. Narayana Pilial, for the Appellant; The Government Pleader, for the Respondent

Judgement

1. The assesses in this revision case has raised six questions of law to be answered by this Court. The only dispute relates to the rate applicable to part of the turnover, namely, Rs. 82,358-39 nP. This has been assessed at the rate of 7 per cent. The revision petitioner-the assessee had claimed that the above turnover must also be assessed only at the rate of one per cent., since he was entitled to the exemption provided u/s 8(1) of the Central Sales Tax Act. This contention of the assessee was negated by the assessing authority, the Sales Tax Officer, the Appellate Assistant Commissioner in appeal, and by the Tribunal in further appeal. The ground for negating the contention was that the several declaration forms mentioned in the order of assessment of the Sales Tax Officer relating to the disputed turnover of Rs. 82,358-39 nP. were not in conformity with the proviso to Sub-rule (1) of Rule 11 of the Central Sales Tax (Kerala.) Rules, 1957, as each of these forms represented a turnover of over Rs. 5,000 and took in more than one transaction of sale. Rule n (1) reads :-

11. (1) A registered dealer, who wishes to purchase goods from another such dealer on payment of tax at the rate applicable under the Act to sales of goods by one registered dealer to another, for the purpose specified in the purchasing dealer's certificate of registration shall obtain from the Registering Authority a

blank declaration form prescribed under Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, for furnishing it to the selling dealer. Before furnishing the declaration to the selling dealer the purchasing dealer, or any responsible person authorised by him in this behalf, shall fill in all required particulars in the Form, and shall also affix his signature in the space provided in the Form for the purpose. Thereafter, the counterfoil of the Form shall be retained by the purchasing dealer and the other two portions marked "original" and "duplicate" shall be made over by him to the selling dealer :

Provided that no single declaration shall cover more than one transaction of sale, except in cases where the total amount covered by one declaration is equal to or less than Rs. 5,000 or such other amount as the State Government may, by a general order, notify in the official Gazette.

2. The assessee had filed the C Forms without complying with the above proviso along with his monthly returns and no objection was raised by the Sales Tax Officer at the time those were filed. However, before making the assessment order the defect was pointed out by the Sales Tax Officer but the assessee urged that the forms were in order. In appeal the assessee specifically requested the Appellate Assistant Commissioner to grant him 15 days' time to produce new declaration forms in accordance with the proviso to Sub-rule (1) of Rule 11. The Appellate Assistant Commissioner rejected this request and said:

The contention is not acceptable.

This request for an opportunity to produce new C Forms was repeated before the Sales Tax Appellate Tribunal. The Tribunal said:

If they had requested for time and the Sales Tax Officer had rejected their request the Appellate Assistant Commissioner ought to have allowed the appellants an opportunity to produce revised declaration forms. But that question does not arise as the appellant did not ask for any time to the Sales Tax Officer. The request was made only to the Appellate Assistant Commissioner. He cannot grant any time or receive them at that late stage, particularly when there is no such request to the Sales Tax Officer. The appellants themselves could have produced the revised declaration forms before the Appellate Assistant Commissioner. That was also not done. They have not produced them even now. Simply because the Sales Tax Officer did not point out the defects as and when the declaration forms were filed it cannot be said that the appellants were not given an opportunity to produce correct declaration forms.

3. A learned Judge of this Court in O. P. No. 1363 of 1960 has expressed the view that Sub-rule (1) of rule n has no application to an assessee similar to the petitioner before us. It was said in that case that the seller need comply only with Sub-rule (2) of rule n.

4. The assessee has produced new C Forms in accordance with the proviso to Sub-rule (1) of rule n before this Court. In the light of the rulings in Deputy

Commissioner of Agricultural Income Tax & Sales tax v. Abdul Wasigh & Bros. [1961] K.L.J. 1111, and the decision in T. R. C. No. I of 1960, we think this is a case in which the Appellate Assistant Commissioner and the Tribunal should have excused the delay in the production of C Forms conforming to the proviso to Sub-rule (1) of Rule 11. ""We are satisfied that there has been no laches on the part of the assessee, particularly because the implications of Sub-rules (1) and (2) are not very clear. And this Court itself has taken the view that Sub-rule (1) of Rule 11 may not apply to an assessee like the revision petitioner. We express no opinion as to whether Sub-rule (1) of rule n would apply or not to the revision petitioner or an assessee similarly placed. But as we have said, we are of the opinion that in the circumstances mentioned the assessee should be given an opportunity to produce C Forms which conform to the proviso to Sub-rule (1) of Rule 11.

5. We, therefore, answer question E raised in the revision memo in the negative and in favour of the assessee and question F in the affirmative and also in favour of the assessee, Accordingly we set aside the order of the Tribunal and direct the Tribunal to take back appeal No. 413 of 1961 in its file. The Tribunal will scrutinise the C Forms that have now been produced and accept them if they are in order and dispose of the appeal in accordance with law and in the light of the observations made above, We make no order as to costs.