
(1982) 11 AP CK 0008

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 76 of 1978

Podisala Sivaiah

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 30-11-1982

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(1), 8(2), 8(3), 8(4)

Citation : (1984) 55 STC 58

Hon'ble Judges : Punnayya, J; B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : P. Venkatarama Reddy, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

Jeevan Reddy, J.—The petitioner herein purchased certain goods during their movement through this State by purchasing the R. Rs. Subsequently, he sold the said goods to another dealer in the State of Tamil Nadu by transferring the R. Rs. The question of exigibility to tax of the sales effected by the petitioner fell for consideration before the Tribunal. The Tribunal was concerned with six transactions. With respect to transaction No. 4, it has granted the relief, and therefore, we are not concerned with it. So far as the transactions shown at Nos. 1 to 3 in the order of the Tribunal are concerned, the Tribunal rejected the plea of the dealer for charging at concessional rate provided by section 8(1) of the Central Sales Tax Act, on the ground that the petitioner has failed to produce E-I forms from the seller and C forms from the purchaser. So far as the transactions Nos. 5 and 6 are concerned, the Tribunal rejected the plea of concessional tax while refusing to receive the C forms sought to be filed before it, on the ground that the petitioner has not shown sufficient cause for not filing them before the assessing authority or before the first appellate authority in spite of the fact that he was in possession of the said forms. The view of the Tribunal on both these aspects is challenged before us.

2. Section 8(1)(b) of the Central Sales Tax Act provides that every dealer, who in

the course of inter-State trade or commerce 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 the said Act at the rate of one per cent (the rate of tax has since been raised to 4 per cent, but during the relevant assessment year, i.e., 1959-60, the rate of tax was 1 per cent). Sub-section (4) of section 8 says that 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 declaration duly filled and signed by the registered dealer to whom the goods are sold, containing the prescribed particulars in the prescribed form obtained from the prescribed authority. We may also in this connection refer to sub-section (2) which is attracted in case a declaration as contemplated by sub-section (4) of section 8 is not filed. According to sub-section (2) as it stood at the relevant time, the rate of tax was seven per cent.

3. Admittedly the petitioner did not file the E-I forms issued by the person who put the goods in inter-State movement, i.e., first seller. Therefore, he cannot claim total exemption. The only contention Mr. Venkatarama Reddy, the learned counsel for the petitioner, urged before us is that since he has produced C forms from his purchaser, he is entitled to the benefit of concessional tax mentioned in section 8(1). We feel that this contention merits acceptance. The Tribunal has rejected the said contention holding that the petitioner has failed to produce both the C forms as well as E-I forms. We are unable to agree with reasoning of the Tribunal. E-I forms are issued by the person who puts the goods in the course of inter-State movement, i.e., by the first seller, while the C forms are issued by the second purchaser. The petitioner is the inter-mediate purchaser, i.e., he is the second seller. Since he is the second seller, he is admittedly liable to pay tax under the Central Sales Tax Act inasmuch as he has not produced the E-I forms but he contends that when he has produced C forms from his purchaser, there is no reason why he should be denied the benefit of the concessional tax mentioned in section 8(1). The reasoning given by the Tribunal for refusing the benefit of the concessional tax does not appear to be sustainable in law. The petitioner is entitled to the benefit of the concessional rate of tax mentioned in section 8(1), as it then stood.

4. So far as the transactions Nos. 5 and 6 are concerned, the Tribunal has recorded a finding of a fact that the petitioner has failed to prove sufficient cause for not producing these forms either before the assessing authority or before the first appellate authority. Indeed, it was the contention of the petitioner before the said authorities that he was under no obligation to file either C forms or E-I forms and it was only before the Tribunal that the petitioner shifted his stand and sought to file the C forms. This the Tribunal did not allow. We are unable to hold that the exercise of discretion by the Tribunal in refusing to receive the C forms is either arbitrary or perverse. We are, therefore, unable to agree with Mr. Venkatarama Reddy that the transactions Nos. 5 and 6 must also be taxed at the concessional rate mentioned in section 8(1) receiving the C forms. When once C

forms are not received, it would automatically follow that the higher rate mentioned in section 8(2) would be attracted.

5. The tax revision case is allowed in part and it is declared that the transactions shown at items Nos. 1, 2 and 3 mentioned in the judgment of the Tribunal shall be charged only at the concessional rate mentioned in section 8(1) of the Central Sales Tax Act, as it obtained for the relevant assessment year. In other respects, the tax revision case is dismissed. In the circumstances of the case, there shall be no order as to costs. Advocate's fee Rs. 250.