
(1963) 04 MAD CK 0050
In the Madras High Court
Case No : Tax Case No. 228 of 1962

R. Kaliappan

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 15-04-1963

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 7, 8

Citation : (1963) 14 STC 750

Hon'ble Judges : Venkatadri, J;Srinivasan, J

Bench : Division Bench

Advocate : V. Venkataraman, for the Appellant; G. Ramanujam, for Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—The assessee returned a turnover of Rs. 21,041-62 nP. The turnover was computed by the assessing authority at Rs. 24,598-05 nP. He appealed and claimed relief in respect of a turnover of Rs. 3,556, that is to say, the amount added by the assessing authority. His contention was however negatived. There was a further appeal to the Tribunal before whom for the first time it was claimed that the assessee should be assessed u/s 7 of the Act. This section provides for compounded rates of tax in the case of certain assesseees whose turnover exceeds Rs. 10,000 but falls short of Rs. 50,000 during the year. The Tribunal rejected this contention holding that Section 7 would not apply to the case of this assessee. It is this order of the Tribunal the correctness of which is canvassed in the present tax revision case.

2. It is not disputed that the assessee is a dealer registered under the appropriate section of the Central Sales Tax Act. Section 5 of the Madras General Sales Tax Act is a special provision enacted to deal with such assesseees. It reads :-

Notwithstanding anything contained in Sub-section (1) of Section 3, every dealer

registered under Sub-section (3) of Section 7 of the Central Sales Tax Act, 1956, shall, whatever be the quantum of his turnover, pay tax for each year in respect of the sale of goods with reference to the purchase of which he has furnished a declaration under Sub-section (4) of Section 8 of the aforesaid Central Act, at the rates specified hereunder:

(a) one per cent of his taxable turnover, in the case of goods mentioned in Clause (i) of the proviso to Sub-section (1) of Section 3 ;

(b) two per cent of his taxable turnover in the case of other goods liable to tax under Sub-section (1) of Section 3.

3. This section accordingly brings to tax the turnover of a dealer registered under the Central Sales Tax Act notwithstanding that the quantum of his turnover may be below the general exemptible limit of Rs. 10,000 at certain rates specified herein. The turnover herein referred to is that of the sale of goods in respect of which declarations u/s 8(4) of the Central Sales Tax Act have been furnished, that is to say, goods purchased by the dealer in the course of inter State trade. Section 7 of the Madras General Sales Tax Act however lays down that "notwithstanding anything contained" in Section 3(1), every dealer whose turnover is not less than Rs. 10,000 and not more than Rs. 50,000, may at his option pay tax at certain compounded rates. What is contended for by Mr. Venkataraman, learned counsel for the assessee, is that Section 7 is available to every dealer, not with standing anything contained in Sub-section (1) of Section 3. In the case of a dealer whose turnover does not exceed Rs. 50,000 it is his claim that Section 7 would apply; and he, having exercised his option, is entitled to be taxed only at the compounded rates mentioned in Section 7.

4. It seems to us that this contention cannot prevail. Section 3 of the Act is the main charging section. It deals with every dealer whose total turnover for a year is not less than Rs. 10,000 and fixes the rate of tax at 2 per cent, of the taxable turnover. The first proviso thereto reduces the rate to 1 per cent, in the case of certain goods. When we turn to Section 7 it deals with the case of dealers whose turnover is not less than Rs. 10,000 but not more than Rs. 50,000. Such a dealer, who would otherwise be liable to pay tax u/s 3(1) of the Act, is given the privilege of being taxed u/s 7 in certain circumstances specified in that section. In the case of an assessment to tax, whether u/s 3 or u/s 7, clearly a dealer whose total turnover does not exceed Rs. 10,000 is not liable to be assessed at all. But Section 5, which is concerned with dealers who are registered under the Central Sales Tax Act, takes away the minimum exemptible limit of Rs. 10,000 in the case of certain transactions ; and whatever the quantum of the turnover, a dealer of that description is liable to pay tax thereunder. Section 5 is undoubtedly a special charging section and the expression "notwithstanding anything contained in Sub-section (1) of Section 3" removes the case of such a dealer from the ambit of Section 3. The further qualification that is found in the section "whatever the quantum of his turnover" again removes the right of such dealer to have the turnover of less than Rs. 10,000 exempted from taxation. The entire

argument of the learned counsel for the assessee is based on the assumption that the dealer is taxed u/s 3 of the Act. That, to our minds, is not the correct position in law. It would be inappropriate to say on a proper construction of Section 5 of the Act that a dealer registered under the Central Sales Tax Act is really being taxed u/s 3 of the Madras General Sales Tax Act. On the other hand, the rates at which such a dealer has to pay are specifically provided u/s 5 itself, and the reference to Section 3 in that part of the section which deals with the rates of tax is only intended to refer to the goods in respect of which different rates of tax are levied. Though the rates specified in Section 5 are no doubt identical with the rates set down in Section 3, the tax in the case of such dealers is imposed by Section 5, which is the charging section. The argument of the learned counsel that the non obstinate clause confers a right upon the assessee, even though he is registered under the Central Sales Tax Act, to the benefit of taxation at the compounded rates u/s 7 does not conform to the pattern of the taxation which Sections 3, 5 and 7 lay down. We are therefore satisfied that the Tribunal rightly held that the petitioner was not entitled to the privilege of taxation at the compounded rates of levy u/s 7.

5. The petition is dismissed with costs. Counsel's fee Rs. 100.