

(1979) 07 MAD CK 0021

In the Madras High Court

Case No : T.C. No. 512 of 1975 (Appeal No. 41 of 1975)

S. Kannan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 05-07-1979

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3, 7

Citation : (1980) 45 STC 496

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : Azeez Basha, for the Appellant;

Final Decision : Allowed

Judgement

Sethuraman, J.—This appeal has been filed against the order of the Board of Revenue dated 4th February, 1975, for the assessment year

1971-72 in a suo motu revision of the order of the Appellate Assistant Commissioner.

2. The assessee returned a total turnover of Rs. 17,308.17 for the assessment year 1971-72. The assessing officer rejected the amount as

incorrect and incomplete and determined the total and taxable turnover to the best of his judgment at Rs. 72,090.80 u/s 3(1) of the Tamil Nadu

General Sales Tax Act. On appeal, the Appellate Assistant Commissioner, Tiruchirapalli, while upholding the rejection of the accounts, determined

the taxable turnover at Rs. 34,617 and deleted the balance. He further directed this turnover to be assessed under the provisions of Section 7.

3. This order of the Appellate Assistant Commissioner was examined by the Board and it was considered that in so far as it related to the direction

for the application of Section 7, the order was not correct. Because the assessee

had been paying taxes on monthly turnovers in form A-2 under

Rule 18 of the Act, the Board took the view that the assessee had not opted to pay tax u/s 7. The Board, therefore, directed the turnover to be

assessed in accordance with the provisions of Section 3(1) of the Act. It is this order of the Revenue Board that is now challenged in the present

appeal.

4. Section 7 of the Tamil Nadu General Sales Tax Act provides for payment of tax at compounded rates. Notwithstanding anything contained in

Sub-section (1) of Section 3, every dealer, whose turnover was not less than the minimum turnover assessable but not more than the maximum

provided in the section from time to time, may, at his option instead of paying the tax in accordance with the provisions of Section 3(1), pay tax at

certain graded rates depending on the volume of the turnover. Section 7(2) provided that any dealer who estimated his turnover for a year to be

not more than the maximum amount provided in the section from time to time with reference to that particular year may apply to the assessing

authority to be permitted to pay the tax under this section and, on being so permitted, he should pay the tax due in advance during the year in

monthly or prescribed instalments and for that purpose he would have to submit the returns in the prescribed manner. Section 7(2-A), which was

brought into force retrospectively so as to cover this year also, provided that the permission granted by the assessing officer under Sub-section (2)

should continue in force so long as the dealer is eligible to be assessed under the section and has not withdrawn his option to be so assessed.

5. As far as this case is concerned, the learned counsel for the appellant submitted that the assessee had been given the benefit of Section 7 in the

prior year and, in view of Sub-section (2-A), this benefit would enure for the subsequent year also until the assessee withdraws his option to be

assessed.

6. For the revenue the submission was that it is not clear from the orders that the assessee had the benefit of Section 7 in the earlier year so as to

justify his reliance on Section 7(2-A). The learned Government Pleader further contended that the assessee could be taken to have withdrawn his

option to be so assessed by the fact that he had filed monthly returns under Rule 18.

7. The withdrawal of this statutory option cannot be inferred from the submission of returns by mistake or otherwise under Rule 18. It must be remembered that Section 7 is intended to be applied only to small dealers most of whom are distributed in the villages. They cannot be credited with the knowledge of the nuances of the sales tax law that by submitting returns in one particular form they can be taken to have exercised their power or right of withdrawal of option already exercised. The withdrawal of an option has to be by an overt act and has to be a conscious exercise of the rights available to him. Such conscious exercise of the rights available to the dealer cannot be inferred in this case and, therefore, we are not satisfied that the accident of the returns being filed under Rule 18 should deprive the assessee of the benefit available to them and granted to them by the legislature. In fact, it has to be remembered that Section 7(2-A) does not impose any other condition, except the actual withdrawal of the option, for the continuance of the benefit of Section 7 for the future years when once that benefit had been granted by the assessing authority for one year. This statutory benefit cannot be taken away by a rule. It is in this context that we have to direct the Commissioner to examine the records and find out whether the assessee had the benefit of Section 7 in the prior year. If so, in view of the provision of Section 7(2-A), the assessee will continue to get the benefit so long as he has not formally withdrawn the option to be so assessed. Rule 18 return cannot be understood as such a formal withdrawal. The matter is, therefore, remanded and the order of the Board is set aside for this purpose.

8. The appeal is accordingly allowed. There will be no order as to costs.