
(1967) 07 MAD CK 0012

In the Madras High Court

Case No : Tax Case No. 330 of 1964 (Revision No. 232)

S. Mohamed Ibrahim Hadhee

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 11-07-1967

Acts Referred:

Central Sales Tax Act, 1956 — Section 6, 8, 9
Constitution of India, 1950 — Article 261, 269

Citation : (1968) 21 STC 378

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : S. Padmanabhan, for the Appellant; The Special Government
Pleader, for the Respondent

Judgement

Veeraswami, J.—We have in this case come to the conclusion, for the reasons which will presently appear, that it should be allowed to the

extent of a turnover of Rs. 27,735.58 and that the assessing authority will consider afresh whether this part of the turnover was included in a

turnover of Rs. 80,615 brought to tax as constituting inter-State sales for which declarations in Form C have not been filed.

2. The matter relates to the assessment year 1958-59. The assessee during the relevant period was a registered dealer both in the State of Kerala

and this State, carrying on business in arecanut seeval. He had his head office at Pattambi in the State of Kerala. The course of his business was,

he brought arecanuts from the State of Kerala to Kuniamuthur in the State of Madras, converted the same into seevals, and effected inter-State

sales by despatching the goods by rail. He filed a return in Form I and his accounts which were checked, disclosed a turnover of Rs. 86,929.25.

The eventual finding of the Tribunal is that out of this figure, a turnover of Rs. 80,615 related to inter-State sales, part of which occasioned the movement of the goods from the State of Madras, and the rest were first sales effected by transfer of documents in the course of movement of the goods, commencing from this State. The assessee failed to file declarations in Form C with the result the entire turnover of Rs. 80,615 has been brought to charge u/s 8(2) of the Central Act at 7 per cent. The assessee's case was that this turnover was included in the turnover for the assessment year 1958-59 returned to the Kerala Sales Tax Authorities and charged to tax there under the Central Act on production of declarations in Form C. This contention did not prevail with the revenue authorities and also the Tribunal and in their view the appropriate State that could properly charge the turnover is the State of Madras, and that the declarations in C Form covering the turnover not having been filed in the prescribed manner and before the prescribed authority the turnover would be liable to tax in Madras at 7 per cent. In the course of his order, the Appellate Assistant Commissioner stated that it was likely that the transactions referred to by the Sales Tax Officer, Perintalmanna, in respect of which C Forms were produced before that officer were quite different from those effected from Kuniamuthur in Madras State. In his view even if the assessee was not in possession of the originals of the C Form as they were claimed to have been filed with the Sales Tax Officer of Kerala State, nothing prevented him from filing duplicates of the forms before the assessing authority. Before the Tribunal a statement would appear to have been filed, by the assessee which it referred to in its order and stated that they disclosed that the assessee had effected inter-State sales to the tune of Rs. 81,074.87 in which the goods were despatched from Coimbatore in Madras State and inter-State sales covering a turnover of Rs. 1,11,903.71 in which the goods were despatched from Pattambi in the State of Kerala.

3. For the assessee it is contended before us that once the turnover of inter-State sales chargeable to tax has been brought to charge in a particular State, though not the appropriate State, under the provisions of the Central Sales Tax Act, there is no jurisdiction in the appropriate State to make a second levy on the identical turnover. Mr. Padmanabhan for the assessee, invites our attention to the definition of "appropriate State" before and

after its amendment by Act 31 of 1958, which came into force with effect from October 1, 1958, as also Section 9(1) as amended by that Act and

argues that since the assessee had places of business in both the States and is also a registered dealer in both of them, the Kerala State was an

appropriate State, which could tax the turnover, so that the Madras authorities will have no power to make a second imposition. It is also said with

reference to Section 9(4) and Article 269 of the Constitution that once a charge has been made on an inter-State turnover, irrespective of the

question of appropriate State, there can be no further charge, and the only question thereafter is one of assignment of the proceeds of the levy

which is a matter for the Central Government.

4. We are unable to countenance counsel's submissions except that there can only be one charge under the Central Act on an identical inter-State

turnover. Section 6 which is the charging section, is subject to the other provisions of the Act. Before and after the amendment by Act 31 of 1958

that State, from which the goods moved pursuant to a sale, is an appropriate State. Section 9(1) as amended by Act 31 of 1958 says that the

Central tax shall be levied and collected by the Government of India in the manner provided in Sub-section (3) in the State from which the

movement of the goods commenced. That will also be the appropriate State in respect of the first sales effected by transfer of documents during

movement of goods. u/s 8(4) the benefit of the rate at 1 per cent, will be available to inter-State sales of declared goods only if the conditions

prescribed thereunder are complied with and one of them is that 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 is furnished to the prescribed authority in

the prescribed manner. Sub-section (3) of Section 9 applies to the Central assessment proceedings, the statutory procedure obtaining in the

appropriate State, for purposes of its local Act. What clearly emerges from these provisions is that, although except where the multi-point tax is

attracted u/s 6, there can only be a single levy in the prescribed manner on identical turnover of inter-State sales, But the levy and collection will

have to be made by the appropriate State which is the State from which the goods have moved pursuant to the sale, and where a concessional rate

u/s 8(1) is claimed, the conditions therefore have to be fulfilled which include filing of declarations in C Form in the prescribed manner and before

the prescribed authority in the appropriate State. In view of this scheme of charge, assessment and collection, Section 9(4) enacts that the

proceeds in any financial year of the tax levied and collected on behalf of the Government of India shall be assigned to the appropriate State which

levied and collected the same and that State shall retain such proceeds. It follows, therefore, that a plea that a wrong State has already assessed

will be no answer to an appropriate State bringing to tax transactions liable to be brought to charge by that State. At the same time it is implicit in

the scheme of things that both the provisions of law as well as the character and effect of particular transactions may possibly be differently

interpreted by assessing authorities in different States, resulting in a dealer being taxed on identical transactions by more than one State. This

appears to be inevitable because of the local procedure applied to Central taxation u/s 9(3). The conflict and consequent hardship to the assessee

will get resolved or relieved only at the hands of a final arbiter. We referred to this aspect in a batch of writ petitions, Messrs Larsen and Toubro

Ltd., Madras-2 v. The Joint Commercial Tax Officer, Mount Road II Division, Madras-2, and. Others W.P. Nos. 2441 to 2444 of 1965 etc.;

[1967] 20 S.T.G. 150 while repelling an attack on the constitutional validity of Section 9(3).

5. There is, however, another aspect of the matter that has to be borne in mind in the context. In cases of such conflicting assessments by

authorities in different States of identical inter-State transactions, where a question of filing of declarations in Form C is involved, if it is brought to

the notice of the assessing authority in an appropriate State that the identical turnover has been assessed by another State claiming jurisdiction over

it and allowed a concessional rate on filing of such forms, the authority in the appropriate State cannot simply dismiss the assessee on the ground

that he has failed to produce declarations in Form C, and proceed to assess him on that basis. It is implicit in the nature of the jurisdiction created

by Section 9(3) which possibly, as we mentioned, may give rise to conflicting orders of assessments by authorities in different States. It is

incumbent upon such authorities to ask and verify from the other authority before whom C Forms are claimed to have been filed whether it is so

and they satisfy the conditions for the concessional rate u/s 8(4). In our opinion, this is not merely by way of courtesy or for the sake of fairness.

Apart from the obligation being involved in the procedural scheme of assessments by the States under the Central Act, Article 261 of the

Constitution enjoins that full faith and credit should be given throughout the territory of India to public acts, records of judicial proceedings of the

Union and of every State. Assessment proceedings are quasi-judicial in character and documents filed in the course of such proceedings are part

of the records therein. It seems to us therefore that when it is brought to the notice of the assessing authority in a particular State that C Forms have

been filed before another authority in another State, who claimed jurisdiction over identical turnover, the former should verify the fact from the

latter and give appropriate relief u/s 8(4). He is for that purpose entitled to call for, as we think, the C Form declarations from the other authority

and return them after the purpose is over or retain them with the consent of the other officer as part of his assessment proceedings.

6. In this case the assessee claims to have filed the C Forms before the Kerala authority before January 30, 1960, when the assessment order in

that State was made. The assessing authority in the Madras State by notice dated November 2, 1959, called upon the assessee to show cause

why the turnover mentioned therein should not be brought to taxation in the manner mentioned. The assessing authority in Madras eventually made

his assessment order on February 10, 1963. The C Forms in the circumstances stated, therefore, could not be produced by the assessee before

the Madras assessing authority. But efforts could possibly have been made by the assessee to produce at least the counterfoil of the C Forms. The

Appellate Assistant Commissioner pointed out that duplicate copies of the C Forms could at least have been obtained and produced. The fact,

however, remains that the assessee having failed to do that, the assessing authority in Madras could have easily checked up with the assessing

authority in the Kerala State whether the relevant C Forms had been filed there which, for the reasons mentioned above, was obligatory on him

before completing the assessment.

7. The benefit of what we have said so far, however, has not extended to the entirety of the turnover of Rs. 80,615 brought to tax by the Madras

assessing authority. A perusal of the order of the Sales Tax Officer at Perintalmanna in the Kerala State shows that the assessee filed C Forms

before him which only covered a turnover of Rs. 27,755.58. It has not been found whether even this turnover or any part of it is to any extent

identical with and is included in the turnover of Rs. 80,615. We drew attention earlier to the fact that the Appellate Assistant Commissioner

expressed a doubt whether the sum of Rs. 27,755.58 related to different transactions. The Tribunal has expressed no opinion on it.

8. In the circumstances the only relief that we can give in this tax revision case is this. The order of assessment is set aside only to the extent of a

turnover of Rs. 27,755.58. The assessing officer, after giving a fresh opportunity to the assessee, will check up with the assessing authority at

Perintalmanna whether C Forms were produced before him covering the turnover of Rs. 27,755.58, whether they were in order and whether the

transactions which made up this turnover of Rs. 27,755.58 were included in the turnover of Rs. 80,615. If he comes to an affirmative conclusion

on these matters and in favour of the assessee, he would of course have to tax the turnover of Rs. 27,755.58 or any part of it at the concessional

rate. There will be an order accordingly. No costs.