(1956) 07 AP CK 0002

In the Andhra Pradesh High Court

Case No : T.R.C. No. 11 of 1954

Sri Sitharama Rice and Oil Mills		APPELLANT
	Vs	
State of Andhra		RESPONDENT

Date of Decision : 20-07-1956

Acts Referred:

Citation : AIR 1957 AP 164 : (1956) 7 STC 635

Hon'ble Judges : Viswanatha Sastry, J;P. Satyanarayana Raju, J;K. Subba Rao, J

Bench : Full Bench

Advocate : B.V. Subrahmanyam, V.V. Krishna Murthy and M. Seshachalapathi, for the Appellant;

Final Decision : Allowed

Judgement

P. Satyanarayana Raju, J.—This is an application by the assessees for revising the order of the Sales Tax Appellate Tribunal in T.A. No. 213A of 1953.

2. The assessees are manufacturers of groundnut oil. They have started business on 26th August, 1951, and have registered themselves as manufacturers under rule 18 of the Sales Tax Turnover and Assessment Rules on 12th November, 1951. They claimed rebate under rule 18 of the Turnover and Assessment Rules in respect of the sales of the manufactured oil as from 26th August, 1951, which is the date of commencement of their business. The Deputy Commercial Tax Officer allowed the rebate only from 12th November, 1951, the date of their registration as manufacturers, and disallowed the deduction claimed with effect from 26th August, 1951. The Commercial Tax Officer, on appeal, confirmed the assessment and dismissed the appeal.

3. The Sales Tax Appellate Tribunal held that the registration under rule 18(1) of the Turnover and Assessment Rules becomes operative only from the date of the registration and that the assessees could not invoke the benefits of rule 18(1) for the period for which they remained unregistered.

4. The learned counsel for the petitioners contended that the assessees

submitted a return in Form A9 on the 25th of October, 1951, wherein they prayed that they might be granted a rebate of tax in respect of the sale of oil manufactured by them from the 5th of September, 1951, and that the fact of the existence of the partnership having been brought to the notice of the Registering Officer, the non-registration of the firm till 12th November, 1951, would not disentitle it to claim relief under rule 18(2).

5. In support of this contention, counsel for the petitioners relied upon a decision of a Divisional Bench of the Madras High Court consisting of Rajagopalan and Balakrishna Ayyar. JJ., in The State of Madras, In re (1954 5 S.T.C. 161; 1954 1 M.L.J. 669) where the learned Judges observed thus :-"Since on the date the assessee applied for the deduction permissible under rule 18(2) he was ''such a manufacturer'' within the meaning of sub-rule (3), i.e., a manufacturer registered under sub-rule (1) of rule 18, he was entitled, under the provisions of sub-rule (3), to present the application for the previous month, i.e., the month even prior to the month of registration."

6. The learned Government Pleader contended that the expression "every such manufacturer" in sub-rule (3) has reference to the manufacturer who has registered himself under rule 18(1) and so read the rules give the benefit of the exemption only to persons who have registered themselves as manufacturers. He submitted that the decision of the Madras High Court has not considered this aspect and that therefore it required reconsideration.

7. The point raised is of some importance and may arise for decision very often in this Court. We consider it desirable that there should be an authoritative ruling as to the interpretation of these provisions by a Full Bench.

8. We formulate the following question for decision by a Full Bench :

"Whether sub-rules (2) and (3) of rule 18 and Form A9 of the Madras General Sales Tax (Turnover and Assessment) Rules can be read together, and an assessee who has not registered himself under rule 18(1) can claim the deduction permissible under rule 18(2) by reason of his having applied for a rebate under Form A9 ?"

Opinion Of The Full Bench.

The Opinion of the Full Bench was delivered by

Satyanarayana Raju, J.

9. The following question has been formulated for decision by the Full Bench :

"Whether sub-rules (2) and (3) of rule 18 and Form A9 of the Madras General Sales Tax (Turnover and Assessment) Rules can be read together, and an assessee who has not registered himself under rule 18(1) can claim the deduction permissible under rule 18(2) by reason of his having applied for a rebate under Form A9 ?"

10. In T.R.C. No. 6 of 1954 (Since reported as Deputy Commissioner of Commercial Taxes v. Pentapaty Lakshmana Swamy 1956 (7 S.C.T. 560)), we have held that the deduction referred to in sub-rule (2) of rule 18 of the Turnover and Assessment Rules framed under the Madras General Sales Tax Act is conditional upon the assessee complying with the requirement contained in sub-rule (3) of that rule.

11. Under sub-rule (2) of rule 18, every registered manufacturer of groundnut oil is entitled to deduction under clause (k) of sub-rule (1) of rule 5, of an amount equal to the value of the groundnut and/or kernel purchased and converted by him into oil and cake, provided that the amount for which the oil is sold is included in his turnover. Under sub-rule (3) of rule 18, in order that he might obtain this deduction, the manufacturer is required to submit, so as to reach the assessing authority not later than the 25th day of every month, a statement in Form A9 in respect of the transactions relating to the previous month. There was no express power vested in any authority, before the 10th of February, 1949, to condone the delay, if the return was not submitted within the time fixed by sub-rule (3) of rule 18. On that date, a further sub-rule (3-A) was introduced after sub-rule (3). Sub-rule (3-A) runs thus :-

"If any such manufacturer fails to submit the statement in Form A9 within the time specified in sub-rule (3) or if he omits to furnish any of the particulars required by that form, the Commercial Tax Officer may, in his discretion, after making such enquiry, as he considers necessary, condone the delay or omission or both :

Provided that such manufacturer has maintained a true and correct account of his business showing all the particulars required by sub-rule (3)."

12. Construing these provisions a Division Bench of the Madras High Court consisting of Rajagopalan and Balakrishna Ayyar, JJ., held in The State of Madras, In re (1954 5 S.T.C. 161; 1954 1 M.L.J. 669) thus :

"Sub-rule (2) and sub-rule (3) of rule 18 have to be read together, and, in reading sub-rule (3), Form A9, which has been specifically referred to in sub-rule (3), has also to be read with it. Form A9 is in itself an application for rebate, and, under sub-rule (3), that application could be made for the previous month. Since on the date the assessee applied for the deduction permissible under rule 18(2) he was ''such a manufacturer'' within the meaning of sub-rule (3), i.e., a manufacturer registered under sub-rule (1) of rule 18, he was entitled, under the provisions of sub-rule (3), to present the application for the previous month, i.e., the month even prior to the month of registration."

13. The learned Government Pleader contends that the expression "every such manufacturer" occurring in sub-rule (3) has reference to the manufacturer who has registered himself under rule 18(1) and so read, the rules give the benefit of the exemption only to persons, who have registered themselves as manufactures, in respect of the period which is subsequent to the date of

registration. It is true that the words "every such manufacturer" used in sub-rule (3) of rule 18, refer only to a dealer who has registered himself as a manufacturer of groundnut oil and cake. Once a dealer has registered himself as a manufacturer under the provisions of rule 18(1), he is entitled under the provisions of sub-rule (3), to present the application for the previous month, i.e., the month even prior to the month of registration. Form A9 is in itself an application for rebate and under rule 3 that application can be made for the previous month. The rule itself nowhere says that the deduction could be claimed only in respect of the period which is subsequent to the month of registration. The contention of the Government Pleader that registration being a necessary condition for getting exemption, the benefit of the exemption cannot relate to a period previous to the month of registration, is not borne out by the language or intendment of sub-rule (3). In our opinion, the decision of the Madras High Court in The State of Madras, In re (1954 5 S.T.C. 161; 1954 1 M.L.J. 669) gives proper effect to the relevant statutory provisions. Sub-rule (3A) empowers the Commercial Tax Officer to condone the delay in filing the return as required by sub-rule (3) provided that the registered manufacturer has maintained a true and correct account of his business showing all the particulars required by sub-rule (3). So long as the assessment is not completed, the concerned officer has power to condone the delay in the submission of the return or condone even an omission to submit a return. Therefore, in respect of the period which is anterior to the period mentioned in sub-rule (3), the manufacturer can apply to the competent authority who, in his discretion, can condone the delay or omission or both.

14. We answer the question accordingly.

Order

After receipt of the opinion of the Full Bench, the Court made the following order :

Following the Full Bench decision the revision is allowed with costs. Advocate''s fee Rs. 100.