
(1967) 08 MAD CK 0046
In the Madras High Court
Case No : Tax Case No. 243 of 1965

State of Madras

APPELLANT

Vs

K. Nandagopal Chetty

RESPONDENT

Date of Decision : 31-08-1967

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 3, 6, 7, 8

Citation : (1968) 22 STC 290

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

Bench : Division Bench

Advocate : The Special Government Pleader, for the Appellant; A.M. Obalapathy Sreshty, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—This tax case raises the question of jurisdiction ~ r the State of Madras to tax certain subsequent inter-State sales made 1 y the respondent to a local buyer by transfer of documents in the course of inter-State movement of the goods. The disputed turnover amounts to Rs. 5,296 subjected to tax at 7 per cent, under the proviso to Section 9(1) read with the proviso to Section 6(2) of the Central Sales Tax Act, 1956. It is not in controversy that the goods initially moved out from the State of Gujarat to the respondent under an inter-State sale within the purview of Section 3(a) and that when they were in transit, he transferred the documents of title to a buyer in this State. It is again not in controversy that sales of the particular goods are exempt from tax in the State of Gujarat. Neither the respondent issued declarations in Form C to the Gujarat seller nor the latter certified to the former in Form E-I. Nevertheless, the revenue took the view that the subsequent sales effected by the respondent being outside the purview of Section 6(2), it has jurisdiction to tax such sales under the proviso to Section 9(1). The Tribunal did not accept that view and that is how the tax case is brought by the State before us.

2. In our opinion, the Tribunal's conclusion is correct, but for different reasons.

The matter relates to the assessment year 1960-61. We shall briefly notice the provisions of the Central Sales Tax Act, 1956, as amended and applicable to that assessment year. "Appropriate State" is defined by Section 2(a) to mean, in relation to a dealer who has one or more places of business situate in the same State, that State, and in relation to a dealer who has places of business situate in different States, every such State with respect to the place or places situate within its territory. "Place of business" u/s 2(dd) includes the place of business of the dealer's agent, or a warehouse, godown or other place where the dealer stores his goods, or a place where he keeps his books of account. Section 6 is the charging section. Sub-section (1), which is subject to the other provisions contained in the Act, visualises a multi-point tax on inter-State sales. But Sub-section (2) exempts from tax subsequent sales by a dealer to a dealer, both registered, but subject to the condition contained in the proviso to the sub-section that the dealer effecting the sale furnishes a certificate in the prescribed form, filled and signed by the registered dealer from whom the goods were purchased. The form prescribed under the rules is the E-I Form. Section 7 requires the registration of dealers, based on the prescribed form of application, and the certificate of registration will show the specified goods in which the dealer, in whose favour the certificate is issued, will deal in the course of his business. The following section prescribes the rates of tax. Sub-section (1) provides for a concessional rate subject to certain conditions, and where the requisites for the concessional rates are not satisfied, Sub-section (2) subjects the transactions to a rate specified therein or the rate for such goods prevailing in the appropriate State, whichever is higher. One of the requisites to qualify for the concessional rate is what is prescribed by Sub-section (4) of Section 8, and that is, 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. This declaration has to be furnished by the dealer selling the goods to the prescribed authority in the prescribed manner. The form prescribed for the declaration under the rules is Form C. Section 9 is the procedural section as to levy and collection of tax. As the instant case will turn on the construction of this section, it may be reproduced for convenience :

9. (1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce (whether such sales fall within Clause (a) or Clause (b) of Section 3) 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:

Provided that, in the case of a sale of goods during their movement from one State to another being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within Sub-section (2) of Section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained the form prescribed for the purposes of Clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods.

* * *

3. The rest of the sub-sections are not material for our purpose. Sub-section (1), at the moment, presents no difficulty. For, the State vested with jurisdiction under this provision is the State from which the movement of the goods commenced. The proviso covers cases of subsequent sales which do not fall within Sub-section (2) of Section 6 and fixation of the State which will have jurisdiction to tax in respect of such sales. Sub-section (2) of Section 6 contemplates subsequent sales by a registered dealer to a registered dealer. If, therefore, the sale is by a registered dealer to a non-registered dealer, it will be outside the purview of Section 6(2). But even where the sale is by a registered dealer to a registered dealer, which will fall within Sub-section (2), its application will depend on compliance with the proviso thereto. That is to say, although the subsequent sale is by a registered dealer to a registered dealer, the exemption of such a sale will depend upon the second seller furnishing a certificate in Form E-I, which will be duly filled and signed by the registered dealer from whom the goods were purchased by him. Where the certificate is not forthcoming, the second sale, as one outside the scope of Section 6(2) will attract the proviso to "section 9(1). But here again, the applicability of the proviso is conditioned upon certain further requisites. It is on the scope of these requisites there is divergence of argument at the Bar.

4. For the revenue it is contended that what decides the jurisdiction of the taxing State is the fact of the second seller obtaining the form prescribed for purposes of Clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods. On the other hand, the contention for the assessee is that this view of the revenue does not give effect to the words in the proviso following the word "obtained". In our opinion, both the conditions of this part of the proviso will have to be satisfied in order to invest the taxing State with jurisdiction. Not only the C Form should be obtained from the taxing State, but it should also be in connection with the purchase of the goods involved in the second sale. The whole purpose of the proviso is to identify the State which is invested with jurisdiction to tax particular subsequent sales. It is, therefore, reasonable to construe the proviso as that, when it speaks of obtaining the form prescribed for the purposes of Clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods, it means that the C Form certificate has been obtained in respect of a particular first sale of the goods. The concluding phraseology in the proviso is not used in the abstract; but since the jurisdiction is to be localised with reference to particular transactions, the form spoken of must necessarily relate to such transactions. So much, as it appears to us, is clear from a reading of Section 8(4)(a) with the proviso to Section 9(1).

5. It may be said that the construction we are inclined to place upon the proviso suffers from this weakness, namely, that the jurisdiction of the taxing State will depend upon the act or failure on the part of the subsequent seller. But we think that very rarely he would fail to comply with Section 8(4)(a), in view of the

adverse consequences of such failure. In cases, as here, where the goods are exempt in the State from which they have moved out, pursuant to a sale within the scope of Section 3(a), the need for Forms C and E-I from the standpoint of the dealer, is not there. In such a case there is nothing in the Act which obliges the respondent to obtain Form C. We are told that in practice registered dealers in this State are issued blank C Forms in a book form, which they are expected to use in connection with each purchase. But that fact can make no difference to the legal position that, as and when a dealer uses the form, he is supposed to obtain it from the prescribed authority, for purposes of Section 8(4)(a).

6. On our construction of the proviso to Section 9(1), there is a lacuna in it. The objects and reasons for enacting the proviso to Section 9(1) are thus stated:

In the case of a, second or subsequent sale by a registered dealer to an unregistered dealer which will not be covered by Sub-section (2) of Section 6 as proposed to be amended by Clause 3, tax will be levied and collected in the State where the registered dealer making the sale has his place of business.

7. Apparently, the proviso, as enacted, is intended to have a wider scope to include also subsequent sales by a registered dealer to a registered dealer without compliance with the proviso to Section 6(2). But the actual language employed by the proviso to Section 9(1) does not cover a case like this and vest jurisdiction in the State of Madras to tax it.

8. The tax case is dismissed with costs. Counsel's fee Rs. 100.