

(1982) 11 MAD CK 0013

In the Madras High Court

Case No : Tax Case No's. 78 and 196 of 1980

State of Tamil Nadu

APPELLANT

Vs

Arulmurugan and Company

RESPONDENT

Date of Decision : 02-11-1982

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(4), 9

Tamil Nadu General Sales Tax Act, 1959 — Section 36

Citation : (1986) ILR (Mad) 97 : (1982) 51 STC 381

Hon'ble Judges : S. Padmanabhan, J;N.V. Balasubramanian, J;M.A. Sathar Sayeed, J

Bench : Full Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant; C. Natarajan, for the Respondent

Judgement

Balasubrahmanyam, J.—This Full Bench is charged with deciding the following question : Whether an appellate authority can entertain C

form declarations filed by a registered dealer at the appellate stage, either under the Central Sales Tax Act, 1956, or the Rules made thereunder ?

From 1st April, 1973, there is a statutory time-limit for furnishing C form declarations. The time-limit is prescribed by rule 12(7) of the Central

Sales Tax (Registration and Turnover) Rules, 1957. The source for this rule is to be found in the proviso to section 8(4) of the Act, as amended

with effect from 1st April, 1973. According to rule 12(7), C form shall be furnished ""up to the time of assessment by the first assessing authority"".

2. There is, however, a provision for allowing further time on sufficient cause. A provision to this effect is found in the proviso to section 8(4) of the

Act. The language of the section is ""within such further time as that authority may, for sufficient cause, permit"". ""That authority"" means the

prescribed authority before whom the assessee should file the C forms. The proviso to rule 12(7) of the Central Sales Tax (Registration and

Turnover) Rules, also carries a similar, but not identical, provision for allowing further time.

3. So far as the assessments to Central Sales tax in Tamil Nadu State are concerned, the prescribed authority, for the purpose of receiving C

forms up to the time of the assessment, is the assessing authority in view of rule 10 of the Central Sales Tax (Tamil Nadu) Rules, 1957.

4. On the above provisions, the argument of the learned Government Pleader for the revenue before us was that C forms must be filed by the

assessee before the assessing authority completes the assessment. The learned Government Pleader offered two reasons why an appellate

authority, like the Appellate Assistant Commissioner or the Sales Tax Appellate Tribunal, cannot receive C forms : (i) With the completion of the

assessment the time-limit for filing C forms expires. The appellate authority comes on the scene only after the assessment is over. It follows that the

appellate authority cannot entertain C forms. (ii) Under the relevant statutory provisions, an assessing authority alone can allow further time. The

appellate authority is different from an assessing authority. Therefore, the appellate authority cannot allow further time and receive C forms at the

appellate stage, subsequent to the assessment.

5. We accept the contention of the learned Government Pleader that the assessing authority, as the prescribed authority, has the power to allow

further time to file C forms under the proviso to section 8(4) of the Central Sales Tax Act. Likewise, we accept the position that under the proviso

to rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957, the first assessing authority is invested with the power to allow

further time for filing C forms. We do not, however, accept the implication in the Government Pleader's further contention that an appellate

authority cannot be brought within the meaning of the expression ""assessing authority"". In one sense, an appeal may be different from an

assessment. But the difference lies only in the particular stage of the proceeding and in the particular authority having jurisdiction in the two stages.

Basically, an appeal does not differ from an assessment. Just as is the case with any other appeal under our legal system, an appeal from a sales tax

assessment is only a rehearing or a retrial. In the absence of any statutory inhibitions or restrictions, an appellate authority has precisely the same powers, exercisable or in the same manner and to the same extent, as the assessing authority has, in the first instance. If this were not the position, no appellate authority can effectively function while hearing and determining an appeal from an assessment. Under the scheme of section 9 of the Central Sales Tax Act, appeals from Central sales tax assessments will have to be dealt with in the same manner and under the same procedure as provided for under the general sales tax law of the concerned State. The jurisdiction of an appellate authority under the Tamil Nadu General Sales Tax Act, 1959, includes the power to confirm, reduce, enhance, or annul, the assessment. It also includes the power to set aside the assessment with a direction to the assessing authority to make a fresh assessment, and also to pass any other order which the appellate authority may think fit. These powers, which are of the widest amplitude, are expressly conferred both on the Appellate Assistant Commissioner and on the Appellate Tribunal, vide sections 31 and 36 of the Tamil Nadu General Sales Tax Act, 1959. The provisions show clearly that the power of the appellate authority concerning an assessment under appeal is no different, and not less wide, than the power of the assessing authority to make the assessment in the first instance. Besides, such power as the appellate authority is empowered to exercise in relation to an assessment under appeal, has got to be exercised only in the same manner and subject to the same conditions, if any, which govern the exercise of the power of assessment by the assessing authority in the first instance. It follows, therefore, that whatever discretion is conferred on the assessing authority for purposes of assessment must so be regarded, as a matter of statutory construction, to have been conferred on the appellate authority even without the concerned statutory provision expressly naming the appellate authority in that behalf. It goes without saying that an appellate authority, engaged as it is in precisely the same task under the fiscal statute as that of the assessing authority must also be possessed to like powers as those of the assessing authority. It is implicit in the very nature of the appellate jurisdiction, as well as the purposes for which that jurisdiction is created by the statute, that the appellate authority will have to function, in the very image of the assessing authority. Appellate proceedings are often truly

described as an extension of the assessment proceedings, or as a continuation of the assessment proceedings. In this context, therefore, it does not matter that a power is conferred, by any provision in the taxing statute or in the statutory rules, eo nomine on the assessing authority, and is silent about the appellate authority or any other authority under the Act. Since the enabling section, or the rule, as the case may be, expressly refers to the assessing authority, as the repository of the power, it is elementary construction to hold that such power can be, and is intended to be, exercised by the assessing authority named in the particular provision concerned. But, it does not mean that the appellate authority and any other fiscal authority who are in seisin of the assessment, either in appeal, or in revision or in any other proceeding, cannot exercise a like power. The fact that the appellate authority is not expressly mentioned in the provision conferring the enabling power, does not mean that the legislature intended to exclude that authority from the purview of the provision.

6. To turn from general principles of construction of statutes, to the particular provision in the proviso to section 8(4) of the Central Sales Tax Act, the proviso, no doubt, mentions, in express terms, only the prescribed authority. It must also be accepted that the prescribed authority in the State of Tamil Nadu is the assessing authority, as can be gathered from rule 10 of the Central Sales Tax (Tamil Nadu) Rules, 1957. This does not, however, mean that the appellate authority, who may be in seisin of an assessment in appeal, is to be denied the exercise of the power conferred by the proviso to section 8(4) of the Act.

7. That this is the proper way to construe not only the scope of the appellate power, but also the repositories of such power is best illustrated by reference to a decision of the Supreme Court in *The Commissioner of Income Tax Vs. Mcmillan and Co.*, . That case arose under the Indian Income Tax Act, 1922, but the principle enunciated in the Supreme Court decision is, in our judgment, of direct application to the present case.

We hold that the decision must be adopted so as to clothe the appellate authority also with the power to extend the time-limit for filing C forms under the proviso to section 8(4) of the Central sales Tax Act.

8. What happened in *The Commissioner of Income Tax Vs. Mcmillan and Co.*, was this : Under the Indian Income Tax Act, 1922, a tax-payer's

business profits must be computed, so far as may be, in accordance with the method of accounting regularly employed by that tax-payer. This general rule is laid down in the substantive part of section 13 of that Act. There is, however, a proviso to the section, under which power is, in terms, conferred on the Income Tax Officer, to adopt his own basis for arriving at the business income, in cases where no method of accounting is regularly employed by the assessee or in cases where the method employed by the assessee is such that in the opinion of the Income Tax Officer, the taxable profits cannot be properly deduced therefrom. It will be noticed that the proviso expressly refers only to the Income Tax Officer as having the requisite power to discard the assessee's method of accounting. The question which arose before the Supreme Court in The Commissioner of Income Tax Vs. Mcmillan and Co., was whether this power to ignore the assessee's method of accounting can be exercised by an Appellate Assistant Commissioner while dealing with an appeal against an assessment made by an Income Tax Officer ? It was contended before the Supreme Court that the proviso to section 13 of the Income Tax Act, in terms, referred only to an Income Tax Officer and not to an Appellate Assistant Commissioner, and therefore, the power conferred by the proviso cannot be exercised by the Appellate Assistant Commissioner. This contention, however, was repelled by the Supreme Court. They held that while the decision as to the method of accounting is to be arrived at, in the first instance, by the Income Tax Officer, the power exercisable by the Income Tax Officer is not clothed with any finality, and, in reviewing the order of the Income Tax Officer, the Appellate Assistant Commissioner can exercise the same powers which the Income Tax Officer could himself exercise. In construing the expression "'in the opinion of the Income Tax Officer'", the Supreme Court observed that the expression is aptly used in section 13 of the Income Tax Act, since the Income Tax Officer must, in the first instance, makes the determination, but it does not necessarily follow therefrom that the Appellate Assistant Commissioner cannot revise the determination and exercise the same power in appeal which the Income Tax Officer himself could exercise in the assessment.

9.The decision of the Supreme Court in The Commissioner of Income Tax Vs. Mcmillan and Co., is not to be considered as a mere analogy. In

our judgment, it establishes a principle of construction of statutory powers in tax appeals, which is general in nature, and therefore, applicable to

the present case. Following the line of approach to statutory construction adopted by the Supreme Court, we hold that the power to extend the

time for filing C form declarations, which the proviso to section 8(4) of the Central Sales Tax Act confers, is available to be exercised by every

authority who has jurisdiction to deal with the assessment in one way or another, and at one time or another, and is not confined strictly to the

assessing authority alone, as the prescribed authority.

10. A few cases were cited in argument. In *State of Tamil Nadu v. Chellaram Garments* [1979] 44 STC 239 a similar question arose in a case

where the Sales Tax Appellate Tribunal entertained C form declarations which were not filed with the assessing authority before the conclusion of

the assessment. The Tribunal remanded the case to the assessing authority for the purpose of finding out whether C forms could be entertained.

This Court upheld the action of the Tribunal in restoring the matter to the assessing authority. We do not find, however, any detailed discussion in

this judgment on the question whether the Appellate Tribunal is competent to exercise the power to extend the time for filing C forms. What the

court pertinently upheld in that case was the decision of the Tribunal to set aside the order of assessment and direct the assessing authority to go

into the question of entertaining C forms, which were not produced at the time of the original assessment.

11. This manner of disposal of the appeal by the Tribunal in that case, and in similar cases, apparently provoked Ismail, C.J., in a judgment, which

is one of the referring judgments before this Full Bench, to cast doubts on the Tribunal's jurisdiction to set aside the assessment just for the sake of

enabling the assessing authority to entertain the C forms, when they had not been filed at the stage of the original assessment. In the view we hold

of the scope of the proviso to section 8(4), the Tribunal has undoubted jurisdiction as an appellate authority to allow further time for filling C forms

beyond the assessment stage. If this power exists, as we hold it does, then we do not see that any impropriety or indiscretion is involved, merely

because the Tribunal, instead of condoning the delay in filing C forms, seeks to set aside the assessment itself on the basis of a finding as to the

existence of sufficient cause. For, what the Tribunal can do directly, it can achieve indirectly too. Even apart from the construction we have placed

on the proviso to section 8(4) of the Act, we have no doubt whatever that the Tribunal has the power, u/s 36 of the Tamil Nadu General Sales Tax

Act, 1959, to set aside as assessment either in whole or in part, and direct the assessing authority to re-do the assessment. Ismail, C.J., in casting

doubts on the indirect use by the Tribunal of their power must have had in mind the analogy of mala fide exercise of power or of exercise of power

for a collateral purpose. We do not think these conceptions which are apparently adopted or borrowed from public law jurisprudence, can have

any place in the discussion of statutory provisions and their construction. We hold that there is nothing in the conferment by the statute of appellate

powers on the Tribunal which bars the Tribunal from setting aside the assessment for the very purpose of enabling the assessee to file C forms

which the assessee had omitted to file in the original assessment. An exercise of power for doing equity to a deserving tax-payer hardly merits the

charge of misuse of power for a collateral purpose, much less, mala fide exercise of power. It is, however, unnecessary to labour this point further,

since we hold, as a matter of construction of the proviso to section 8(4), that an appellate authority has power to allow further time, on sufficient

cause, for filing the C forms, even though the said proviso does not, in so many words, name the Tribunal as the repository of such power. If, on

our construction of the statute, the Tribunal has got the requisite power, and it can be exercised directly without mincing matters, certainly the

Tribunal can achieve the same end, indirectly, by setting aside the assessment and by directing the assessing authority to do what the Tribunal itself

might have done if it had so wished.

12. In a later decision, as yet unreported, in Deputy Commissioner v. Rathna and Company Sago Factory (T.C.R. No. 329 of 1976) printed at

page 398 infra, this Court had had occasion to deal with a similar case of the Sales Tax Appellate Tribunal entertaining C form declarations at the

appellate stage. In this case, the court referred to the earlier decision in State of Tamil Nadu v. Chellaram Garments [1979] 44 STC 239. The

court also referred briefly to the mode of construction of appellate powers adopted by the Supreme Court in The Commissioner of Income Tax

Vs. Mcmillan and Co., . Having cited these cases, this Court proceeded to uphold the action of the Tribunal in entertaining the C forms filed at the appellate stage. Although this decision might be regarded, in some respects, as a forerunner to the present Full Bench references, the law on the subject had not had the advantage of having been fully discussed in that judgment.

13. In another unreported decision of this Court in Imperial Match Works, Sivakasi v. State of Tamil Nadu (T.C. No. 187 of 1977), an attempting was made to file C form declarations before the Tribunal, the assessee not having done so at the assessment stage. The Tribunal, however, declined to entertain the C forms, not on the ground that they had no power to entertain them, but for the reason that there was no sufficient cause made out in that case to extend the time. The action of the Tribunal was upheld by this Court, but without any analytical discussion either of the relevant statutory provisions or of the reported cases.

14. In the course of arguments, a judgment of the Kerala High Court reported in McDowell & Co.'s case [1980] 46 STC 79 was also cited. One of the points which arose in that case was whether C form declarations, which had not been filed by the assessee at the initial stage of assessment, could be entertained by the appellate authorities. The Kerala High Court held that the appellate authorities had no power to entertain C forms at the appellate stage, nor had they any power to extend the time for sufficient cause. The decision, however, has been rendered with little or no discussion apparently because the assessee who figured in that case had all but conceded the point.

15. We must observe that in none of these cases in which the power of the appellate authorities to entertain C forms directly arose for decision has there been any full or exhaustive investigation into the real nature and scope of the appellate power in taxing statutes. We have earlier referred to The Commissioner of Income Tax Vs. Mcmillan and Co., decided by the Supreme Court. But this case is not to be regarded either as an isolated phenomenon or as a decision turning peculiarly on the construction of a special provision in the Indian Income Tax Act, 1922, namely, section 13.

The Supreme Court's decision, as we earlier said, reiterated a principle of wide application in tax law. An appellate authority under the taxing

enactments sits in appeal, only in a manner of speaking. What it does, functionally, is only to adjust the assessment of the appellant in accordance with the facts on the record and in accordance with the law laid down by the legislature. An appeal is a continuation of the process of assessment, and an assessment is but another name for adjustment of the tax liability to accord with the taxable event in the particular tax-payer's case. There can be no analogy or parallel between a tax appeal and an appeal, say, in civil cases. A civil appeal, like a law suit in the court of first instance out of which it arises, is really and truly an adversary proceeding, that is to say, a controversy or tussle over mutual rights and obligations between contesting litigants ranged against each other as opponents. A tax appeal is quite different. Even as the assessing authority is not the tax-payer's opponent", in the strictly procedural sense of the term, so too the appellate authority sitting in appeal over the assessing authority's order of assessment is not strictly an arbitral tribunal deciding a contested issue between two litigants ranged on opposite sides. In a tax appeal, the appellate authority is very much committed to the assessment process. The appellate authority can itself enter the arena of assessment, either by pursuing further investigation, or causing further investigation to be done. It can do so on its own initiative, without being prodded by any of the parties. It can enhance the assessment, taking advantage of the opportunity afforded by the tax-payer's appeal, even though the appeal itself has been mooted only with a view to a reduction in the assessment. These are special and exceptional attributes of the jurisdiction of a tax appellate authority is no different, functionally and substantially, from the assessing authority itself. This position has been well brought out in more than one decision of the Supreme Court. The Commissioner of Income Tax Vs. Mcmillan and Co., , which we earlier referred to, may be regarded as highlighting only one aspect of the wide range and peculiar slant of the appellate power in fiscal matters. We may cite another decision, of the Supreme Court, Commissioner of Income Tax, Madras Vs. Mahalakshmi Textile Mills Ltd., , which also had arisen under the Indian Income Tax Act, 1922, as highlighting, from another angle, the peculiar position of tax appellate tribunals. A general view of the position of appellate authorities under the tax codes is laid down in yet another decision of the Supreme Court. In Commissioner of Income Tax, U.P., Lucknow Vs. Kanpur Coal

Syndicate, the Supreme Court again examined the nature and scope of the powers of the appellate authorities under the Income Tax Act, and

observed that the scope of the Appellate Assistant Commissioner's power is "conterminous with that of the Income Tax Officer", and that the

Appellate Assistant Commissioner "can do what the Income Tax Officer can do and can also direct him to do what he has failed to do". It is

needless to point out that the provisions defining appellate powers in the Income Tax Act are, in pari materia with those laid down in sales tax

enactments as well. Having regard, therefore, to the weight of authority of the Supreme Court rulings on the nature of the appellate jurisdiction in

tax matters, some of the decisions of the High Courts, we have noticed earlier, which tend to espouse an all-too restricted view of the appellate

functions under the sales tax laws, must be held to have got the legal position quite wrong. In any case, none of these decisions persuades us to

read the scope of the power under the proviso to section 8(4) of the Central Sales Tax Act in a way which excludes from the repository of that

power any appellate authority sitting in appeal over Central sales tax assessments.

16. We would proceed now to advert to the different ways in which the discretion to allow further time for filing C forms is conferred by the

proviso to section 8(4) of the Act, on the one hand, and the proviso to rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, on

the other. The proviso in the Act simply says that the C forms shall be filed before the prescribed authority either within the prescribed time or

within such further time as that authority may, for sufficient cause, permit". As a matter of construction of the proviso in the statute, if there is

sufficient cause, further time will have to be allowed. The proviso to the section does not insist that the assessee should establish before the

prescribed authority that he was prevented by sufficient cause from filing the C forms in time. The "sufficient cause" spoken of by Parliament in

section 8(4) is sufficient cause which appeals to the mind of the authority concerned, and which enables it to allow further time without bothering

about any onus on the assessee. The proviso to rule 12(7), however, is a study in contrast. The power to allow further time under this rule is

severely circumscribed by the language of its proviso. This proviso is more or less fashioned after section 5 of the Limitation Act. Under the

requirement laid down by the rule-making authority, the burden is on the assessee to make out sufficient cause by explaining why he did not file, and what prevented him from filing, the C forms before the completion of the assessment. What is more, it is for the assessing authority to be satisfied about the existence of sufficient cause and its having prevented the assessee from filing the declarations within time. The difference between the two provisos is not merely one of language or of emphasis. The difference lies in the basic approach to the substance of the power to allow further time. Under the statutory provision, the prescribed authority can allow further time for sufficient cause, without bothering to see whether anything or any occurrence prevented the assessee from filing the C forms within time, and whether the assessee could have filed the C forms within time even in the position in which he actually found himself. The rule, however, casts the burden on the assessee and makes the position more difficult for him to invoke the power successfully. It also narrows down the discretion of the authority concerned. The question, however, is which is to be the master, the proviso in the section or the proviso in the rule? There can be no doubt about the legal position that a rule cannot prevail against the statute, by being repugnant to the statute. A study of the structure of the proviso to section 8(4) shows how Parliament's peculiar preferences had worked in this regard. While Parliament was content to leave to the rule-making authority, namely, the Central Government, the task of prescribing a rule laying down the time-limit for furnishing C forms, the power to allow further time, however, was not relegated to the Rules, but deliberately enacted into the very text of the provisos to section 8(4). In this statutory format, with Parliament clearly expressing its mind on the subject, the Central Government must be held to possess no authority whatever to make any rule as respects the power to allow further time, let alone prescribe the conditions subject to which any such power could be exercised. In this sense, the proviso to rule 12(7) must be held to be ultra vires the rule-making power, to the extent that it is inconsistent with, or lays down tests or standards different from, the proviso to section 8(4). It is quite clear that the proviso to rule 12(7) is both superfluous and badly drafted. The indifferent drafting is all the more regrettable when we remember the legislative history which brought into the statute book the proviso to section 8(4) as a necessary part of the

taxing enactment. Avowedly, the proviso was introduced by Parliament in section 8(4) to fill in the lacuna disclosed by the previous litigations in the

country, culminating in the decision of the Supreme Court in *Sales Tax Officer Vs. K.I. Abraham*, . It is a matter for comment that Parliament's

effort at clarity should have been neutralized, in part at least, by clumsy and unwanted rule-making. Be that as it may, we are clear in our minds that

where an assessee seeks to file C forms beyond the stage of assessment, the relative power which the concerned authority should invoke is the

power defined in the proviso to section 8(4) and not the power defined in the proviso to rule 12(7).

17. Two minor points of construction which the learned Government Pleader placed before us in the course of his argument may be briefly noted

and disposed of. While urging that an appellate authority could not possibly have been intended as one of the authorities invested with the power to

grant further time for filing C form declarations, the learned Government Pleader referred to the description of the assessing authority, as "the first

assessing authority" in the proviso to rule 12(7). The argument was that the term "first" must be given due significance, and such significance can

only be given by excluding the appellate authority and all other authorities from the purview of the power to extend the time. We do not think that

the inclusion of the word "first" in the phrase "first assessing authority" leads to this result. We see nothing significant in the use of the epithet "first

occurring before the words "assessing authority". If the intention of the draftsman were that the appellate authority and other authorities are to be

severely excluded from the rule, then that need not have been sought to be achieved by the use of the appellation "first assessing authority", as if

there can be second assessing authority, a third assessing authority, and so on. In our view, by a "first" assessing authority is meant no more than

the authority who makes the assessment, in the first instance. The designation does not mean anything else. Even otherwise, the basis of our

conclusion that the appellate authority also can allow further time for filing C form declarations in deserving cases is not derived from the words of

the proviso to section 8(4) or the proviso to rule 12(7). Our conclusion is based, rather, on the true juristic conception of the role which the

appellate authority has to play under the tax code as respects assessments in appeal. Our conclusion is least affected by the particular form of

words which the rule-making draftsman has adopted in drawing up the proviso to rule 12(7).

18. Another subsidiary argument of the learned Government Pleader dwelt on the modus operandi of the power to allow further time for filing C

forms. The learned Government Pleader wondered how an assessing authority is expected to allow further time for C forms, after the assessment is

over and done with. With the completion of the assessment, it was said, the assessing authority would become functus officio so far as that

assessment was concerned. He might, no doubt, reopen the assessment for bringing to charge escaped turnover. But, it was pointed out that

allowing further time for filing C forms is not a process of assessing escaped turnover, but a process of reduction the liability already determined in

the assessment in the absence of C forms. The learned Government Pleader feared that even in the case of an assessing authority, the power might,

in practice, break down for want of the requisite machinery provision enabling the assessing authority to receive the C forms on file subsequent to

the completion of the assessment.

19. We do not think there is any room for the perplexity given expression to by the learned Government Pleader. Given the assessing authority's

undoubted power to allow further time for C forms to be filed on sufficient cause, the rest of it is mere procedure or follow up action. Where the

assessing authority is satisfied, in a given case, about the existence of sufficient cause, it must necessarily be followed up by appropriate action,

such as reopening the assessment already completed. Perhaps the requisite corrective action can be taken by invoking the assessing authority's

statutory power of rectification of mistakes. Even otherwise, the implementation, in appropriate cases, of the power to allow further time cannot be

withheld on the excuse that there is not express provision either in the statute or in the statutory rules for reopening the assessment. When the

power is there and the facts are there demanding its exercise, the implementation must be done as a matter of course, on the doctrine of implied or

ancillary powers. Where there is a power, and where there is a will, there will be a way. It is, however, unnecessary to pursue the line of discussion

further, because the particular problem we are concerned with in the two cases before us is quite different. What we are asked to consider, and

what we have been engaged in discussing so far, is whether an appellate authority has the same power as the assessing authority to allow further

time for accepting C forms, and not how and by what process the assessing authority itself could exercise the power after the completion of the assessment.

20. We may now turn to the facts of each of the two individual references before us. In both the cases, the assessee concerned did not file C forms

with the assessing authority before the completion of the assessments. Naturally, therefore, the turnovers in question were charged to tax at the rate

of 10 per cent, instead of at the concessional rate of 4 per cent. Both the assessees appealed against their respective assessments. In both the

cases, leave to file the relevant C forms was asked for, at the appellate stage. The Appellate Assistant Commissioner, however, declined to receive

the C forms, and confirmed the assessments. On further appeal before the Tribunal, the assessees produced the C forms once again. At this stage,

the Tribunal entertained them. While doing so, the Tribunal felt satisfied that there was sufficient cause for not filing the C forms before the

assessments were over. The final orders of the Tribunal, however, were different in the two cases. In one case, the Tribunal set aside the

assessment and directed the assessing authority to make the assessment afresh on the basis of the C forms received at the appellate stage. In the

other case, without setting aside the assessment, the Tribunal forwarded the C forms to the assessing authority, directing that authority to scrutinise

the C forms and find out if they complied with the formalities.

21. Having regard to the considerations which we have set out in the foregoing paragraphs, we must uphold the decision of the Tribunal in both the

cases. We hold that the Tribunal has the power to receive C forms at the time of the appeal, for sufficient cause. The Tribunal can then proceed to

the next step of applying the concessional rate of tax to the turnover covered by the C forms. Or, the Tribunal may remand the case to the

Appellate Assistant Commissioner. The remand may be for the specific purpose of going into the question of sufficient cause. The remand may also

be loaded with a finding by the Tribunal that there has been sufficient cause, leaving the scrutiny of the C forms alone to be undertaken on remand.

The Tribunal may, if satisfied about the sufficient cause set aside even the

assessment order, and direct the assessing authority to re-do the assessment, in which event there would be no occasion for the assessing authority to go into any question of "delay" in filing the C forms, for with the setting aside of the assessment the whole thing is once again at large. It is needless to add that whatever has been stated by us as respects the Tribunal's power and the modes of its exercise apply, mutatis mutandis, to the Appellate Assistant Commissioner in like situations occurring in the appeals before him.

22. In the result, we uphold the decision of the Tribunal in both the cases. The revisions, filed by the State Government, must therefore be dismissed. We accordingly do so. The Government will pay the costs of these revisions. Counsel's fee Rs. 250 (one set).

23. The assessee figuring in one of the revisions did not appear at the hearing either in person or by counsel, although served with notice. We felt it necessary to have his case represented by an amicus curiae, having regard to the importance of the issues involved. Mr. C. Natarajan, at our request, performed that task. We place on record our thanks for his assistance at the hearing.

24. The learned Government Pleader orally asked for leave to appeal to the Supreme Court against the judgment in the two tax cases which we have now delivered. Having regard to the great importance of the subject which we have discussed in the two cases and also our view that the proviso to rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957, is different from the proviso to section 8(4) of the Central Sales Tax Act, 1956, and the rule should to that extent be regarded as ultra vires, we think the cases involve substantial points of great importance not only for this State but also in other States where Central Sales Tax Act, 1956 is being administered. We accordingly grant a certificate of fitness for appeal to the Supreme Court in both the cases.

25. Petitions dismissed.