
(1977) 04 MAD CK 0040
In the Madras High Court
Case No : T.C. No. 276 of 1974 (Rev. 132)

State of Tamil Nadu

APPELLANT

Vs

Ball Bearing Centre

RESPONDENT

Date of Decision : 11-04-1977

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 15(4B), 3, 3(1), 7, 7(1)

Citation : (1978) 7 CTR 53(2)

Hon'ble Judges : Sethuraman, J

Bench : Single Bench

Judgement

Sethuraman, J.—This tax revision petition has been filed against the order of the Sales tax Appellate Tribunal dated 22nd December 1973. For the assessment year 1971-72 the assessee reported a total and taxable turnover of Rs. 46,733-60 and Rs. 45,199-14 respectively. The Assistant Commercial tax Officer noticed certain defects, rejected the turnover as per accounts and determined the turnover to the best of his judgment at Rs. 56,398-92 under S, making an addition of 25 per cent to the book turnover. The assessee filed an appeal before the Appellate Assistant Commissioner who upheld the rejection of the accounts but he sustained only an addition of 12 1/2 percent to the book turnover and re-fixed the taxable turnover at Rs. 50,759-03. Assistant Commissioner, the assessee appealed to the Tribunal. The turnover disputed in the appeal was Rs. 5639-89, and the tax due on disputed turnover was Rs. 922-58. The assessee had opted for assessment under S. 7 of the Act by letters dated 1-8-1972. The assessing authority accordingly assessed under S. 7 of the Act. On appeal, the Appellate Assistant Commissioner revoked the assessment made under S. 7 of the Act and directed the assessment under S. 3(1) of the Act because Rule 15(4-B) of the Tamil Nadu general by an amendment made to the rules. The assessee questioned this part of the order of the Appellate Assistant Commissioner before the Sales-tax Appellate Tribunal. According to the assessee, the deletion of rule 15(4-B) had not deprived the right to have the option exercised within a reasonable time and the right having vested in the assessee on 1st May 1971,

could not be taken away from the assessee retrospectively. It was this contention which found favour with the Tribunal. The Tribunal held that the assessee having exercised the option for assessment under S. 7 within a reasonable time, was eligible for assessment under that provision. It is this order of the Sales-tax Appellate Tribunal which is now sought to be questioned in the present revision filed by the State.

2. The learned Additional Government Pleader submitted that the result of the repeal of S. 15 (4B) read with the relevant provisions in the statute as interpreted in the decisions would only to show that the assessee had to exercise the option before the 1st of May in each year that in the present case, the option question of S. 7 applying to the assessee at all. It is this contention which requires to be examined.

3. S. 7 provides that notwithstanding anything contained in sub-S. (1) of S. 3, every dealer whose total turnover is not less than fifteen thousand rupees but not more than seventy five thousand rupees, could at his option instead of paying the tax in accordance with the provisions of that sub-sections, pay the tax at certain rates specified under S. 7(1). S. 7(2) provided that any dealer who estimates total turnover for a year to be not to be more than seventy five thousand rupees may apply to the assessing authority to be permitted to pay the tax under S. 7 and on being so permitted he shall pay the tax in advance during the year in monthly or prescribed instalments and for that purpose shall submit such returns in such manner as may be prescribed. The permission granted to the assessee by the assessing authority would continue in force so long as the assessee eligible to be assessed under that provision i.e., so long as the turnover did not exceed the amount specified in the provision and so long as the assessee had also not withdrawn the option. Sub-S.(3) of S. 7 provides that the tax paid under sub-S. (2) shall be subject to such adjustment as may be prescribed on the completion of final assessment in the manner prescribed.

4. Rule 15 provides for the submission of returns by the assessee. Every dealer liable to submit a return had to, on or before the 1st of May in every year, submit to the assessing authority of the area in which his principal place of business was situate a return in form A-1 showing the actual total and taxable turnover in the preceding year and the amounts by and the amounts by way of tax or taxes actually collected during that year. The proviso to sub-rule (1) of rule 15 states that a dealer who opts to pay tax at compounded rates under S. 7 shall submit a return in form AA-1, Sub-rule 4-A of rule 15 provides that if a dealer who is eligible to pay tax at the compounded rate laid down in S. 7 is desirous of being assessed on a provisional basis from the commencement of any year, at the rates laid down in that section, he shall before the 1st May of each year or if the return referred to in sub-rules (1) to (3) of this rule was submitted earlier along with that return, intimate his desire to the assessing authority to be so assessed. It further provides that the option so exercised shall be continued so long as the dealer was found eligible to be assessed under S. 7 and had not withdrawn the

option and that the change over to this method of assessment shall not be permitted in the course of a year. Sub-rule 4-B which was in force, at any rate, during a part of the year provided that a dealer who was eligible for payment of tax at the rates laid down in S. 7 but who had not exercised the option to be assessed under that section as provided for in sub-rule (4-A) in respect of any year, shall if he desired to avail himself of payment of tax at the compounded rates laid down under that section for that year, exercise his option to be assessed at the time of submitting return prescribed in sub-rules (2) and (3) of rule 15 or at any time before the final assessment for the year and that the option once exercised under this rule shall be final in respect of that year.

5. There is another provision, in rule 18(1) providing for filing of monthly return. That rule specifically states that it would apply only to a case where a dealer had not opted to pay the tax under S. 7. We have, therefore, to consider rule 18 in the context of the present case.

6. A consideration of the statutory provisions described above would go to show that the assessee had to exercise an option of being assessed in accordance with the provisions under S. 7. The assessee had to submit a return on or before the 1st May every year showing the actual total and taxable turnover in the preceding year. In the present case, the return under rule 15(1) would be the return that had to be filed on or before 1st May 1972. Sub-rule 4-B of rule 15 was dated under notification No. 1000 of dated 27-9-1971. The notification was published in the Tamil Nadu Government Gazette dated 1st December 1971. The Sales tax Appellate Tribunal in its order has proceeded on the basis that the rule came to be deleted with effect from 1st December 1971. The learned Additional Government Pleader stated that the notification was effective from the date on which it was made, namely, 27th September 1971. It is unnecessary to go into the question as to whether the sub-rule came to be deleted with effect from 27th September 1971 or 1st December 1971. In either event, the sub-rule came to be deleted during the relevant year under consideration. The consequence of the deletion of sub-rule 4-B would be to leave only sub-rule 15 applies only to cases where a dealer who is eligible to pay tax at the compounded rate laid down in S. 7 is desirous of being assessed on a provisional basis from the commencement of any year. That sub-rule, would therefore, apply only to a case where the assessee desirous a provisional assessment being made. In the present case, the assessee had not expressed any desire of being assessed on a provisional basis, so that on the language of sub-rule 4-A it would be clear that it would not apply to the present case. In other words, sub-rule 4-A would apply only to those cases where the assessee had exercised his option of a provisional assessment being made for the purpose of S. 7 from the relevant year under consideration. Where the assessee had exercised his option subsequent to the relevant year, then sub-rule 4-A would, on its own language, not apply. The result is that we have to proceed on the basis that sub-rule 4-A does not apply to the facts of the present case and sub-rule 4-B having been deleted from rule 15 has also no application. We are thus left with the statutory provision as such, namely, S. 7.

In S. 7, there is no time limit prescribed for the purpose of exercising the option. The result would be that the assessee could exercise the option within any reasonable time. We have now to consider as to what would be a reasonable time in a case like this.

7. Before proceeding further, we have to clarify one point. S. 7(2) provides that any dealer who estimates his total turnover for a year to be not more than the amount specified therein may apply to the assessing authority to be permitted to pay the tax under S. 7 and on being so permitted, he shall pay the tax due in advance during the year in monthly or prescribed instalments and for that purpose shall submit such return in such manner as may be prescribed. The application contemplated by S. 7(2) is only optional and the section does not say that the failure to apply in the relevant year deprives once and for all the assessee getting the benefit of the section. In other words, S. 7(2) gives only a facility to an assessee, and the failure to avail oneself of this facility does not result in the assessee not being in a position to opt at a later date. A provision like this intended to help small traders should not be strictly construed. The point to be considered is whether in giving effect to sub-S. (2) of S. 7, it is possible to the rule making authority to fix a time limit, which, if it is not adhered to, makes that assessee lose the benefit of the provision and renders him liable to a higher tax.

8. The learned counsel for the assessee brought to our notice a decision of the Supreme Court in *Sales Tax Officer Vs. K.I. Abraham*, . That case arose under the Central Sales tax Act. The third proviso to rule 6(1) of the Central Sales tax (Kerala) rules 1957 provided that all declaration forms should be submitted on or before a particular day. The validity of this rule came to be considered in the context of S. 8(4) of the Central Sales tax Act. S. 8(4) provided that the provision of sub-S. (1) S. 8 would not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnished to the prescribed authority in the prescribed manner a declaration as provided therein. The question was whether the words in the prescribed manner contemplated any fixing of time limit under the rules. It was only in the assumption that S. 8(4) (a) provided for the rule making authority to fix a time limit that the rule making authority of Kerala had fixed a certain date before which the declaration had to be filed. The Supreme Court held that the rule making authority had no power to fix a time limit in exercise of the powers under S. 8(4)(a) of the Act. The expression in the prescribed manner occurring in S. 8(4) of the Central Sales tax Act, it was laid down, only confers power on the rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold, and to which authority the form is to be furnished. It was held that this did not take in the time element. It was held that, in other words, the section did not authorise the rule-making authority to prescribe a time limit within which the declaration was to be filed by the registered dealer. It was, however, pointed out that in the absence of time limit, it was the duty of the dealer to furnish the declaration within a reasonable time.

On the facts of the case, it was held that the declaration having been filed before the order of assessment was made, it had been filed within a reasonable time. Having regard to this decision and having regard to the fact that S. 7 does not fix any time limit within which the option had to be exercised, it appears to us that the option could be exercised within a reasonable time as pointed out by the Supreme Court.

9. The reasonable time in a case like this has been considered by the Supreme Court in *be before the assessment was made*. In fact, sub-rule 4-B of rule 15 itself provided for the exercise of the option before the assessment was made. Taking into account what the rule making authority itself had considered as reasonable before the deletion of sub-rule 4-B of rule 15, it is clear that the reasonable time limit can be taken to be before the assessment in this view, the declarations in the present case were filed within the time, so that the assessee would be eligible for assessment under S. 7. The Additional Government Pleader brought to our notice two decisions of this Court and they are *Deputy Commissioner of Commercial Taxes, Coimbatore Division Vs. A. Mahadevan Chettiar*, and *Deputy Commissioner Commercial Taxes, Madras Division Vs. P. Gajapathy Mudaliar*, . The learned Additional Government Pleader submitted that under these decisions, the time limit for the exercise of the option had been held to be on or before the 1st of May of the relevant year. In *Deputy Commissioner of Commercial Taxes, Coimbatore Division Vs. A. Mahadevan Chettiar*, it is stated that the option that was given to a dealer under S. 7(1) of the Madras General Sales tax Act 1959 had to be exercised at the commencement of the year at the time the dealer submitted the return and that it was not open to the dealer to wait till the end of the year and to ask at the time of his final assessment that his tax liability should be computed on the basis of S. 7. It is this decision that was followed in *Deputy Commissioner Commercial Taxes, Madras Division Vs. P. Gajapathy Mudaliar*, In a case where the business is stated after 1st May, it would be impossible for the assessee to get the benefit of the provision. The learned Additional Government Pleader contended that this difficulty would arise only in the first year of business. We do not think it proper to assume that the Legislature which wanted to confer some benefit on small traders wanted the benefit to operate in such cases only for the second year. Further, these decisions came to be rendered at a time when the Supreme Courts decision in *Sales Tax Officer Vs. K.I. Abraham*, , was not available. Having regard to the law laid down by the Supreme Court, it is clear that the rule making authority would have no power to fix the time limit for the exercise of such an option as in S. 7(1). The option would be exercisable before the assessment is made. Further, when the said decisions were rendered sub-rules 4-A and 4-B of rule 15 were not in the statute book and they had not to deal with a situation where sub-rule 4-A alone remained in the statute book and sub-rule 4-B had been deleted. Having regard to the peculiar feature emerging from the omission of sub-rule 4-B and the decision of the Supreme Court, we consider that in the present case, the option was rightly exercised by the assessee before the assessment was made. The

learned Additional Government Pleader brought to our notice a decision in Deputy Commissioner (C.T.) Coimbatore vs. Amirtham Ghee Store. That was a case where the assessee had filed the return under R. 18 as a result of which, it was not possible to exercise the option available under S. 7. Therefore, we do not consider that there is anything in the said decision which would apply to the facts of this case. Further the effect of omission of sub-rule 4-A of rule 15 had not to be considered on the facts of that case. We hold that the order of the Tribunal is correct.

10. The revision petition accordingly fails and is dismissed. There will be no order as to costs.