

(1998) 02 MAD CK 0147

In the Madras High Court

Case No : T.C. No. 797 of 1985 (Revision No. 359 of 1985)

State of Tamil Nadu

APPELLANT

Vs

Chordia Electricals

RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:

Central Sales Tax Act, 1956 — Section 6(2), 9(1)
Tamil Nadu General Sales Tax Act, 1959 — Section 17

Citation : (2000) 120 STC 34

Hon'ble Judges : N.V. Balasubramanian, J;Janarthanam, J

Bench : Division Bench

Advocate : S. Sudarsan, for the Appellant; Pramodkumar Chopta, for Moolchand Jain, for the Respondent

Final Decision : Allowed

Judgement

N.V. Balasubramanian, J.—This tax case revision is filed against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Madras, passed in T.A. No. 750 of 1983 dated April 18, 1985.

2. The respondent-dealer carrying on business in the name and style Chordia Electricals, 104, Audiappa Naicken Street, Madras-1 (hereinafter to be referred to as "the assessee-dealer"), is a dealer in electrical goods. We are, in the tax case revision, concerned with two items of the turnover for the assessment year 1979-80. The first item is with reference to the turnover of a sum of Rs. 12,320, relating to an inter-State sale which the assessee-dealer claimed that it was not assessable to tax in this State. The second item is with reference to the turnover of a sum of Rs. 14,441 relating to the sale made by the assessee-dealer to the Commissioner, Coimbatore Municipality.

3. In so far as the first item of dispute is concerned, the said turnover is covered by the bill No. 1373 dated March 19, 1979, but the turnover is not covered by the declaration in form C. The Deputy Commercial Tax Officer, Peddunaickenpet (South) Circle, Madras-1, proposed to assess the said turnover at 10 per cent on

the ground that the sale was not covered by the necessary declaration in form C, and after granting opportunity to the assessee for the production of C form and after hearing the assessee-dealer brought to tax the said turnover at the rate of 10 per cent. The assessee preferred an appeal to the Appellate Assistant Commissioner (CT) II, Madras, against the levy of tax at the rate of 10 per cent on the said turnover. The Appellate Assistant Commissioner found that the assessing officer had given sufficient time to the assessee-dealer for the production of C form, and the assessee-dealer did not respond to anyone of the notices issued by the assessing officer for the production of C form nor did the assessee-dealer file the C form for claiming the exemption. The Appellate Assistant Commissioner, therefore, held that the order of the assessment made by the assessing officer did not call for any interference. The assessee then carried the matter in appeal before the Tamil Nadu Sales Tax Appellate Tribunal, Madras-104 (Main Bench) (hereinafter to be referred to as "the Appellate Tribunal") and the Appellate Tribunal found that the assessee-dealer had purchased the goods from a dealer in Delhi and transferred the goods to a dealer at Andhra Pradesh. On a perusal of purchase invoice, sale invoice and E-1 form, the Appellate Tribunal held that since the sale had not taken place in the territory of Tamil Nadu, the sales tax authorities in Tamil Nadu have no jurisdiction over the transaction.

4. In so far as the second item of dispute is concerned, it relates to the turnover of a sum of Rs. 14,441 and the assessing officer found that the turnover was covered by the bill No. 1281, dated September 26, 1979, but the turnover was not covered by the declaration in form C and therefore, he brought to tax the said turnover of Rs. 14,441 at 10 per cent on the said turnover which was confirmed on appeal by the Appellate Assistant Commissioner on the ground that the assessee-dealer failed to produce C form in spite of several opportunities granted by the assessing officer. The Appellate Tribunal, on appeal by the assessee-dealer, found that the rate of tax would be 3 per cent and therefore, it was necessary to produce D form under the proviso to Section 6(2) of the Central Sales Tax Act, 1956 (hereinafter to be referred to as "the C.S.T. Act"). The Appellate Tribunal also found that on the basis of the letter of the assessee-dealer dated March 21, 1979 to the Commissioner of Coimbatore Municipality and the letter dated February 21, 1980 of the Commissioner of Coimbatore Municipality to the assessee-dealer, the supply was only to a electricity undertaking of the local body, viz., the Coimbatore Municipality and therefore, it held that the sale was exempt u/s 17 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter to be referred to as "the TNGST Act"). In this view of the matter, the Appellate Tribunal-held that the assessee-dealer was not liable to be taxed on the disputed turnover of Rs. 12,320 as well as on Rs. 14,441 and allowed the appeal preferred by the assessee-dealer to that extent. The Revenue has challenged the findings of the Appellate Tribunal with reference to two items in the present tax case revision.

5. In so far as the first item of turnover amounting to Rs. 12,320 is concerned,

the submission of the learned Government Advocate was that the sale was one falling u/s 3(b) of the C.S.T. Act and under the proviso to Section 9(1) of the C.S.T. Act, the turnover was liable to be assessed under the C.S.T. Act. In so far as the second item of dispute, viz., Rs. 14,441 is concerned, he submitted that even according to the letters relied upon by the Appellate Tribunal, the sale was made by the assessee-dealer to the Coimbatore Municipality and it was not a sale to the electricity undertaking and therefore, the sale was not exempt u/s 17 of the TNGST Act. He also submitted that the Appellate Tribunal proceeded on wrong assumption that the rate of tax was 3 per cent and submitted that the assessee-dealer is not entitled to exemption under the proviso to Section 6(2) of the C.S.T. Act.

6. Mr. Pramodkumar Chopta, appearing for Mr. Moolchand Jain, learned counsel for the assessee-dealer submitted that in so far as the first item of turnover is concerned, the sale was a Section 6(2) sale and therefore, the proviso to Section 9(1) of the C.S.T. Act would not apply. He further submitted that in so far as the second item is concerned, the sale was to an electricity undertaking and therefore, it is exempt under the TNGST Act and the Appellate Tribunal was right in holding that both the turnover are exempt from tax under the C.S.T. Act.

7. We have carefully considered the submissions of the learned counsel. In so far as the first item of dispute relating to the turnover of Rs. 12,320 is concerned, the sale was admittedly an inter-State sale and there is also no dispute that it was a sale falling u/s 3(b) of the C.S.T. Act. The assessee had purchased the goods from a dealer in Delhi by Invoice No. 03699 dated September 15, 1979 for a sum of Rs. 8,583 and the goods were transferred by the assessee by transfer of document of title. When the goods were in movement from Delhi to Madras, in favour of a dealer at Visakapattinam for a sum of Rs. 12,320 by Invoice No. 1373 dated March 19, 1979. The finding of the Appellate Tribunal is that the assessee had produced E-1 form, but the assessee has not produced C form. The question is whether the sale by the assessee in favour of a dealer at Visakapattinam, when the goods were in movement from Delhi to Chennai is exempt or not.

8. Admittedly, the sale by the assessee was to a registered dealer and it is not a case of sale of goods of an exempted item u/s 8(2A) of the C.S.T. Act. The question whether in the above factual matrix, the view of the Appellate Tribunal that the sales tax authorities of Tamil Nadu have no jurisdiction over the transaction as the sale took place outside the State of Tamil Nadu and hence, the assessing officer has no power to levy tax on the transfer of goods to an Andhra Pradesh dealer is justifiable or not has to be considered in the light of the provisions of the C.S.T. Act.

9. Section 3 of the C.S.T. Act prescribes the conditions on which the sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce. Section 3(b) of the C.S.T. Act provides that the sale shall be deemed to have taken place in the course of inter-State trade or commerce when the sale or purchase is effected during the movement of the goods from one State to

another and under Explanation 1 to Section 3 of the C.S.T. Act, where the goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Section 6 of the C.S.T. Act imposes the liability to tax on inter-State sales of goods other than electrical energy effected in the course of inter-State trade or commerce during that year. Sub-section (2) of Section 6 of the C.S.T. Act grants exemption from the levy of Central sales tax on inter-State sale, if the subsequent sale was effected during the movement of goods from one State to another in favour of the Government or to a registered dealer provided the conditions prescribed in Sub-section (2) of Section 6 are complied with. Admittedly, it is not a case falling under the second proviso to Sub-section (2) of Section 6 of the Act as the assessee has not established that the sale of the goods was exempt under the provisions of the TNGST Act or was subject to tax at a rate lower than 4 per cent. Therefore, the assessee will be eligible to get exemption under Sub-section (2) of Section 6 of the C.S.T. Act, if and only if the assessee satisfies the statutory conditions prescribed in the first proviso to Sub-section (2) of Section 6 of the Act. One such condition is the furnishing of C form and other condition is the furnishing of E-1 form. The assessee has not filed the necessary C form inspite of several opportunities.

10. The next question that arises is on failure on the part of the assessee to produce C form or to comply with the conditions prescribed in Sub-section (2) of Section 6 of the C.S.T. Act, which is the State that has the power to levy the tax on the inter-State sale. A clue to the question is found in the proviso to Section 9 of the C.S.T. Act. Ordinarily, the State from which the movement of the goods commences is empowered to levy tax on inter-State sale of goods. However, under the proviso to Section 9 of the C.S.T. Act in the case of a subsequent sale, in respect of same goods, during the movement from one State to another, the State empowered to levy tax is the State from which a registered dealer has obtained or could have obtained C form in connection with the purchase of goods. The assessee-dealer, in this case, is the first purchaser and he could have obtained C form from the State of Tamil Nadu and the State of Tamil Nadu has the jurisdiction to levy sales tax. The view of the Appellate Tribunal that the State of Tamil Nadu has no jurisdiction as the sale took place outside the State of Tamil Nadu is plainly erroneous in law as the assessee being a registered dealer in Tamil Nadu could have obtained C form from the State of Tamil Nadu, and since the assessee failed to fulfil the conditions prescribed in Sub-section (2) of Section 6 of the Act, in the case of the subsequent sale by the assessee to a dealer in Andhra Pradesh, the State of Tamil Nadu has the requisite power and authority to levy and collect tax under the C.S.T. Act in respect of the sale subsequent to the first sale. Our view arrived at on the interpretation of the provisions of Sections 3, 6, 8 and 9 of the C.S.T. Act is supported by several decisions of the High Courts of this country. Let us start with the earliest case law of this Court and we will also notice the legislative amendment made with

reference to Section 9 of the C.S.T. Act.

11. In *State of Madras v. K. Nandagopal Chetty* [1968] 22 STC 290, this Court was considering the provisions of proviso to Section 9(1) of the C.S.T. Act, prior to the Central Sales Tax (Amendment) Act, 1969 and this Court considering the provision, as it stood then, held as under :

"When the proviso to Section 9(1) speaks of obtaining the form prescribed for the purposes of Section 8(4)(a) 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. Therefore for the application of the proviso to Section 9(1) 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."

12. The provision of Sub-section (1) of Section 9 of the C.S.T. Act was again considered by this Court in *State of Tamil Nadu v. Bombay Metal Depot* [1978] 41 STC 140. In that case, the assessee placed orders with a Bombay party for the purchase of certain goods and the goods were directly sent from Bombay to Kerala and the assessee endorsed the documents of title to the goods after the Bombay party put the goods on board the train and the assessee claimed exemption on the ground that it had complied with the provisions of Section 6(2) of the Act. In that fact-situation this Court held that the State of Tamil Nadu has jurisdiction to levy tax as the sales were liable to tax in the State of Tamil Nadu. The principles laid down by this Court in the abovesaid decision are as under :

"(i) that as the transfer of documents took place after the goods were delivered to the common carrier and before they were delivered to the purchaser the assessee's sales squarely fell within the scope of Section 3(b) of the Central Act ;

(ii) that as there were two sales, one by the Bombay party in favour of the assessee and another by the assessee to the Government of Kerala, the case would fall within the proviso to Section 9(1) as contrasted with the main portion of Section 9(1) ;

(iii) that the assessee had obtained the form prescribed by Section 8(4)(a) in connection with the purchase of the goods from the Bombay party from the Tamil Nadu State and therefore the Tamil Nadu State was the State from which the assessee had effected the subsequent sale after the sale was effected by the Bombay party to the assessee and the Tamil Nadu State would be the State which could levy and collect the tax from the assessee ;

(iv) that where the description of the goods is clear and such goods have been sent in conformity with such description and have also been accepted by the purchaser on the basis that they conformed to the description, there is ascertainment and appropriation of the goods to the contract. Where the goods

are ascertainable and goods of that description are despatched then the goods so despatched can be taken as appropriated to the contract unconditionally. The circumstance that the purchaser has a right of rejection does not postpone the transfer of property in the goods ;

(v) that the intention of the parties in the present case was that the property in the goods should pass to the purchaser as soon as the endorsement on the railway receipts was made and there was nothing to show that the intention was to effect a transfer of property in the goods only on actual delivery."

The above decision makes it clear that the assessee-dealer could have obtained C form from the State of Tamil Nadu in respect of the purchase from Delhi and therefore, the State of Tamil Nadu is the State from which the assessee had effected the subsequent sale after the sale was effected by the Delhi dealer to the assessee and the State of Tamil Nadu is the State which is empowered to levy and collect tax from the assessee. Though the earlier decision of this Court in K. Nandagopal Chetty's case [1968] 22 STC 290, was not referred to, the Division Bench of this Court in Bombay Metal Depot case [1978] 41 STC 140 held that the State of Tamil Nadu has the statutory power to levy the tax by virtue of the provisions of Section 9 of the C.S.T. Act.

13. The Andhra Pradesh High Court in Jadhavjee Laljee v. State of Andhra Pradesh [1989] 74 STC 201 noticed the amendment made to the proviso to Sub-section (1) of Section 9 of the C.S.T. Act by the Central Act 28 of 1969 and took the view that the effect of the earlier decision of this Court in K. Nandagopal Chetty's case [1968] 22 STC 290 was neutralised by the legislative amendment made by the Act 28 of 1969. The Andhra Pradesh High Court held as under :

"The object of the proviso to Section 9(1) of the Central Sales Tax Act, 1956 is to determine or specify the appropriate State competent to tax second or subsequent sales not falling u/s 6(2) of the Act. For this purpose, even where the sale in favour of a dealer effecting such second or subsequent sale is exempt, it has to be seen from which State he could have obtained the declaration in C form, had it been necessary for him to furnish such a declaration. It was not the intention of the legislature that in cases where the first inter-State sale is exempt from tax, all subsequent sales should be equally exempt from tax. Thus, the words "or as the case may be, could have obtained" in clause (a) of the proviso to Section 9(1) would take in not only a situation where a dealer, who could have obtained such form, fails to do so, but also a situation where it is not necessary for him to obtain such a declaration, the sale in his favour being exempt from tax."

14. A similar view was taken by the Rajasthan High Court in Commercial Taxes Officer v. Raj, Small Industries Corporation [1988] 68 STC 101. S.C. Agrawal, J., (as His Lordship then was), after noticing the decision of this Court in K. Nandagopal Chetty's case [1968] 22 STC 290, as well as the Central Sales Tax (Amendment) Act, 1969, which was inserted with retrospective effect from the

date of commencement of the Central Sales Tax Act, 1956, held as under :

"The proviso to Sub-section (1) of Section 9 deals with a sale of goods during their movement from one State to another which is a sale subsequent to the first sale in respect of the same goods and which does not fall within Sub-section (2) of Section 6 and provides that the tax shall be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, as the case may be, could have obtained, the form prescribed for the purpose of clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods . . .

In *State of Madras v. K. Nandagopal Chetty* [1968] 22 STC 290, the learned Judges of the Madras High Court have observed that there was a lacuna in the proviso to Sub-section (1) of Section 9 inasmuch as the jurisdiction of the taxing State was dependant upon the act or failure on the part of the subsequent seller, and there was nothing in the Act which obliged the seller to obtain form C and the language of the said proviso did not cover a case where dealer fails to obtain declaration in form C. The defect that was pointed out by the Madras High Court in the aforesaid decision was removed by the Central Sales Tax (Amendment) Act, 1969 whereby proviso to Sub-section (1) of Section 9 was substituted with retrospective effect. In the amended provision the words "or, as the case may be, could have obtained" have been inserted. As a result of this amendment the proviso to Sub-section (1) of Section 9 would cover a situation where the declaration in form C could have been obtained by the dealer and he has not obtained such a declaration."

The Rajasthan High Court in *Rajendra Trading Company v. C.T.O.* [1994] 93 STC 71 has taken a similar view to the effect that under the proviso to Sub-section (1) of Section 9 of the C.S.T. Act, the State which could have issued the form under clause (a) of Sub-section (4) of Section 8 of the C.S.T. Act has the jurisdiction to levy tax under C.S.T. Act.

15. On perusal of the file, we find that the assessee was under the impression that in order to claim exemption with reference to a sale subsequent to the first sale, the requirements of filing C form was only directory and for the failure to produce C form, the assessee cannot be denied the exemption. This view was entertained on the basis of the decision of the Madhya Pradesh High Court in *Bhojmal & Sons v. Commissioner of Sales Tax* [1979] 44 STC 474. The above decision of the Madhya Pradesh High Court is not applicable as the Madhya Pradesh High Court was dealing with the provisions of Rule 8-D of the Madhya Pradesh Sales Tax (Central) Rules, 1957 and that case is a case arising before the insertion of the Central Sales Tax (Amendment) Act 28 of 1969. Hence, the decision of the Madhya Pradesh High Court in *Bhojmal & Sons* case [1979] 44 STC 474, is not applicable to the facts of the case. So also, the decision of the Madhya Pradesh High Court in *Commissioner of Sales Tax v. Prahalad Das Ramdas* [1983] 52 STC 224, taking a similar view by following its earlier decision in *Bhojmal & Sons* case [1979] 44 STC 474, is also not applicable to the facts of

the case.

16. The Madhya Pradesh High Court in Commissioner of Sales Tax, M.P. v. Narendralal & Co. [1992] 87 STC 518 held as under :

"After the amendment of Section 9 of the Central Sales Tax Act, 1956, with retrospective effect by the Central Sales Tax (Amendment) Act, 1969, under the proviso to Sub-section (1) thereof, the right to levy and collect a tax in the case of a subsequent sale is given to the State where the form prescribed for the purposes of clause (a) of Sub-section (4) of Section 8 could have been obtained."

17. The uniform view taken by all the High Courts clearly establishes that under the proviso to Section 9 of the C.S.T. Act, the assessee-dealer could have obtained C form from the State of Tamil Nadu and since he failed to obtain necessary C form and produce the same before the authorities as contemplated under Sub-section (2) of Section 6 of the Act, the State of Tamil Nadu has the jurisdiction to levy tax under the C.S.T. Act. The Tribunal, however, completely omitted to take into consideration the proviso to Section 9 of the C.S.T. Act for its conclusion that the State of Tamil Nadu has no jurisdiction to levy the tax. We are, therefore, of the view that the view of the Appellate Tribunal is plainly erroneous in law and under the provisions of Section 9, particularly the proviso to Sub-section (1) of Section 9 of the Act, the State of Tamil Nadu is empowered to levy tax on the subsequent inter-State sale effected by the assessee during transit from one State to another for his failure to produce the C form and to comply with the conditions prescribed under Sub-section (2) of Section 6 of the Act. Consequently, we hold that the order of the Appellate Tribunal that the State of Tamil Nadu has no power to levy tax is erroneous in law and the order of the Appellate Tribunal to that extent is liable to be set aside and accordingly, it is set aside.

18. In so far as the second point of dispute relating to the sale turnover of Rs. 14,441 is concerned, we have already set out the facts in detail and the Appellate Tribunal held that the sale was to the electricity undertaking of a local body and the rate of tax was 3 per cent and hence, it was not necessary for the assessee to produce C form. The Appellate Tribunal held that the sale was exempt u/s 17 of the T.N.G.S.T. Act and therefore, under the provisions of Section 6(2)(b) of the C.S.T. Act, the assessee was not required to produce D form.

19. To appreciate the point raised, it is necessary to notice some of the provisions of the C.S.T. Act, We have already seen Section 6 and 6(2) of the C.S.T. Act and it is not necessary to repeat the same. However, it is necessary to notice Sub-section (1) of Section 8 of the C.S.T. Act which prescribes the rate of tax on sales effected in the course of inter-State trade or commerce and Sub-section (2) of Section 8 of the C.S.T. Act deals with the inter-State sale of declared goods or non-declared goods. Under Sub-section (2-A) of Section 8 of the C.S.T. Act, where the sale of any goods under the local sales tax law is either

exempt or the rate of tax is lower than 4 per cent, then, the rate of tax shall be the same rate as prescribed under the local sales tax law, i.e., if it is exempt, there is no liability under the C.S.T. Act and if it is lower than 4 per cent, then, the lower rate has to be taken.

20. It is not clear from the order of the Appellate Tribunal how the Appellate Tribunal has come to the conclusion that the sale of goods by the assessee would attract the tax at the rate of 3 per cent under the provisions of the T.N.G.S.T. Act. The Tribunal has not even mentioned the nature of the article which was the subject-matter of the sale. The Appellate Tribunal, at one place of its order seems to indicate the rate of tax under T.N.G.S.T. Act is 3 per cent, but at another place, it gives a finding that the sale is exempt u/s 17 of the T.N.G.S.T. Act. We repeatedly asked the learned counsel for the assessee to bring to our notice the exemption notification and the learned counsel for the assessee was not able to bring to our notice any exemption notification. We have gone through some of the notifications issued u/s 17 of the T.N.G.S.T. Act and we found that there was no exemption notification in the case of sale to the local authority or the electricity undertaking nor we were able to lay our hands any notification granting concession and limiting the rate of tax to 3 per cent.

21. The letters exchanged between the assessee and the Coimbatore Municipality show that the sale was to the Coimbatore Municipality. Even the finding of the Appellate Tribunal is that the sale was to the electricity undertaking of a local body against the materials on record. We perused the notification S.R.O.A. 3240 of 1960 dated April 22, 1960 (page 359 of Tamil Nadu General Sales Tax Act, Government Edition, 1985) which reduced the rate of tax to two per cent. There is another notification G.O.P. No. 1356, Commercial Taxes Department dated September 6, 1977 (page 439 of the Tamil Nadu General Sales Tax Act, Government Edition, 1985) which refers to the rate of tax as specified in Sub-section (1) of Section 8 of the C.S.T. Act, i.e., 4 per cent. The second notification was in supersession of earlier notification of the year 1960 and there is no notification, to which our attention was drawn, which reduced the rate of tax to 3 per cent. We have also perused other notifications and there is no notification granting general exemption in the case of sale either to Coimbatore Municipality or to the electricity undertaking of the local body. In the absence of any notification reducing the rate of tax to below 4 per cent, the assessee-dealer has necessarily to comply with the provisions of Section 6(2) of the C.S.T. Act and produce D form and if the sale is a sale under Sub-section (2) of Section 6 of the C.S.T. Act, the assessee is eligible to get exemption only on furnishing necessary forms required to be produced under Sub-section (2) of Section 6 of the Act. The assessee, admittedly, has neither produced C form, nor submitted D form before the lower authorities and in our view, the Appellate Tribunal has proceeded on an erroneous assumption that the sale was to the electricity undertaking and the rate of tax for the said sale was either at 3 per cent or was exempt from tax and hence, the assessee was not required to produce D form. Since the assessee has not fulfilled the statutory conditions to claim exemption, we are of the view, the

assessing officer as well as the Appellate Assistant Commissioner was justified in holding that the assessee was not entitled to claim the exemption and the turnover in question was to be taxed at the rate of 10 per cent.

22. Before parting with the case, we regret to mention the procedure adopted by the Appellate Tribunal in relying upon certain notifications without giving full particulars of the same is not correct. If the Tribunal relies upon an exemption notification, then, it should give the complete reference with reference to the notification, viz., number of the notification and date of the notification. The same procedure should be adopted if a concessional notification was relied upon and if it fails to do so, this Court is forced to search for the notification on which the Appellate Tribunal seems to have placed reliance.

23. In fine, we are of the view that the order of the Appellate Tribunal in so far as it relates to the two items of dispute referred to above is concerned, is liable to be set aside and accordingly, it is set aside and the order of the assessing officer which was confirmed by the Appellate Assistant Commissioner is directed to be restored on file and consequently, the revision petition filed by the State is allowed. However, in the circumstances of the case, there will be no order as to costs.