

(1977) 04 MAD CK 0045

In the Madras High Court

Case No : Tax Case No. 279 of 1974 (Revision No. 162 of 1974)

State of Tamil Nadu

APPELLANT

Vs

Shanthi Stainless Steel Company

RESPONDENT

Date of Decision : 12-04-1977

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 3, 38, 4, 5

Citation : (1977) 41 STC 270

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant; Trilokchand Chopda and D. Madanchand Chopda, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—In this revision petition filed by the State of Tamil Nadu u/s 38 of the Tamil Nadu General Sales Tax Act, 1959, the only point raised is whether the assessee is eligible for coming within the scope of Section 7 of the Act. The assessee reported a total and taxable turnover of Rs. 36,415.66 and Rs. 30,218.16 respectively for the year 1971-72. The Assistant Commercial Tax Officer determined the total and taxable turnover at Rs. 66,634.62 and Rs. 60,437.92 respectively due to certain defects noticed in the accounts. He made an addition of 100 per cent to the book turnover. On appeal, the Appellate Assistant Commissioner gave a reduction to the extent of 50 per cent in the addition made to the book turnover. The result was that over and above the book turnover, 50 per cent thereof stood added, so as to arrive at the taxable turnover. The assessee disputed this addition before the Sales Tax Appellate Tribunal. The Tribunal reduced the turnover to Rs. 45,328.44.

2. The assessee, in the course of a reply to the pre assessment notice dated 12th November, 1972, opted to be assessed u/s 7 of the Act. The assessing officer rejected the claim on the ground that Rule 15(4-B) of the Rules framed under the Act had been deleted as per a notification dated 27th September, 1971,

published in the Gazette on 1st December, 1971 and that the necessary application should have been made even at the time of the submission of the A-I return itself. The Appellate Assistant Commissioner, on appeal, also negated the assessee's claim for assessment u/s 7. In the appeal before the Tribunal, the assessee agitated this point and the Tribunal held that the option could be exercised at any time before assessment and, therefore, the assessee was eligible for being brought within the scope of Section 7. It is this conclusion that the assessee can be brought within the scope of Section 7, that is now challenged by the State in the present revision petition.

3. Section 3 of the Tamil Nadu General Sales Tax Act, 1959, provides for levy of tax on sales or purchases of goods with reference to persons whose total turnover for a year was not less than the amount specified in the provision. Section 7 provides that, notwithstanding anything contained in Sub-section (1) of Section 3, every dealer whose turnover was not less than Rs. 15,000 but not more than Rs. 75,000, may, at his option, instead of paying the tax in accordance with the provisions of Sub-section (1) of Section 3, pay tax at certain specified rates as set out in the said provision. Section 7(2) provides that any dealer who estimated his turnover for a year to be not more than Rs. 75,000 may apply to the assessing authority to be permitted to pay tax under that provision and, on being so permitted, he would pay the tax due in advance during the year in monthly or prescribed instalments and, for that purpose, had to submit such returns in such manner as may be prescribed. Section 7(3) provides that the tax paid under Sub-section (2) shall be subject to such adjustments as may be prescribed on the completion of the final assessment in the manner prescribed. Section 12 of the Act prescribes the procedure to be followed by the assessing authority. It provides that the assessment of a dealer shall be on the basis of the prescribed return relating to the turnover submitted in the prescribed manner within the prescribed period. If no return is submitted within the prescribed period or if the return submitted was incomplete or incorrect, then the assessing authority had power to assess the dealer to the best of its judgment. From a perusal of the provisions of Sections 3, 7 and 12, the following position emerges. Section 3 prescribes the general rate of tax. Section 7 provides a concessional rate of tax in the case of persons whose turnover is below a particular limit and who exercise the option to come thereunder. Such dealers who come within the scope of Section 7 may be said to be small dealers. Section 12 provides for the assessment on the basis of a return. The return contemplated u/s 12 would be different from the option that is exercisable u/s 7. With this background we have to consider the rules that have been framed under the Act.

4. Rule 9(1) provides that every dealer liable to pay tax u/s 3(2) or Section 4 or Section 5 shall submit within thirty days of the commencement of his business his estimated total and taxable turnover for the first twelve months of his business. It may be seen that Rule 9(1) does not deal with persons coming within the scope of Section 7. There is a proviso which applied to those persons

and that states that a dealer who opts to pay tax at compounded rates u/s 7 shall submit a return in form AA. Rule 9(5), as it was in force before 27th September, 1971, provided that the option to pay the tax at compounded rates provided for in Section 7 had to be exercised by a dealer by submitting an application to the assessing authority at the time the estimated return prescribed in sub-rules (2) and (4) of that rule was filed, i. e., within thirty days of commencing the business. Rule 10 provided that if the assessing authority was satisfied with the return submitted, he should fix provisionally, on the basis of the return, the annual tax or taxes payable at the rates specified, among others, in Section 7 of the Act. Rule 11 provides for the best judgment assessment in cases where the dealer had not submitted the return under Rule 9. That would also apply to cases coming within the scope of Section 7. Rule 15(1) provides that every dealer liable to submit a return under Rule 9, unless he had elected to be assessed by the method described in Rule 18, had, on or before the 1st day of May in every year, to submit to the assessing authority of the area in which his principal place of business is situated, a return in form A-I showing the actual total and taxable turnover in the preceding year. In the proviso to Sub-rule (1) of Rule 15, it was provided that a dealer who opted to pay tax at compounded rates u/s 7 had to submit a return in form AA-1. Sub-rule (4-A) of this rule relates to cases where a dealer who was eligible to pay tax at compounded rates laid down in Section 7 was desirous of being assessed on a provisional basis from the commencement of any year at the rates laid down in that section. Sub-rule (4-B), which was in force up to 27th September, 1971, but which was deleted subsequently, related to those cases where a dealer, who was eligible for payment of tax at the rates laid down in Section 7, had not exercised his option to be assessed under that section as provided in Sub-rule (4-A) of Rule 15 in respect of any year. In such a case, such dealer, if he wanted to avail himself to pay the tax at the compounded rates, had to exercise his option to be so assessed at the time of submitting the return prescribed in sub-rules (2) and (3) of Rule 15, or at any time before the final assessment for the year. The option once exercised under that sub-rule was to be final in respect of that particular year.

5. The learned Additional Government Pleader submitted that the dealer, in the present case, had no power to exercise his option beyond the 1st of May of the relevant year. As Sub-rule (4-B) of Rule 15 had been omitted from 27th September, 1971, according to him, the dealer had no power to exercise his option after the 1st of May of that relevant year. In the present case, in his submission, the option should have been exercised before 1st May, 1971 and the option, not having been so exercised, could not have been exercised subsequently.

6. We have considered this question in *State of Tamil Nadu v. Ball Bearing Centre* [1978] 41 S.T.C. 264 (T.C. No. 276 of 1974), in which we pronounced judgment yesterday. We are again examining the contentions here only because the learned Additional Government Pleader felt that some aspects of the rules had

not been brought out earlier. After hearing further arguments we see no reason to reconsider our conclusion. We have held in that case that as a result of the decision of the Supreme Court in *Sales Tax Officer v. Abraham* [1967] 20 S.T.C. 367, the rules could not fix the time-limit for the exercise of the option. A provision for limitation could only be provided in a statute. If the legislature intended to delegate the power to fix the period of limitation, it should have done so by appropriate words. The expression "in such manner" having been understood as not including a power to impose a period of limitation, it would follow that the rules could not have prescribed any period of limitation for the purpose of exercising the option available in Section 7. If no period could be prescribed, then the result would be that the dealer or the assessee would have to exercise the option within a reasonable time. In view of the provisions contained in Sub-rule (4-B) itself, it is clear that the rule-making authority also considered the exercise of the option before the assessment as reasonable. We, therefore, consider that it would be reasonable and proper if the exercise of the option was made before the assessment. In the present case, as the assessee had exercised his option even before the assessment, the sales tax authorities were not justified in rejecting the assessee's claim for being brought within the scope of Section 7. In our opinion, the Tribunal acted rightly in interfering with the order of the Appellate Assistant Commissioner in so far as he had decided against the assessee on this point. The tax revision case accordingly fails and is dismissed. But, there will be no order as to costs.