(1970) 04 AHC CK 0007

In the Allahabad High Court

Case No : Sales Tax Reference No. 551 of 1969

The Commissioner, Sales Tax — APPELLANT

Vs

The Educational Supplying Co. Ltd. — RESPONDENT

Date of Decision : 16-04-1970

Acts Referred:
Central Sales Tax Act, 1956 — Section 10, 10A, 11, 2, 7

Citation : (1971) 27 STC 34

Hon'ble Judges : Satish Chandra, J;R.L. Gulati, J

Bench : Division Bench

Advocate : S.B.L. Srivastava, for the Respondent

Judgement

R.L. Gulati, J.—In compliance with the order of this Honourable Court dated 27th March, 1969, the Additional Revising Authority, Sales Tax, Varanasi, has submitted this statement of the case u/s 11(4) of the U.P. Sales Tax Act for the opinion of this court on the following question of law:

Whether a dealer unregistered under the Central Sales Tax Act in U.P. can also be given concessional rate of tax as provided u/s 8 of the Central Sales Tax Act, if the sales are made to a registered dealer outside the State and the unregistered dealer in U.P. procured ''C'' forms from the purchasers, i.e. outside State dealers?"

2. The assessee was a proprietary concern which carried on business in the name and style of M/s. Educational Supplying Co. Ltd., Bullanala, Varanasi, and was a registered dealer. Subsequently the business was taken over by a partnership concern which carried on the business in the same trade name. The partnership, however, did not get itself registered under the belief that the old registration certificate would ensure to its benefit.

3. In respect of the assessment year 1960-61 the assessee was assessed to a tax of Rs. 317.80 on a net turnover of Rs. 4,540 under the Central Sales Tax Act. Even though the assessee-firm had filed the requisite declaration form ''C

covering the turnover, it was assessed at 7 per cent. and not at the concessional rate of 1 per cent. on the ground that the assessee was not a registered dealer. The assessee appealed and its appeal was allowed by the Assistant Commissioner (Judicial), Varanasi, who took the view that the concessional rate was available even to an unregistered dealer so long as the goods were sold to a registered dealer, who had furnished the requisite ''C'' forms. This view has been confirmed by the Judge (Revisions) to whom the Commissioner of Sales Tax had applied in revision. Being dissatisfied, the Commissioner applied for a reference u/s 11(1), but the revising authority declined to make a reference. Thereupon an application u/s 11(4) was made which was allowed by this court.

4. There is no dispute about the turnover. The dispute relates only to the rate of tax. Section 8 of the Central Sales Tax Act deals with the rate of tax on sales in the course of inter-State trade or commerce. Section 8(1) of the Central Sales Tax Act as it stood at the material time provided:

Section 8(1). Every dealer, who in the course of inter-State trade or commerce--

(a)...

(b) sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3), shall be liable to pay tax under this Act which shall be 1 per cent. of his turnover.

5. Sub-section (2) provided:

The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within Sub-section (1)--

(a) ....

(b) in the case of goods other than declared goods shall be calculated at the rate of 7 per cent. or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher....

6. Sub-section (3) provided:

The goods referred to in Clause (b) of Sub-section (1)--

(a) ...

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power ;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for packing of any goods or classes of goods specified in the certificate of registration referred to in Clause (b) or for packing of any containers or other material''s specified in the certificate of registration referred to in Clause (c).

7. Sub-section (4) of Section 8 is also relevant which provided:

The provisions of Sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner--

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) ...

8. Reading the above provisions together, the scheme of the Act appears to be to tax inter-State sales at the rate of 7 per cent. unless such sales are entitled to concessional rates mentioned in Sub-clause (b) of Subsection (1) of Section 8. The concessional rate is available only if the following conditions are satisfied: (i) that the sales are to a registered dealer, (ii) that the goods sold are such as are mentioned in Sub-section (3) of Section 8. Sub-section (3) of Section 8 then enumerates the goods or class of goods which are specified in the certificate of registration of the registered dealer purchasing the goods and such goods are either intended for resale by him or meant for use by him in the manufacture or processing of the goods for sale, or are containers or packing materials for use by the registered purchasing dealer, and (iii) the purchasing dealer furnishes the requisite declaration in the prescribed form. The prescribed form is called form ''C''. There is no requirement that the selling dealer must also be a registered dealer. It is not disputed that the purchasing dealer was a registered dealer and the goods purchased by him were such as were mentioned in his registration certificate and he had supplied the requisite ''C'' form to the assessee.

9. Section 7 of the Act provides for the registration of dealer under the Act. Under Sub-section (1) of this section every dealer liable to pay tax under this Act shall within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed. Sub-section (2) then provides that a dealer who is liable to pay tax under the sales tax law of the appropriate State, may get himself registered under the Central Sales Tax Act. Then there are rules prescribing the procedure for the grant, amendment or cancellation of certificate of registration.

10. Section 9A provides:

Section 9A. Collection of tax to be only by registered dealers.--No person who is not a registered dealer shall collect in respect of any sale by him of goods in the course of inter-State trade or commerce any amount by way of tax under this Act, and no registered dealer shall make any such collection except in accordance with this Act and the Rules made thereunder.

11. Section 10 then provides for penalties, Clause (a) whereof stipulates that "if any person fails to get himself registered as required by Section 7, he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both..." Section 10A provides for imposition of penalty in lieu of prosecution.

12. It is thus clear that the scheme of the Act is that every dealer who is liable to pay tax under the Central Sales Tax Act must get himself registered and even if a dealer is not liable under the Central Sales Tax Act he has been given an option to get himself registered, if he is a dealer liable to pay tax under the State law. On the failure of a dealer to get himself registered, two consequences follow:--(a) he is not entitled to realise tax from the purchasers, and (b) he renders himself liable to penalty or prosecution under Sections 10 and 10A of the Act.

13. But on his failure to get himself registered, a dealer does not forfeit the right to be assessed at the concessional rate on his turnover of inter-State sales, provided other conditions referred to above are satisfied. To put it in another way, the failure of a person to get himself registered does not in any way affect or control the rates of tax specified in Section 8.

14. The learned Standing Counsel submitted that the word "dealer" should be interpreted to mean a "registered dealer". That submission is not correct. A dealer has been defined in Section 2(b) of the Act to mean "any person who carries on the business of buying or selling and includes a Government which carries on such business." The registration of a dealer is provided separately u/s 7 of the Act and under the relevant Rules framed under the Act. Under the charging section, the tax is to be paid by every dealer--whether registered or unregistered. Accepting the contention of the learned Standing Counsel would mean that it is only a registered dealer who will be liable to pay tax, with the result that unregistered dealers would escape tax altogether. That would be an unsound proposition which could not have been intended by the Legislature. We are, therefore, clearly of opinion that whereas under the scheme of the Act every dealer is required to get himself registered in order to escape the consequences and penalties pointed out above, yet his non-registration in no way entitles the authorities to levy tax at a rate different from that provided in Section 8. To reiterate what we have already stated above, the concessional rate is applicable where the goods are sold in the course of inter-State trade or commerce to a registered purchasing dealer and the goods are either declared goods or are of such description as are specified in the registration certificate of a purchasing dealer. After all the concessional rate is intended primarily for the benefit of the purchasers and the purchasers cannot be deprived of the concessional rate for the default, committed by the selling dealer in getting himself registered.

15. Reference in this connection may be made to the case of The State of Madras Vs. Radio and Electricals Ltd. etc., their Lordships observed:

The Act seeks to impose tax on transactions, amongst others, of sale and purchase in inter-State trade and commerce. Though the tax under the Act is levied primarily from the seller, the burden is ultimately passed on to the consumers of goods because it enters into the price paid by them.

16. The learned Standing Counsel relied strongly upon the following observations at page 230 of the Supreme Court in the case of State of Madras v. Radio and Electricals Ltd.:

The scheme of the Rules read with the Act is that the purchasing dealer as well as the selling dealer must register themselves under the Central Sales Tax Act

17. This observation is to be read in the context of facts of that case. We have ourselves pointed out above that according to the scheme of the Act, every dealer, whether selling or purchasing, who is engaged in the inter-State trade, is required to get himself registered. But the consequences of non-registration are only those which we have enumerated above, viz., that the unregistered dealer is prohibited from realising the tax as such, from the purchasers and he renders himself liable to penalty and prosecution. But there is nothing to prevent an unregistered dealer from including in the purchase price the sales tax which ultimately he will have to pay on his turnover of inter-State sales. An unregistered dealer who sells goods to a registered dealer against valid ''C'' forms is liable to pay tax at the concessional rate and he would naturally add to the price the tax at that rate. If the purchasing dealer happens to be an unregistered dealer in that case, the tax payable would be at the higher rate of 7 per cent. If the selling dealer is a registered dealer, he may charge tax at that rate separately, but if he is not a registered dealer, he may add tax at that rate to the sale price. The Supreme Court in the case of State of Madras v. Radio and Electricals Ltd. was not dealing with the question which is for consideration before us. There the question was as to whether a dealer who had sold goods against ''C'' forms was under any liability to see that the goods were utilised by the purchasing dealer for the purposes indicated by him in his declaration in ''C'' forms or where no such purpose was indicated, whether the ''C'' forms could be rejected. The Supreme Court held that so long as the goods were sold to a dealer, who was a registered dealer and the goods sold were covered by his certificate of '' registration, no further liability lay upon the selling dealer in order to obtain the benefit of the concessional rate ensuing upon the production of ''C'' forms. To put it in the words of the Supreme Court:

The seller can have, in transactions of sale and purchase in the course of inter-State trade and commerce, no control over the purchaser. He has only to rely upon the representation made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate; but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in form ''C the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used.

18. This decision of the Supreme Court is of no assistance in resolving the question which we have been called upon to answer in the instant case. That question is as to whether an unregistered dealer can also be given a concessional rate of tax as provided in Section 8 of the Central Sales Tax Act, if the sales are made to a registered dealer outside the State and the unregistered dealer procures ''C'' forms from the purchasers. In view of the conclusions arrived at by us, we are clearly of opinion that the unregistered dealer in such a case is entitled to the concessional rate.

19. We accordingly answer the question in the affirmative in favour of the assessee and against the department. The assessee is entitled to the costs of this reference which we assess at Rs. 100. The fee of the learned counsel is also assessed at the same figure.

