
(2006) 11 AHC CK 0238
In the Allahabad High Court

The Commissioner, Trade Tax

APPELLANT

Vs

S/S Ascort Limited

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 12, 8

Citation : (2006) 11 AHC CK 0238

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order dated 17th November, 1997 relating to the assessment year 1989-90 under the Central Sales Tax Act.

2. Short question involved in the present revision relates to the allowance of the benefit of concessional rate of tax against Form C furnished for Rs. 35,37,461.30 paise. Assessing authority disallowed the benefit of concessional rate of tax on the aforesaid amount on the ground that Form C contained more than one bill and the total amount exceeded Rs. 25,000/- which was not permissible u/s 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957. The claim of the dealer that supplies against several bills were against one agreement has been rejected by the assessing authority and also by the first appellate authority. Before the Tribunal dealer raised the plea that the supply was against one agreement and, thus, the benefit of concessional rate of tax against the amount exceeding Rs. 25, 000/- may be allowed, but the same has been rejected by the Tribunal on the ground that no such order was produced. Tribunal however allowed the claim of concessional rate of tax on the ground that Rule was only directory and not mandatory.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that in view of the decision of the Apex

Court in the case of Indian Agencies (Regd.), Bangalore Vs. Additional Commissioner of Commercial Taxes, Bangalore, the view taken by the Tribunal is not correct.

5. Learned Counsel for the dealer submitted that under Rule 8 (4) (a) of the Rules requirement is that a declaration is to be 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. He submitted that the prescribed particular does not include the monetary limit of the form. According to him Section 8(4) of the Central Sales Tax Act only provide that the form may contain the prescribed particulars and does not provide that it should be for a particular amount and thus the restriction imposed by the proviso to Section 12(1) that the amount of the form should not exceed more than Rs. 25,000/- in case of more than one transaction is not mandatory, but only directory. In support of his contention, he relied upon the decision of the Madras High Court in the case of Bimetal Bearings Ltd. v. State of Tamil Nadu reported in 90 STC 128.

6. Having heard the learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below.

7. Relevant provisions of Section 8 of the Central Sales Tax are referred as follows:

8. Rates of tax on sales in the course of inter-State trade or commerce-

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

(a) sells to the Government any goods; or

(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, with effect from such date as may be notified by the Central Government in the Official Gazette for the purpose which shall be two per cent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, or as the case may be, under any enactment of that State imposing value added tax, whichever is lower:

Provided that the rate of tax payable under this subsection by a dealer shall continue to be four per cent, of his turnover, until the rate of two per cent, takes effect under this sub-section.

(4) The provision 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) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorized officer of the Government

Provided that the declaration referred to in Clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 reads as under:

12(1) the declaration and the certificate referred to in Sub-section 4 of Section 8 shall be in Forms C and D respectively:

Provided that Form C in force before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules, 1974, or before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules, 1976, may also be used up to the 31st December, 1980 with suitable modifications;

Provided further that no single declaration or certificate shall cover more than one transaction of sale, exception in cases where the total amount of sales made in a financial year, covered by one declaration or certificate, is equal to or less than Rs. 25,000 or such other amount as the Central Government may, by a general order, notify in the Official Gazette.

Provided also that where, in the case of any transaction of sale, the delivery of goods is spread over to different financial years it shall be necessary to furnish separate declaration or certificate in respect of goods so delivered in each financial year.

8. Rule 8-A (1) of the Central sales Tax (U.P.) Rules, 1957 reads as follows.

8-A. Submission of declarations or certificates to the Sales Tax Officer and matters incidental thereto-(I) A dealer who claims-

(a) to have made inter-State sales to a registered dealer or to a department of the Central Government or a State Government; or

(b) exemption from tax under Sub-section (2) of Section 6 of the Act; or

(c) to have sent goods to a dealer registered in another State otherwise than by way of sale in the course of inter-State trade or commerce,

shall, in respect of each such claim, furnish to the assessing authority the portion marked "Original" of the appropriate form of declaration and/or certificate referred to in Rule 12 of the Central Rules.

9. Rule 8-A (1) of the Central Sales Tax (U.P.) Rules, 1957 contemplates that the

dealers who claims to have made inter-State sale to a registered dealer shall, in respect of such claim, furnish to the assessing authority the portion marked "Original" of the appropriate form of declaration and/or certificate referred to in Rule 12 of the Central Rules. Therefore, filing of the portion marked "original" of Form-C is mandatory and without its filing, the claim of the dealer that the sale was made to a registered dealer cannot be accepted. Proviso to Rule 12 (1) of the Central Sales Tax (Registration and Turnover) Rules, 1957, provides that no single declaration shall cover more than one transaction of sale except in cases where the total amount of sales made in a financial year, covered by one declaration is equal to or less than Rs. 25.000/-. The rule is mandatory and unless Form is not in accordance to rule the same is not admissible.

10. In the matter of Commissioner of Sales Tax, Delhi v. Delhi Automobiles (P.) Ltd. reported in 48 STC 333 the Delhi High Court held that the production of a declaration form is a condition precedent for the availability of the concession. The Bench has also observed that these provisions are intended as a measure of safeguard against possible misutilisation of the forms and also to ensure that relief is not obtained by more than one selling dealer in respect of the same declaration form by using the various parts of it differently.

11. Against the decision in Commissioner of Sales Tax, Delhi v. Delhi Automobiles (P.) Ltd. (supra) of the High Court of Delhi, M/S Delhi Automobiles (P) Ltd. preferred an appeal before the Apex Court- Delhi Automobiles (P) Ltd. Vs. Commissioner of Sales Tax, Delhi, which was dismissed. Court have observed in para 7 as under:

In our view, in the first place, the assessee had not done all that it could; it could, and should, have preferred an appeal against the order of the learned single judge and persisted in his application for obtaining the Official Liquidator duplicates of the "C" Form declarations, as required by Rule 12(3). Since it did not, in the face of the clear language of the rule, its case can hardly be said to be a hard case. The judgment cited by the learned Counsel has no application because that was a case where the language of the statute was found to be ambiguous. The language of the provision here is clear and was rightly applied by the High Court.

12. In the case of Indian Agencies (Regd.), Bangalore Vs. Additional Commissioner of Commercial Taxes, Bangalore, , Apex Court upheld the denial of benefit of concessional rate of tax on the basis of "copy of Form C marked as "duplicate". Apex Court held that benefit of concessional rate of tax can be allowed only on furnishing of original "copy of Form C as required under the Rule 12 (1) of the Central Sales Tax Rules and Rule 6 (ii) of CST (Karnataka) Rule. 13. Apex Court held as follows:

10. We are of the view that the Rule 6 (b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 which provides for furnishing of the original C-Form in order to claim the concessional rate of tax consistent with the provisions of the

Central Sales Tax Act and there is no conflict between the provisions of Rule 12 (2) AND (3) OF THE Central Sales Tax Rules and Rule 6(b)(ii) of the Central Sales Tax" (Karnataka) Rules, 1957 as contended by the appellant. Rule 12 of the Rules is intended to prevent misuse of C-Forms by unscrupulous and mischievous dealers and makes it obligatory for the dealer to furnish indemnity bond. In other words, in order to claim concessional rate of tax, the original C-Form has to be attached to the return as provided under Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957. It is not a mere formality or technicality but it is intended to achieve the object of preventing the forms being mis-used for the commission of fraud and collusion with a view to evade payment of taxes. In our opinion, Rule 6(b)(ii) which is clear and categorical cannot be liberally construed but it should be construed strictly. We, therefore, hold that without producing the original of the C-Form as prescribed under Rule 6(b)(ii) of the Rules the appellant is not entitled for concessional rate of tax under Sub-section (4) of Section 8 of the Act.

21. The learned senior counsel for the appellant submitted that there is no suggestion anywhere that there is anything wrong with the genuineness of the transaction or any doubts as to the possession by the purchasing dealer on (of?) a certificate enabling the sellers to obtain the concessional rate of tax u/s 8 of the Act. Under such circumstances, the authorities should not have taken the strict view in rejecting the claim of the concessional rate of tax. At first sight, the argument of the learned Counsel for the appellate appears to be genuine and acceptable but considering the mandatory nature of the provisions of the Act and Rules, this Court is called upon to decide the questions involved in this case. The provisions being mandatory they should have been complied with. The appellant made no attempt to comply with Rule 12 (3) till after his claim was rejected by the Assessing Authority. Having made no attempt to comply with the mandatory provisions, he disentitled himself from getting the concessional rate. Even otherwise, in our view, it is a pure question of law as to the proper interpretation of the provisions of Section 8 of the Central Sales Tax Act and the provisions of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 and Rule 6 (b) (ii) of the Central Sales Tax (Karnataka) Rules, 1957. In view of the decision of this Court in the case of Kedarnath Jute Manufacturing Co. (supra) and of the decision in Delhi Automobiles (P) Ltd. (supra), it is clear that these provisions have to be strictly construed and that unless there is strict compliance with the provisions of the statute, the assessee was not entitled to the concessional rate of tax.

13. In the case of India Agencies (Regd) Bangalore v. Additional Commissioner of Commercial Taxes, Bangalore (Supra), Apex Court held that the aforesaid provisions have to be strictly construed and that unless there is strict compliance with the provisions of the statute, the assessee was not entitled to the concessional rate of tax. Apex Court also observed that the above provisions are of mandatory nature and should have been complied with. In this view of the matter, the view of the Tribunal that the requirement is not mandatory is not

correct.

14. I do not find any substance in the argument of the learned Counsel for the dealer. Prescribed form containing the prescribed particulars means the particulars in accordance to Rule 12. The proviso to Rule 12 (1) requires that no single declaration shall cover more than one transaction of sale except in cases where the total amount of sales made in a financial year, covered by one declaration is equal to or less than Rs. 25,000 - means that one Form should cover only one transaction of sale and as an exception it is provided that it may cover more than one transaction, but in all not exceeding Rs. 25,000/-. Thus the form should be in accordance to Rule 12 (1). If the Form-C contains more than one transaction exceeding Rs. 25,000/-. it would not be in accordance to Rule 12 (1) and cannot be said to be a prescribed form containing prescribed particulars. Form -C containing more than one transaction exceeding Rs. 25,000/- may amounts to the Form containing particulars, which is not prescribed under the Rules. The decision of the Madras High Court in the case of Bimetal Bearings Ltd. v. State of Tamil Nadu (supra) is no more a goods law in view of the decisions of the Apex Court in the case of Delhi Automobiles (P) Ltd. v. Commissioner of Sales Tax, Delhi (supra) and in the case of India Agencies (Regd) Bangalore v. Additional Commissioner of Commercial Taxes, Bangalore (Supra).

15. For the reasons stated above, the order of the Tribunal is erroneous and is liable to be set aside.

16. In the result, revision is allowed. The order of the Tribunal dated 17th November, 1997 is set aside. Tribunal is directed to pass appropriate order in accordance to Section 11(8) of the Act.