
(1976) 02 MAD CK 0025

In the Madras High Court

Case No : Tax Case No. 164 of 1973 (Revision No. 141 of 1973)

The Deputy Commissioner (C.T.)

APPELLANT

Vs

Amirtham Ghee Stores

RESPONDENT

Date of Decision : 26-02-1976

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 4, 5, 7

Citation : (1978) 41 STC 259

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : K. Govindarajan, for Additional Government Pleader No. 1, for the Appellant; S.V. Subramaniam, for Subbaraya Aiyar, Padmanabhan and Ramamani, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami

1. The assessee is a dealer in butter and ghee. For the assessment year 1971-72, he had reported a total and taxable turnover of Rs. 56,129.06

and Rs. 54,335.60 respectively in form A-2 returns submitted by him during the year. On the ground that the accounts produced showed some

discrepancies, a reassessment notice was issued proposing to add a sum of Rs. 10,867.12 to the turnover disclosed in the accounts as probable

omissions. This notice was issued on 14th July, 1972. In the reply of the assessee dated 27th July, 1972, to this reassessment notice, the assessee

contended that his business was dull during the year and that, therefore, the turnover was not high. He, accordingly, prayed that no addition should

be made. He also stated that, since his turnover is less than rupees one lakh, he may be assessed u/s 7 of the Sales Tax Act for the assessment

year 1972-73. The Tribunal has now given a finding that the reference to the assessment year 1972-73, in the reply to the pre-assessment notice, is a mistake for 1971-72. Though we are not quite convinced as to whether it is a mistake, since the Tribunal, as a finding of fact, has decided that it is a mistake, we proceed to deal with the case, as if the reference to the assessment year 1972-73 is a mistake for 1971-72. The assessing authority did not accept the objection and determined the total and taxable turnover as proposed in the reassessment notice. The assessing authority, it may be mentioned, treating the request for assessment u/s 7 as relating to 1972-73, rejected the request even for 1972-73 on the ground that there was no proper reason to hold that in the forthcoming year, the turnover would be lesser. The Appellate Assistant Commissioner confirmed the assessment and held that he was not eligible to be assessed u/s 7 of the Act, as the request made in the letter was for the assessment year 1972-73. The Tribunal, however, on its finding that the reference to 1972-73 in the objections filed was a mistake for 1971-72, permitted the assessee to be assessed u/s 7 and, accordingly, directed the assessing authorities to re-do the assessment u/s 7. It is questioning this view of the Tribunal that the State has preferred this case.

2. As stated already, we are proceeding to deal with the question on the basis that in his reply to the reassessment notice dated 27th July, 1972, the assessee had asked for compounding u/s 7 for the assessment year 1971-72. The learned counsel for the revenue contended that the assessee had opted to be assessed under Rule 18 of the Tamil Nadu General Sales Tax Rules, 1959, hereinafter referred to as the Rules and had, in fact, submitted the monthly returns in form A-2. Therefore, the assessee is not entitled to the assessment under Rule 15(4-B), which was relied upon by the assessee.

3. The learned counsel for the assessee, on the other hand, contended that since he had exercised an option to be assessed u/s 7, before the actual assessment order was made in respect of 1971-72, he is entitled to be assessed under that Section, in view of Rule 15(4-B), irrespective of the fact that he had submitted his returns under Rule 18 in form A-2 and had not submitted any annual return under Rule 15(2) or (3).

4. The rules contemplated two distinct methods of assessment; one is prescribed

under Rule 15 and the other is prescribed under Rule 18. In the method prescribed under Rule 15, the dealer, whose total turnover is not less than Rs. 15,000, is required to submit an annual return on or before the first day of May in every year in form A-1 showing the actual total and taxable turnover in the preceding year. On receipt of the return in form A-1, if the assessing authority is satisfied, after such scrutiny of accounts and such enquiry as he considers necessary, that the return is correct and complete, he is to finally assess him on the basis of the return u/s 3, 4 or 5, as the case may be. In such a case, the assessing officer also is entitled to make a provisional assessment as provided under Rule 15(7) for the current year on the basis of the return received or on the basis of the assessment order. At the time of filing of the annual return in form A-1, if the assessee satisfies the other conditions u/s 7, he may opt to be assessed at the compounded rates u/s 7 of the Act. If he opts to be assessed, then the return of the actual total and taxable turnover in the preceding year should be in form AA-1. On receipt of such a return under Rule 15(5), the assessing authority makes the assessment u/s 7 of the Act. Even in such cases where the assessee has opted to be assessed u/s 7, the assessing authority could make a provisional assessment for the current year on the basis of the return received. The method prescribed under Rule 18 requires the dealer to submit for every month on or before the 25th of the succeeding month a return in form A-2 showing the total and taxable turnovers for the preceding month and the amount or amounts actually collected by him by way of tax or taxes during the month. Along with the return he must submit a treasury receipt for remittance of the tax collected or enclose a crossed cheque for the full amount of tax or taxes collected during the month or payable under Sections 3, 4 and 5 of the Act. These monthly returns in form A-2 are provisionally accepted and, at the end of the year, if on check of accounts, the assessing officer is satisfied that the returns are correct, he makes a final order of assessment on the basis of the monthly returns submitted by the assessee under Sections 3, 4 and 5. There was no obligation on the part of the assessee in the method of assessment contemplated under Rule 18 to submit any return in form A-1 or AA-1 after the year of assessment showing the annual turnover of the previous year. If the assessee had opted to be

assessed under Rule 18, there is also no provision for the assessing officer to make any provisional assessment for the current year on the basis of

the total turnover disclosed in form A-2 returns. This being the dual procedure prescribed under the Rules, we have to consider now whether even

in the case of Rule 18, the assessee is entitled to opt to be assessed u/s 7. That section provides that notwithstanding anything contained in Sub-

section (1) of Section 3, every dealer whose total turnover is not less than Rs. 25,000 but not more than rupees one lakh, may, at his option,

instead of paying the tax in accordance with the provisions of that section, pay tax at the rates provided therein. Rules 15(2), (3), (4-A), (4-B) and

18(1), which are relevant for the consideration of the points at issue, may now be extracted :

15. (2) Every dealer who is not liable to submit a return under Rule 9 and whose total turnover in any year is not less than Rs. 15,000 shall, unless

he has elected to be assessed by the method described in Rule 18, submit to the assessing authority of the area in which his principal place of

business is situated a return in form A-1 (or form AA-1 as the case may be) showing the actual total and taxable turnover for that year on or

before the 1st day of May of the succeeding year and thereafter on or before the 1st day of May immediately following each year.

(3) Every dealer who discontinues his business during the course of a year in which he has been provisionally assessed under Rule 10 or 11 shall

submit to the assessing authority concerned a return in form A-1 (or form AA-1 as the case may be) for the period up to and inclusive of the date

of discontinuance of business in the manner prescribed in this rule, within thirty days from the date of such discontinuance.

(4-A) If a dealer who is eligible to pay tax at the compounded rate laid down in Section 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 is submitted earlier along with that return, intimate his desire to the assessing authority to be so assessed. The option so

exercised shall be valid for the year of assessment and be continued so long as the dealer is found eligible to be assessed u/s 7 and has not

withdrawn the option. The change-over to this method of assessment shall not be permitted in the course of a year.

(4-B) A dealer who is eligible for payment of tax at the rates laid down in Section 7 but who has not exercised the option to be assessed under

that section as provided in Sub-rule (4-A) of this rule in respect of any year, shall, if he desires to avail himself of payment of tax at the

compounded rates laid down under that section for that year, exercise his option to be so assessed at the time of submitting the return prescribed in

sub-rules (2) and (3) of this rule or at any time before the final assessment for the year. The option once exercised under this rule shall be final in

respect of that year.

18. (1) In lieu of the method of assessment described in the foregoing rules, the method described in sub-rules (2) to (7) of this rule may, at the

option of the dealer, be adopted in the case of dealers whose taxable turnover exceeds Rs. 20,000 a year and who have not opted to pay tax u/s

7. If the dealer desires that this method of assessment should be applied to him from the beginning of any year, he shall intimate his desire to the

assessing authority at the time of submitting the return prescribed in Rule 9 or Sub-rule (2) of Rule 15 or thereafter before the 1st May in any year.

On being so permitted the dealer shall submit returns and pay tax in accordance with the following sub-rules. The tax, if any, paid under rules 10 to

13 and 15 for that year shall be adjusted towards the tax assessed under this rule.

5. It may be seen from Rule 15(4-A) that at the beginning of the year before the first of May or at the time of filing a return in form A-1, the dealer

may opt to be assessed for the current year u/s 7, if he considers that his turnover will not exceed the maximum prescribed u/s 7. This Rule 15(4-

A) deals with the current year. Rule 15(4-B) on the other hand deals with the previous year. If the dealer had not exercised the option to be

assessed u/s 7, as provided for by Sub-rule (4-A) of Rule 15, he could still exercise that option, when he submits the annual return of the actual

total and taxable turnover ; if he opts to be assessed even at the time of submitting the return, the return should be in form AA-1. But if he had not

exercised that option even at that stage and filed only a return in form A-1, Rule 15(4-B) further states that he may exercise the option to be

assessed u/s 7 at any time before the final assessment for the year. The words ""at the time of submitting a return"" in sub-rules (2) and (3) of this

rule, or "at any time before the final assessment for the year", in our opinion, clearly indicate that even in a case where he had submitted a return in form A-1, he could exercise his option before the final assessment order was made. The learned counsel for the assessee contended that, on a reading of sub-rules (2) and (4-B) of Rule 15, a dealer who is not assessed under Rule 18 had to exercise his option even at the time of filing a return and, if he so opts, he will have to file the return in form AA-1 and there is no question of his opting to be assessed thereafter u/s 7 and the reference to option at any time before the final assessment for the year in Sub-rule (4-B) of Rule 15 is with reference to the assessee who had opted to be assessed under Rule 18. We are unable to agree with this contention of the learned counsel. We are of the view that even a dealer, who had submitted a return originally in form A-1, could opt to be assessed before the actual order of assessment under Sub-rule (4-B) of Rule 15, if he satisfies the other conditions referred to in Section 7. This shall be so, as under Rule 18, a person could opt to the method of assessment under that provision if he had not opted to pay tax u/s 7. By submitting the returns in form A-2 and acceptance of that return by the assessing officer, the assessee shall be deemed to have waived his right of option to be assessed u/s 7. The return and the final assessment referred to in Sub-rule (4-B) of Rule 15 should, therefore, be of a return under Rule 15 and a final assessment under that rule and not an assessment under Rule 18. This is also clear from the fact that Section 7 is omitted in Rule 18(6) but included in Rule 15(5). We are accordingly of the opinion that the assessee who had opted to be assessed originally under Rule 18 is not entitled to claim to be assessed u/s 7 at the time of assessment under Rule 18(6).

6. We have considered the question as to the applicability of Rule 15(4-B) to the case of the assessee on the basis that the provision was available for the assessment year 1971-72. We may point out that Sub-rule (4-B) of Rule 15 was deleted with effect from 27th September, 1971 in G.O.

Ms. No. 2845 dated 27th September, 1971.

7. In the result, the order of the Tribunal is liable to be set aside and it is, accordingly, set aside and the assessment order is restored. The revenue will be entitled to its costs. Counsel's fee Rs. 250.