(1970) 01 AP CK 0012

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 15 of 1966

The State of Andhra Pradesh APPELLANT

Vs

C.S. Bhoomi Reddy RESPONDENT

Date of Decision : 21-01-1970

Acts Referred:
Central Sales Tax Act, 1956 — Section 8

Citation : (1970) 26 STC 444

Hon'ble Judges : Sriramulu, J;Gopal Rao Ekbote, J

Bench : Division Bench

Advocate : Principal Government Pleader, for the Appellant; A.V.S. Ramakrishnaiah, for the Respondent

Final Decision : Allowed

Judgement

Sriramulu, J.—This revision petition is against the order of the Sales Tax Appellate Tribunal. The assessee runs an oil mill at Adoni, crushes groundnuts into oil and sells it locally and also outside the State of Andhra Pradesh. In this revision petition we are only concerned with a transaction of sale of groundnut oil of the value of Rs. 36,199.81 effected by the assessee to M/s. Narayan Traders, Rourkela, on the ground that the ''C'' form from the purchaser, in respect of the said transaction of sale of groundnut oil was not produced and filed by the assessee and the Commercial Tax Officer levied a tax at the rate of 7 per cent, of the said turnover. If the ''C'' form was filed before the assessing authority the assessee would have been entitled to be taxed on the said turnover at 1 per cent. On appeal against the assessment, the Assistant Commissioner of Commercial Taxes affirmed the levy of tax at 7 per cent, on the said turnover on the ground that the assessee had sufficient time to produce ''C'' form, but had failed to do so. A second appeal against the assessment was carried to the Sales Tax Appellate Tribunal. Before the Tribunal, the assessee stated that the ''C'' form No. H. 461683 dated 18th January, 1962, was collected by the United Commercial Bank, Rourkela, on behalf of the assessee from M/s. Narayan

Traders, Rourkela, but it was lost in transit. Before the Tribunal the assessee filed an affidavit to the effect that they had requested.M/s. Narayan Traders, Rourkela, to send a duplicate copy of the ''C'' form in respect of the above transaction, but they had expressed their inability to send a copy of the ''C'' form on account of the fact that in the recent riots that took place at Rourkela, their shop was looted and in fire their machinery worth three lakhs of rupees was gutted and that in those circumstances they were unable to help the assessee by sending a duplicate copy of the ''C'' form. Nevertheless, they expressed their willingness to furnish an indemnity bond. Accepting the arguments advanced by the assessee''s counsel, the Sales Tax Appellate Tribunal held that the ''C'' form was lost while it was in transit through the bank. It could not, therefore, be said that it was lost either in the custody of the seller or the purchaser and Rule 10-A was not clear as to what exactly should be done in such a case. However, since the sale was a genuine one as found by the invoice, account books etc. the assessee should get the benefit of being taxed at the concessional rate u/s 8(1) of the Act. The Tribunal accordingly directed that the said turnover should be taxed at 1 per cent, on the assessee furnishing an indemnity bond. It is the correctness of the above order that is challenged in this revision petition before us.

2. The learned Government Advocate submitted that the language used in Section 8(4) of the Central Sales Tax Act was mandatory. In order to be entitled to be taxed at a concessional rate, an assessee, as a condition precedent, has to furnish a certificate in ''C'' form before the assessing authority. The assessee did not furnish such a certificate before the Commercial Tax Officer. Furnishing security or indemnity in case of loss of the ''C'' form while in transit or from the custody of the seller or purchaser, was only intended to serve as a security for the prevention of certain malpractices of the traders. Unless an assessee produces before the Commercial Tax Officer the ''C'' form in original or if the original is lost a duplicate copy of the ''C'' form, he would not be entitled to be taxed at a concessional rate of tax, irrespective of the fact, whether he has furnished security or not. In support of the above submissions, the learned Government Advocate relied upon the decisions in Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others, and State of Madras Vs. R. Nand Lal and Co.,

3. As against those arguments, the learned counsel appearing for the assessee contended that the United Commercial Bank, Rourkela, was the agent of the assessee, that the bank had intimated the assessee that the ''C'' form was lost in transit, that the purchaser was involved in circumstances beyond their control and, therefore, they were unable to furnish a duplicate copy of the ''C'' form, that they were, however, willing to furnish an indemnity bond and that they had filed an affidavit to that effect before the Tribunal. A genuine sale of goods, which attracted tax at a concessional rate, should not be taxed at a higher rate for the technical reason that ''C'' form was not produced. The tax at 7 per cent, had already been paid. At, this point of time, even if the assessee succeeds in getting a duplicate copy of ''C'' form from the purchaser, he would not be able to get a

refund from the sales tax department and, therefore, the order of the Sales Tax Appellate Tribunal should not be disturbed.

4. We have carefully considered the submissions made before us by the learned Advocates. In order to appreciate the contentions raised by the parties, it is necessary to bear in mind the actual language used in the concerned section and the rules framed under the Central Sales Tax Act. The relevant portion of Section 8 of the Central Sales Tax Act reads as follows:

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 one per cent, of his turnover.

(2) 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 seven per cent, or at the rate applicable to the sale or purchase of such goods inside the. appropriate State, whichever is higher.

(3)...

(4) 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.

5. Rule 10-A of the Central Sales Tax (Andhra Pradesh) Rules, 1957, reads thus :

(1) If a declaration form either blank or duly completed is lost while it is in the custody of the purchasing dealer or while it is in transit and has not reached the selling dealer, the purchasing dealer shall furnish a reasonable security by way of an indemnity bond for each such declaration form to the authority from whom the forms are obtained.

(2) If a declaration form duly completed is lost while it is in the custody of the selling dealer, he shall furnish a reasonable security by way of an indemnity bond for each such declaration form to the authority to whom he is required to furnish his periodical returns of turnover.

(3) If a declaration form duly completed and signed is lost in transit or from the

custody of the selling dealer, he shall obtain a duplicate of the form with the following declaration in red ink across the page in all the three parts and duly signed by the purchasing dealer and unless such a duplicate form is obtained the sale in question shall not be treated as one falling u/s 8(1) of the Act.

I hereby declare that this is the duplicate of the declaration form No... signed on... and issued to...who is a registered dealer of... (State) and whose registration certificate No is....

6. It is common ground that the sale in question is an inter-State sale of goods referred to in Sub-section (3)(b) of Section 8 of the Central Sales Tax Act. Goods referred in Sub-section (3)(b) of Section 8 are (1) goods or class of goods specified in the certificate of registration of the purchasing dealer as being intended for resale by him subject to the rules made by the Central Government in that behalf, or (2) for use by him in the manufacture and processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power. Such sale is liable to be taxed u/s 8(1)(b) of the Central Sales Tax Act at 1 per cent.

7. Section 8(4) controls the applicability of Section 8(1) and says that Section 8(1) shall not apply to any inter-State sale, unless the selling dealer furnishes to the prescribed authority ''C'' form duly signed by the purchasing dealer and obtained by him in the manner prescribed. The language of Section 8(4) is express, explicit and mandatory. The benefit of taxation at 1 per cent, u/s 8(1) of the Central Sales Tax Act is conditional upon the assessee producing and furnishing a prescribed declaration in ''C form in the prescribed manner. "Prescribed" means prescribed under the rules. The "prescribed authority" contemplated u/s 8(4) is the Commercial Tax Officer. Since the section contemplates furnishing of the ''C'' form before the Commercial Tax Officer, it will not be ordinarily sufficient compliance, if it is filed before the appellate authorities after the assessment is over. Non-compliance with the mandatory rule of furnishing the ''C'' form will inevitably deprive the assessee of the benefit of taxation at a favourable rate u/s 8(1). We derive support for our opinion in the decision of the Supreme Court in State of Madras Vs. R. Nand Lal and Co., In that case, the declaration in ''C'' form was filed, but it was not in the prescribed form. There the question arose whether the assessee was entitled to the benefit of taxation at a lower rate u/s 8(1) of the Central Sales Tax Act. Speaking for the Supreme Court, Honourable Mr. Justice Shah observed :

If the selling dealer fails to furnish the declaration in the prescribed form, he is liable to pay tax at the higher rate mentioned in Sub-section (2)(b) of Section 8.

8. Rule 10-A of the Central Sales Tax (Andhra Pradesh) Rules, 1957, prescribes the manner in which the ''C'' form has to be obtained and furnished before the Commercial Tax Officer. ''C'' form in original is contemplated to be filed u/s 8(4). But the law allows the filing of its duplicate copy in the circumstances stated in Rule 10-A. However, the furnishing of the ''C'' form either in original or in

duplicate, in the circumstances stated in Rule 10-A, is a sine qua non for obtaining the benefit of taxation at a concessional rate u/s 8(1) of the Act. Since, in this case the assessee has not furnished the ''C'' form in original before the Commercial Tax Officer, or its duplicate copy in the circumstances stated in Rule 10-A, Section 8(1) of the Act is not attracted and the assessee is not entitled to the benefit of taxation at a concessional rate of tax. It is, therefore, irrelevant for the purpose of this appeal, to consider the language of Rule 10-A and to interpret it in order to find out under what circumstances the duplicate copy of the ''C'' form could be filed.

9. It appears to be a great hardship to deprive an assessee of the benefit of taxation at a lower rate of a genuine sale, which comes u/s 8(1) of the Act, merely because of the non-production of the ''C'' form and even in a case where the purchasing dealer or a selling dealer is prepared to furnish security by way of an indemnity bond. Construing a similar section, i.e., Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act and Rule 27A of the Rules framed thereunder, his Lordship Subba Rao, J., speaking for the Supreme Court in Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others, observed as follows :

Sub-rules (3) and (4) of Rule 27A are not helpful to the appellant. They provide only safeguards against abuse of the declaration forms by the purchasing dealers ; they do not enable the selling dealer to either directly apply or to compel the purchasing dealers to apply for duplicate forms ; nor do they enjoin the appropriate authority to give the selling dealer a duplicate form to replace the lost one. We realise that the section and the rules as they stand may conceivably cause unmerited hardship to an honest dealer. He may have lost the declaration form by a pure accident, such as fire, theft etc. and yet he will be penalised for something for which he is not responsible. But it is for the Legislature or for the rule-making authority to intervene to soften the rigour of the provisions and it is not for this court to do so where the provisions are clear and unambiguous.

10. We are, no doubt, aware of the hardship that may result to the assessee by reason of non-production of the ''C'' form before the Commercial Tax Officer, but this court cannot help the assessee. It is for the Legislature to soften the rigour of the section and the rule and not for this court, when the provisions of Section 8(4) and Rule 10-A are clear and unambiguous in their language.

11. It would not be out of place to state here as to why the Legislature has given so much importance to the production, in the prescribed manner, the ''C'' form obtained from the prescribed officer. The Government intended to give the benefit of taxation at a lower rate only in respect of goods specified in the certificate of registration of the purchasing dealer, who intended to resell them or to use them in the manufacture or processing of goods for sale etc. That is why an undertaking is taken from the purchasing dealer, in ''C'' form, to the effect that the goods sold to him by the selling dealer would be resold or used in the

specified manner. If after purchase of such goods for any of the purposes specified in Section 8(3)(b), the purchaser fails, without reasonable excuse, to make use of the goods for any such purpose, he is liable to be penalised u/s 10. u/s 10(e) the dealer is also liable to be penalised if he is in possession of ''C'' form, which has not been obtained by him, or by his principal or by his agent, in accordance with the provisions of this Act or any rules made thereunder. The ''C'' form also shows as to which authority he should approach for obtaining the ''C'' form and to which authority he should account for such forms. All these are intended to fix up the parties to the sale transaction and the goods sold, which are, in the larger interests of the State, sold and used in a specified manner. The object in enacting a similar rule under the Bengal Finance (Sales Tax) Act has been stated by his Lordship Subba Rao, J., in Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others, as follows :

There is an understandable reason for the stringency of the provisions. The object of Section 5(2)(a)(ii) of the Act and the Rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will well nigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the twofold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid.

12. In view of the importance of the ''C'' form, the rules framed by the State of Andhra Pradesh under the Sales Tax Act also provide the manner in which the ''C'' form has to be proved. It must be proved by the production of the original itself. If it is lost in the custody of the purchasing dealer, or while it is in transit and before it reaches the selling dealer, the purchasing dealer is required to furnish a reasonable security by way of indemnity and for each such declaration form to the authority from whom the forms are obtained [rule 10-A(1)]. If, however, a declaration form, which is duly completed, is lost while it is in the custody of the selling dealer, he is required to furnish a reasonable security by way of an indemnity bond for each such declaration form to the authority to whom he is required to furnish his periodical returns of turnover [Rule 10-A(2)]. it is evident that the, above two clauses refer to the furnishing of security either by the purchasing dealer or by the selling dealer to the authorities stated in those clauses. Rule 10-A(3) stated the circumstances in which a duplicate copy of the ''C'' form can be filed by the selling dealer, before whom he furnishes his periodical returns. If a declaration form duly completed and signed is lost in

transit or from the custody of the selling dealer, he is required to obtain a duplicate of the form with a declaration in red ink in all the three parts of the ''C'' form and duly signed by the purchasing dealer. That rule also makes it clear that unless such a duplicate form is obtained, the sale shall not be treated as one falling u/s 8(1) of the Act.

13. All these provisions of Rule 10-A and Section 8(4) of the Act are clear and unambiguous and are mandatory. Therefore, without complying with those provisions by furnishing the ''C'' form in original or its duplicate in the circumstances stated in the section and the Rules, an assessee cannot get the benefit of taxation at a lower rate.

14. In the instant case before us, since the assessee has not produced and furnished the ''C'' form in respect of the sale in question, before the Commercial Tax Officer, the Tribunal erred in directing the taxation of the sale at a lower rate after taking an indemnity bond from the selling dealer. We, therefore, allow this revision petition, set aside the order of the Tribunal and restore the order of the Assistant Commissioner of Commercial Taxes, upholding the order of the Commercial Tax Officer taxing the turnover at 7 per cent. The revision petition is accordingly allowed with costs. Assessee will pay the costs to the Government. Advocate''s fee is Rs. 100.