

(1967) 06 MAD CK 0005

In the Madras High Court

Case No : Tax Case No. 221 of 1964 (Revision No. 148)

The State of Madras

APPELLANT

Vs

P. Subbiah Pillai

RESPONDENT

Date of Decision : 22-06-1967

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 6

Citation : (1968) ILR (Mad) 116 : (1967) 20 STC 263

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : K. Venkataswami, for Additional Government Pleader, for the Appellant; K.R. Ramamani, for Subbaraya Ayyar and Sethuraman, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Phool Chand Gupta Vs. State of Andhra Pradesh, AIR 1997 SC 914 : (1997) 1 JT 700 :

(1997) 1 SCALE 419 : (1997) 2 SCC 591 : (1997) 1 SCR 420 : (1997) 104 STC 601 : (1997) AIRSCW 805 : (1997) 2 Supreme 18

Veeraswami, J.—A turnover of Rs. 14,025 was charged to tax at 7 per cent., the revenue being of the view that the assessee failed to file

along with the returns declarations in "C" Forms. The assessee claimed exemption of the entire turnover from tax u/s 6(2) of the Central Sales Tax

Act and had duly filed the "E-I" Forms. The Tribunal accepted the assessee's contention that Sub-rules (2) and (5) of Rule 9-B of the Central

Sales Tax (Madras) Rules, 1957, are in excess of the rule-making power of the State Government and allowed the appeal. The State is the

petitioner in this Court.

2. u/s 6(1), every inter-State sale is liable to tax. But this is subject to the other provisions of the Act. Second inter-State sales to registered

dealers, by transfer of documents during movement of goods are, however, exempted from tax by Sub-section (2) of Section 6, provided the

requirements of the proviso to the sub section are satisfied. The proviso is as follows :

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the

prescribed authority in the prescribed manner a certificate duly filled and signed by the registered dealer from whom the goods were purchased,

containing the prescribed particulars.

3. The Central Sales Tax (Registration and Turnover) Rules, 1957, prescribe that the certificate for purposes of Section 6(2) should be in Form

E-I". There is no dispute that the assessee did file "E-I" Forms in respect of the turnover in dispute. But the revenue insisted upon the assessee

producing declarations in Form "C", which the assessee resisted and declined. Apparently, the revenue relied on Rule 9-B(2) and (5) of the

Madras Rules. Sub-rules (2) and (5) read :

(2) The purchasing registered dealer who received the certificate in Form E-I as aforesaid shall, if he sells the goods to a registered dealer by

transfer of documents of title to the goods, furnish to the assessing authority the original of the Form E-I received by him from the dealer from

whom he purchased the goods and the original of the declaration Form "C received from the registered dealer to whom he sold the goods.

(5) The exemption provided in Section 6, Sub-section (2) of the Act, shall not be granted unless the dealer making the sale furnishes to the

assessing authority the original of the declaration in Form "C obtained from the registered dealer, making the purchase together with the certificate

in Form E-I or E-II as the case may be.

4. The Tribunal, as we mentioned, was of opinion and, we think, quite rightly, that Sub-rule (5) is not within the rule-making power of the State

Government. The proviso only requires that the dealer, in order to qualify himself to the exemption under Sub-section (2) of Section 6, should

produce a certificate in the prescribed form relating to the turnover in respect of which exemption is claimed. The proviso does not require that

anything more need be done by the dealer to qualify for the exemption. But the argument for the State is that the exemption would be available only

if the dealer proves that the sales are to a registered dealer. That is perfectly true. But it is quite another matter to insist upon the dealer producing

declarations in Form "C" and to lay down a rule that unless he does so he will be disentitled to the exemption. That certainly is not the effect of

Sub-section (2) of Section 6 or of the proviso. The conditions for the exemption under the sub-section are only that the sales must be second sales

and effected by transfer of documents during movement of goods to a registered dealer and that further certificates in Form E-I obtained from the

dealer from whom the assessee has purchased, are produced. Nowhere is any indication to be found in Sub-section (2) or the proviso thereto, that

C Forms as such should be obtained and produced. Nor do we find in Section 13(4) any authority for the State Government to frame a rule, like

Sub-rule (5) of Rule 9-B. The Tribunal was, therefore, right in its view that Sub-rule (5) of Rule 9-B is invalid.

5. As for Sub-rule (2) of that rule, what is stated for the State is that it is not invalid and that all that is intended by the requirement of production of

a declaration in Form "C" is that there should be proof that the second sales, for which exemption from tax is claimed, were to registered dealers.

If that is the intention, the sub-rule is innocuous. It cannot, in any sense, be read as mandatory. It should be understood only as one mode of proof

of the fact that the second sales are to registered dealers. But the revenue cannot insist that the dealer is bound to produce declarations in Form

C in order to qualify himself for exemption. All that the revenue can require the dealer to do is to prove that the second sale's were to registered

dealers and the proof may take any form, not necessarily declarations in Form "C". While, therefore, we do not think that Sub-rule (2) is invalid,

the sub-rule understood as being merely directory, we make it clear that the revenue cannot rely on non-production of declarations in Form "C

and merely on that ground deny exemption to the Dealer to which he is entitled by Section 6(2). S-34

6. The petition fails and is dismissed with costs. Counsel's fee Rs. 100.