

(1979) 04 MAD CK 0012

In the Madras High Court

Case No : T.C. No. 353 of 1975 (Revision No. 67 of 1975)

The State of Tamil Nadu

APPELLANT

Vs

A.P.T. Manicka Nadar

RESPONDENT

Date of Decision : 19-04-1979

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3, 7

Citation : (1980) 45 STC 301

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : N. Subramanian, for C.S. Chandrasekara Sastri, C. Venkataraman and C. Natarajan, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—This revision has been filed against the order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai, dated 4th

December, 1974, for the assessment year 1972-73. The assessee reported a turnover of Rs. 36,142.22 claiming exemption on a turnover of Rs.

4,477.97 as inter-State sales. The assessing authority finally determined the taxable turnover at Rs. 38,413.89. The Appellate Assistant

Commissioner modified the turnover so fixed and brought it down to Rs. 33,664.25. He agreed with the assessing authority that the turnover

should only be charged u/s 3(1) and that Section 7 could not be applied. The assessee questioned the order of the Appellate Assistant

Commissioner before the Tribunal, and the Tribunal, after examining the question in detail, came to the conclusion that the assessee had already

been granted permission to compound his assessment to sales tax for the earlier year and that the permission once granted would survive for the

subsequent years also in case the assessee continued to be eligible and there was no withdrawal of the option. The turnover as determined by the

Assistant Commissioner was confirmed and the assessee was held eligible u/s 7 of the Tamil Nadu General Sales Tax Act, 1959, hereinafter called

as the Act, for compounding. This order of the Tribunal is questioned in this revision.

2. The learned Additional Government Pleader contended that the assessee was ineligible for the benefit of Section 7 of the Act as he had filed

exhibit A-2 returns under Rule 18. The question is whether the permission granted by the assessing authority continues to be in force for the year in

question also notwithstanding the filing of such a return.

3. Section 7 provides thus:

Notwithstanding anything contained in Sub-section (1) of Section 3, every dealer whose total turnover is not less than fifty thousand rupees but not

more than one lakh of rupees, may at his option instead of paying the tax in accordance with the provisions of that sub-section, pay tax at the

following rates, namely: --

....

4. We are not reproducing the table given in Section 7(1) of the Act specifying the rates of tax in respect of different slabs of the turnover. Sub-

sections (2) and (2-A) of Section 7 run as follows:

(2) Any dealer (other than a casual trader or an agent of a non-resident dealer) who estimates his total turnover for a year to be not more than one

lakh of rupees may apply to the assessing authority to be permitted to pay the tax under this section and on being so permitted, he shall pay the tax

due in advance during the year in monthly or prescribed instalments and for that purpose shall submit such returns in such manner as may be

prescribed.

(2-A) The permission granted by the assessing authority under Sub-section (2) shall continue in force so long as the dealer is eligible to be

assessed under this section and has not withdrawn his option to be so assessed.

5. There is no dispute in the present case that for the earlier year, viz., 1971-72, the dealer was permitted to pay tax u/s 7(1) of the Act. Sub-

sections (2) and (2-A) of Section 7 provide for the continuance of the permission

so granted subject to two conditions. The first is that the dealer should be eligible to be assessed under that section. In other words, the dealer's turnover should not exceed Rs. 1 lakh. There is no dispute that, in the present case, the turnover does not exceed Rs. 1 lakh. The second condition is that the dealer should not have withdrawn his option to be so assessed. There is no withdrawal of option by the dealer in the present case. The only manner in which this withdrawal is alleged to have taken place is that the dealer had filed certain returns in form A-2 under Rule 18 of the Tamil Nadu General Sales Tax Rules. The mere circumstance that a dealer, by mistake or otherwise, filed the returns under form A-2 would not have the effect of his withdrawing the option to be assessed u/s 7 of the Act. The scheme of the provision is to require a positive act on the part of the dealer to withdraw the option granted to him.

6. The dealer himself is eligible for the benefit of Section 7 only if he makes a formal application for that purpose as contemplated by Sub-section

(2). The permission contemplated by Sub-section (2) has also to be granted by the appropriate authority and is not something automatic. The grant

is also a formal act. Thus, the withdrawal contemplated by Sub-section (2-A) could only be formal in nature. There should be a conscious

withdrawal by the dealer to waive the benefit of Section 7 which had once been granted to him and of which the legislature contemplates

continuance in his favour so long as his turnover did not exceed Rs. 1 lakh. Withdrawal in this context cannot be a matter of implied inference.

After all, it has to be remembered that this section is intended to benefit small dealers, and that such dealers carrying on business mostly in small

towns and villages will not be in a position to appreciate the subtle significance of filing A-2 returns, as contrasted with returns in some other form.

In fact one could legitimately expect the assessing authorities to guide them in these matters rather than take advantage of unintended or innocent

lapses.

7. The learned Additional Government Pleader brought to our notice a decision of this Court in Deputy Commissioner (C.T.), Coimbatore v.

Amirtham Ghee Stores [1978] 41 S.T.C. 259. In that case, there was no occasion to go into the scope of Sub-section (2-A) of Section 7 of the

Act, as we have to do here, and, therefore, nothing in the said decision can be

taken as applying to the facts herein. That case dealt with the position of the exercise of the option for the first time after the filing of the A-2 returns. He drew our attention to another decision of this Court in State of Tamil Nadu v. Ball Bearing Centre [1978] 41 S.T.C. 264. In that case, it was observed at page 269, while referring to the case of Deputy Commissioner (C.T.), Coimbatore v. Amirtham Ghee Stores [1978] 41 S.T.C. 259, that, in that case, the assessee had filed the return under Rule 18 as a result of which it was not possible to exercise the option available u/s 7. This decision also does not in any manner support the contention of the revenue in the present case. What was contemplated by the said observation was that the case in Deputy Commissioner (C.T.), Coimbatore v. Amirtham Ghee Stores [1978] 41 S.T.C. 259, was a case where a dealer rendered himself ineligible for exercising the option originally u/s 7 by filing his return under Rule 18. That is not the position here. In fact, it has been pointed out in the second of the two decisions at page 268 that "a provision like this intended to help small traders should not be strictly construed". On the facts of this case, we are satisfied that the Tribunal has acted properly in giving the benefit of the provisions of Section 7 to the assessee in the present case. The revision fails and is dismissed. There will be no order as to costs.