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In the Madras High Court

Case No : Tax Case No. 228 of 1977 and Revision No. 58 of 1977

The State of Tamil Nadu — APPELLANT

Vs

Chellaram Garments (P.) Ltd. — RESPONDENT

Date of Decision : 06-04-1977

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

Citation : (1979) 44 STC 239

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

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

Sethuraman, J.—For the assessment year 1973-74, the assessee disputed, before the Sales Tax Appellate Tribunal, the liability to tax at 10 per cent on a turnover of Rs. 24,955.14. The assessee had not filed C forms before the assessment by the first assessing authority in respect of certain inter-State transactions. The assessee was given a period of 8 days for filing the missing C forms. As the assessee could not file the relevant C forms with reference to the aforesaid turnover, the assessing authority taxed the assessee and the matter was taken on appeal to the Appellate Assistant Commissioner, but without success.

2. Thereafter, the assessee contested the assessment before the Sales Tax Appellate Tribunal. The Appellate Tribunal considered that the C forms were received only subsequent to the assessment and that the assessee''s failure to ask for time was not due to any negligence, but due to the fact that the assessee was not familiar with the tax procedures. In this view, the Tribunal remanded the matter back to the assessing authority for considering the assessee''s claim for concessional rate of tax on the turnover of Rs. 24,955.14. The Tribunal, however, observed that the Appellate Assistant Commissioner would transmit the C forms taken from his record to enable the assessing authority to consider the claim

afresh. It is this conclusion of the Tribunal that is now challenged before us.

3. The learned Additional Government Pleader referred to the proviso to Section 8(4) and also to Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957. Section 8(1) of the Central Sales Tax Act, 1956, provides that every dealer who in the course of inter-State trade or commerce sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3) is liable to pay tax under the Central Sales Tax Act at the rate specified in the provision. Sub-section (4) of Section 8 provides that 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 declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority. The proviso to Section 8(4) states that the declaration referred to in Clause (a) of Section 8(4) should be 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, states that the declaration and the certificate referred to in Sub-section (4) of Section 8 shall be in forms C and D respectively. The declaration is to be in form C as far as this case is concerned. Rule 12(7) provides that the declaration in form C should be furnished to the prescribed authority up to the time of assessment by the first assessing authority and the proviso to that rule states that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit. The effect of this provision is to show that the C form is to be furnished only before the assessing authority. The assessing authority has to entertain the C forms which are filed before the assessment. If such C forms were not furnished before the assessment, then if the assessing authority was satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate before the assessment, then the authority may allow such declaration or certificate to be furnished within such further time as that authority may permit. The petitioner had filed the C forms before the Appellate Assistant Commissioner belatedly. The Appellate Assistant Commissioner declined to accept the C forms. Therefore, the Tribunal remanded the matter back to the assessing authority for the purpose of finding out whether those C forms could be entertained. As the conclusion of the Tribunal in restoring the matter to the assessing authority for the purpose of considering the entertainability of the C forms is correct, we do not think it necessary to interfere with the order of the Sales Tax Appellate Tribunal. It was not necessary or proper for the Sales Tax Appellate Tribunal to go into the question as to whether the assessee''s failure to ask for time was due to negligence or not. This aspect can only be gone into by the assessing authority. As the remand order as such cannot be said to be erroneous, we do not think it

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necessary to entertain this revision petition. The revision petition is accordingly dismissed.

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