ANDHRA PRADESH HIGH COURT

Rajeswari Stone Polishers

Vs

State of Andhra Pradesh

(B.Jeevan Reddy, C.J. G.R Naidu, J.)

11.11.1982

JUDGMENT

B. Jeevan Reddy, J.

1. Sub-section (4) of section 8 of the Central Sales Tax Act, before its amendment in 1976, read as follows :

"(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; or
(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government."

2. As contemplated by this sub-section, rules were made by several States prescribing the time within which C forms - with which alone we are concerned in this case - were to be filed. One of the rules framed by the Kerala State, provided that the C forms should be filed along with the declaration, but in any event before the assessment is made. This rule was struck down by the Supreme Court in Sales Tax Officer v. Abraham , as travelling beyond the power of the rule-making authority. The Supreme Court observed that section 8(4) conferred power on the rule-making authority only to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, and parties to whom they are sold and to which authority the form has to be furnished, but that it did not take in the time-limit. In other words, it was held that the section did not authorise the rule-making authority to prescribe a time-limit within which the declaration has to be filed by the registered dealer.

3. By the Central Sales Tax (Amendment) Act (61 of 1972), which came into force with effect from 1st April, 1973, Parliament added the following proviso to sub-section (4) :
"Provided that the declaration referred to in clause (a) is furnished within the prescribed time or

within such further time as that authority may, for sufficient cause, permit."
In pursuance of this proviso, the Central Government made sub-rule (7) to rule 12 which reads as follows :
"The declaration in form C or form F or the certificate in form E-I or form E-II shall be furnished to the prescribed authority up to the time of assessment by the first assessing authority.Provided 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."

4. A reading of the sub-rule shows that the C forms shall have to be filed, before the first assessing authority, up to the time of assessment. The proviso however empowers the first assessing authority to receive the said forms at any time thereafter, provided the dealer satisfies the authority that he was prevented by sufficient cause from furnishing the forms within the time prescribed by sub-rule (7).

5. Now coming to the facts of the case, the petitioner is a dealer whose turnover for the assessment year 1974-75 included inter-State sales in an amount of Rs. 99,199.00. The assessee did not file the C forms before the first assessing authority, with the result that the higher rate of tax was levied. The assessee filed an appeal. Before the first appellate authority, he filed five C forms covering an amount of Rs. 16,203. The first appellate authority, however, refused to receive those forms on the ground that according to sub-rule (7) of rule 12, they ought to have been filed before the first authority alone and that he had no power to receive the same. On further appeal, the Tribunal confirmed the said view.

6. In this tax revision case Mr. S. Dasaratharama Reddi, the learned counsel for the assessee-petitioner, challenges the correctness of the view taken by the two appellate authorities. He contends that on a proper interpretation of sub-rule (7) of rule 12, read with section 19(3) of the A.P.G.S.T. Act and regulation 11 of the Andhra Pradesh Sales Tax Appellate Tribunal Regulations, 1957, it must be held that the appellate authority does have the power to receive the forms, in case the dealer satisfies such authority that he was prevented by sufficient cause from furnishing the said forms before the first assessing authority. He submits that the appellate authorities have all the powers of the original authority and hence, if the original authority has the power to condone the delay on sufficient cause being shown, and receive the forms, the appellate authority can equally do so. He relies upon certain decisions rendered under the Income-tax Act.

7. On the other hand it is contended by Sri J. V. Suryanarayana, the learned Government Pleader, that when the law says that a particular thing should be done in a particular manner, that thing should and can be done in that manner alone and not in any other manner. He submits that the Act and the Rules have designedly provided that these forms ought to be filed only before the first assessing authority, which alone is clothed with the power to receive the same belatedly and this power cannot be extended to or made applicable to the appellate authority. The learned Government Pleader relied upon the decision of the Madras High Court in State of *Tamil Nadu v. Chellaram Garments (P.) Ltd*[1]. in support of his contention.

8. Sub-rule (7) of rule 12, as stated hereinbefore, empowers the first assessing authority to receive C forms even after making the assessment, provided the dealer satisfies him that he was

prevented by sufficient cause from filing the said forms before making of the assessment. The proviso to sub-rule (7) does not prescribe any time within which a dealer can file C forms, which means that at any time after making of the assessment, a dealer can file the forms and so long as he is able to satisfy the authority about the sufficient cause contemplated by the proviso, the authority shall have to receive those forms. Ordinarily, an assessee has to follow this course alone. But, where an appeal is pending against the order of assessment - it is immaterial whether the appeal is confined only to the rate of tax under the Central Sales Tax Act or whether it involves other issues besides the rate of tax under the C.S.T. Act - and the assessee-appellant seeks to file the C forms in such an appeal, is it to be held that the appellate authority has no power to receive the same and should necessarily direct the assessee to approach the first assessing authority ? In other words, is it to be held that the appellate authority has no power to go into the question of sufficient cause contemplated by the proviso to rule 12(7) ? We see no reason to take such a narrow view, when the appellate authorities not only possess all the powers of the original authority, but also are expressly empowered the receive additional evidence in appeal, which power too, as we shall presently point out, is circumscribed in a manner similar to the power under the proviso to rule 12(7). We hold that the appellate authority does have the power to receive these forms, on proof of sufficient cause contemplated by rule 12(7); of course, it has a choice in the matter - if it feels that the reasons shown by the appellant are sufficient as to require no further inquiry, it may itself condone the delay and receive the C forms, but if it thinks that the question of sufficient cause, calls for a further inquiry, or investigation into facts, which it cannot conveniently do, it can remit the matter to the assessing authority to determine the said issue.

9. Section 19(4) of the Andhra Pradesh General Sales Tax Act clothes the appellate authority with the power, inter alia, to make such inquiry as it thinks fit, in an appeal. So far as the Appellate Tribunal is concerned, regulation 11 expressly empowers the Tribunal to receive additional evidence in appeal, subject to the conditions specified therein, viz., (a) if the authority, from whose order the appeal is preferred before the Tribunal, has refused to admit evidence, which ought to have been admitted or (b) if the party seeking to adduce such additional evidence satisfies the Appellate Tribunal that such evidence, notwithstanding the exercise of due diligence, was not within his knowledge and could not be produced by him at or before the time when the order under appeal was passed. Indubitably, clause (b) of regulation 11 is substantially in the same terms as the proviso to sub-rule (7) of rule 12 of the Central Sales Tax Rules.

10. There is another reason behind our opinion. Suppose, we insist that the assessee should approach the first assessing authority alone, notwithstanding the pendency of the appeal, and the assessee so approaches, but the first authority is not satisfied about the sufficient cause, on the material placed before it, it is undoubtedly, open to the assessee to file an appeal, and if necessary, a further appeal to the Tribunal and in such an appeal - it goes without saying - the appellate authority is entitled to come to a different conclusion than the first assessing authority. In such a situation, it would be consistent with the policy of avoidance of multiplicity of proceedings to hold that in case an appeal is pending against the assessment, it is open to the assessee to file the C forms in such appeal and it is equally open to the appellate authority to go into the sufficient cause contemplated by the proviso to rule 12(7) and is satisfied, receive the said forms and pass consequential orders. We must reiterate that the appellate authority has the choice either to go into the said question itself or to remit the matter to the first assessing authority to go into it. To hold otherwise, viz., that the appellate authority has no power at all to

receive those forms and that they should be filed only before the assessing authority, notwithstanding the fact that an appeal is pending at the relevant time, may amount to insisting upon an empty formality, and may, in many cases, lead to multiplicity of proceedings. We accordingly hold that the appellate authority too has power to receive the C forms, if submitted before it, and adopt either of the courses indicated above.

11. It is true that the Madras High Court in State of *Tamil Nadu v. Chellaram Garments (P.) Ltd*[2]. has taken a view that having regard to the language of the proviso to sub-rule (7) of rule 12, the declarations (C forms) ought to be furnished only before the prescribed authority and it is for that authority to form the requisite satisfaction and also that "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." With great respect to the learned Judges, we are of the opinion that placing such a formalistic construction upon the above provisions may, in many cases, lead to unnecessary delays and to multiplicity of proceedings. It is also not brought to our notice that by adopting the view which we have taken, we would, in any manner, give room for any abuses or that this view would otherwise defeat the objects or purposes of the Act and the Rules. The genuineness and validity of C forms has to be verified and if necessary inquired into both by the first assessing authority as well as the appellate authority, before they are acted upon. Furthermore, the appellate authority has the choice either to enquire into the relevant issues itself or to remit it to the first assessing authority.

12. The learned Government Pleader relief upon certain decisions, rendered by different High Courts, with reference to the Rules framed under the unamended sub-section (4). On a perusal of those judgments we find that in all those cases, the rules required that the C forms ought to be filed along with the return, and at any rate, before making of the assessment. Even the assessing authority was not clothed with the power to receive the forms, for any reason whatsoever or in any circumstances whatsoever, after making the assessment. In such a situation, it was held that the appellate authority too cannot receive the forms, because by doing so, it would be exercising a power which is not available to the original authority. We, therefore, do not think it necessary to refer to those decisions. Similarly it is unnecessary to refer to the decisions cited by Sri Dasaratharama Reddi, in support of the principle that the appellate authority can exercise all the powers of the original authority.

13. For the above reasons, we hold that the appellate authorities were not right in holding that there is no power in them to receive the five C forms tendered before them. The matter is accordingly remitted to the first appellate authority. The first appellate authority shall dispose of the matter in the light of the observations contained herein and in accordance with law.

14. The T.R.C. is accordingly allowed, but in the circumstances there will be no order as to costs. Advocate's fee Rs. 250.

Cases Referred.

1[1979] 44 STC 239
2[1979] 44 STC 239