

National Traders (India) Vs. Additional Commissioner of Sales Tax and anr.

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Court : Madhya Pradesh

Decided On : Apr-08-1968

Reported in : 1968MPLJ688; [1968]22STC86(MP)

Judge : P.V. Dixit, C.J. and ;G.P. Singh, J.

Appeal No. : Miscellaneous Petition No. 195 of 1966

Appellant : National Traders (India)

Respondent : Additional Commissioner of Sales Tax and anr.

Advocate for Def. : K.K. Dubey, Government Adv.

Advocate for Pet/Ap. : G.M. Chaphekar and ; P.D. Pathak, Advs.

Disposition : Petition allowed

Judgement :

ORDER

G.P. Singh, J.

1. This petition under Articles 226 and 227 of the Constitution is by a dealer and is directed against an order passed in revision by the Additional Commissioner of Sales Tax, Indore, by which he confirmed an order of assessment of sales tax for the year 1962-63 made by the Sales Tax Officer, Indore. In the assessment

proceedings, the petitioner claimed deduction of a part of the turnover amounting to Rs. 2,97,033 which pertained to sales of chemicals such as alum, chlorine etc. to the Public Health Department. According to the petitioner these sales were sales of medicines to the department within Rule 24(ii) of the Madhya Pradesh General Sales Tax Rules, 1959, and were duly certified. Rule 24(ii) permits deduction of turnover in respect of sales of 'medicines, instruments and other equipments' to certain hospitals and dispensaries, the Indian Red Cross Society and Public Health Department. By a proviso to the rule the deduction is allowable only when it is certified by the Medical Officer-in-charge, the Secretary of the Indian Red Cross Society, or the Director of Public Health Services or Public Health Engineer, Madhya Pradesh, as the case may be, that the medicines, instruments or other equipments purchased are intended for bona fide use in the hospital or dispensary or by the Indian Red Cross Society or are intended for the use of free distribution in connection with any scheme of the Department of Public Health, Madhya Pradesh, for the prevention, control and treatment of diseases. The Sales Tax Officer disallowed the deduction on the finding that sales of alum, chlorine and other chemicals could not be described as sales of medicines within Rule 24. In this view of the matter he did not consider it necessary to go into the question whether the sales were certified as required by the proviso to the rule. The Additional Commissioner in revision did not give any finding regarding the correctness or otherwise of the view adopted by the Assessing Officer that the sales were not sales of medicines. He, however, held that the petitioner not having produced the certificates of the Public Health Department before the Assessing Officer was not entitled to get the benefit of Rule 24. It appears that the petitioner produced the certificates before the Additional Commissioner who did not accept them as according to him the petitioner ought to have filed them before the Assessing Officer.

2. Shri G. M. Chaphekar, learned counsel for the petitioner contends that as the Assessing Officer was of the view that the sales were not sales of medicines covered by Rule 24, he did not call upon the petitioner to produce the certificates and, therefore, the Additional Commissioner should not have disallowed the deduction on the ground of non-production of certificates before the Assessing Officer. Shri K.K. Dubey, learned Government Advocate, in reply submits that

under Rule 15(4), the certificates required by Rule 24 must accompany the return and cannot be filed later. According to him Rule 15(4) is mandatory.

3. Under the scheme of the Madhya Pradesh General Sales Tax Act, 1958, tax is levied on taxable turnover and every registered dealer has to furnish returns for such period and by such dates as may be prescribed. The procedure for assessment is provided in section 18, the relevant, provisions of which read as follows :

Section 18...

(1-A) If the Commissioner is satisfied that the returns furnished by a registered dealer in respect of any period are correct and complete, he shall assess the amount of tax due from him on the basis of such return.

(2) If the Commissioner is not so satisfied he shall serve the dealer with a notice appointing a place and day and directing him-

(i) to appear in person or by an agent entitled to appear in accordance with the provisions of Section 21; or

(ii) to produce evidence or have it produced in support of the returns; or

(iii) to produce or cause to be produced any accounts, registers, cash memoranda or other documents as may be considered necessary by the Commissioner for the purpose.

(3) After hearing the dealer or his agent and examining the evidence produced in compliance with the requirements of Clause (ii) or Clause (iii) of Sub-section (2) and Such further evidence as the Commissioner may require, the Commissioner shall assess him to tax.

Rule 15(1) of the Rules prescribes that a registered dealer shall furnish quarterly returns within 30 days from the expiry of the quarter to which the return relates. Sub-rule (4) of Rule 15 requires that :

(4) The quarterly returns referred to in Sub-rule (1) shall be accompanied by-

(d) certificates and list of certificates as per Rule 24.

4. Having regard to the relevant provisions of the Act especially Section 18, it does not appear that the requirement of Rule 15(4) that the certificates and list of certificates as per Rule 24 shall accompany the return, is mandatory. Under Sub-section (1-A) to section 18, if the Assessing Officer is satisfied that the returns furnished are 'correct and complete' the assessment is made on the basis of the returns. In case the Assessing Officer is not so satisfied he calls upon the assessee under Sub-section (2) 'to produce evidence or have it produced in support of the returns', or 'to produce or cause to be produced any accounts, registers, cash memoranda or other documents' as may be considered necessary. After hearing the dealer and before making the assessment the Assessing Officer can again under Sub-section (3) require 'further evidence'. Rule 15(4) does not in terms provide that if the certificates do not accompany the return, the dealer will not be entitled to the benefit of Rule 24. If the certificates are not filed along with the return all that can be said is that the return will be held to be incomplete and the Assessing Officer will call upon the dealer to produce the necessary documents. The dealer will thus have opportunity to produce the certificates before the assessment.

5. In the instant case the Assessing Officer came to the conclusion that the sales in respect of which deduction was claimed were not 'sales of medicines' within rule 24. He did not require the production of certificates as in the view that he took of the nature of the sales they did not fall under Rule 24 at all. The question of producing the certificates at the time of hearing therefore did not arise. The Additional Commissioner without noticing this special feature of the case wrongly assumed that the petitioner failed to produce the certificates in support of his claim before the Assessing Officer. The revising authority under Section 39 can 'make such enquiry as he considers necessary'. Having regard to the circumstances of this case the Additional Commissioner committed an apparent error in refusing to accept the certificates when produced before him. After admitting the certificates he should have decided the question whether the sales were such which qualified for deduction under Rule 24.

6. The learned Government Advocate has relied in support of his submission on K. M. Chopra, Jabalpur v. Additional Commissioner of Sales Tax, Indore 1966 M.P.L.J. 1115. In that case while construing Section 8(4) of the Central Sales Tax Act, 1956, it was held by this Court that in case of sales to a registered dealer, the declaration of the purchasing dealer must be filed before the assessing authority and that the Additional Commissioner was right in refusing to accept the declaration at the stage of revision. The decision in that case was based on the terms of Section 8(4) of the Central Act which requires that the 'declaration has to be furnished 'to the prescribed authority'. Moreover, in that case the dealer had been given sufficient opportunity to produce the declarations at the assessment stage and that was one of the reasons why the declarations were not admitted in revision. In the instant case, no provision in the Act has been shown which lays down that the certificates can be produced before the assessing authority alone and cannot be accepted in revision; further, as has already been pointed out, in the view that the Assessing Officer took of the nature of the sales the question of production of certificates did not arise at the assessment stage. Chopra's case [1967] 19 S.T.C. 46 is, therefore, distinguishable.

7. The petition is allowed. The order of the Additional Commissioner of Sales Tax, Indore, dismissing the revision is quashed and he is directed to rehear and decide the revision according to law in the light of the observations made above. In the circumstances of the case there will be no order as to costs of this petition. The security amount will be refunded to the petitioner.