

State Of Madras vs R.Nand Lal & Co on 14 April, 1967

Equivalent citations: 1967 AIR 1758, 1967 SCR (3) 645, AIR 1967 SUPREME COURT 1758, 1968 2 SCJ 27, 1967 3 SCR 645, 20 STC 374

Author: J.C. Shah

Bench: J.C. Shah, S.M. Sikri, V. Ramaswami

PETITIONER:

STATE OF MADRAS

Vs.

RESPONDENT:

R.NAND LAL & CO.

DATE OF JUDGMENT:

14/04/1967

BENCH:

SHAH, J.C.

BENCH:

SHAH, J.C.

SIKRI, S.M.

RAMASWAMI, V.

CITATION:

1967 AIR 1758

1967 SCR (3) 645

CITATOR INFO :

R 1972 SC 845 (25)

ACT:

Central Sales Tax Act, 1956, s. 8(4)-Form 'C' as prescribed by Central Government to be filled by purchasing dealer for selling dealer to get benefit of lower rate under s. 8(1)(b)-Central Sales Tax (Madras) Rules, 1957 Rule 10(1) requiring each declaration in Form 'C' to contain one transaction only-Sale by Madras dealer to Punjab dealer-Punjab dealer declaring more than one transaction in one form-Whether contravenes Rule 10(1)-State Government does not have power under s. 13(3) and s. 13(4)(e) of the Central Act to place such restriction on outside dealer-Desirability of Central Government making rules under s. 13(1)(d) in this regard.

HEADNOTE:

The assessee firm was a 'dealer' in Madras State. For the year 1959-60 the firm was taxed at 7% on certain sales effected to registered dealers in the Punjab on the ground that the declarations taken from dealers in Punjab in Form 'C' were not in accordance with r. 10(1) of the Central Sales Tax (Madras) Rules, 1957. The latter rule required, that there must be a separate declaration in respect of each transaction whereas the declarations in the present case were in respect of several transactions each. The appellant firm claimed that on the turnover in question it should have been assessed at one Per cent only, as laid down in s. 8(1) of the Central Sales Tax Act, 1956. The claim was turned down by the Sales-tax Authorities and the Tribunal, but the High Court held that r. 10(1) of the Central Sales Tax (Madras) Rules, 1957 applied only to transactions of purchase by a dealer in the State of Madras and not to the purchasing dealer in the State of Punjab, that the Madras State was incompetent to frame rules governing the conduct of the chasing dealers in the Punjab, and that in any event r. 10(1) was tory and not mandatory. The State appealed.

HELD: (i) Ex facie r. 10(1) imposes no obligation upon a dealer in the State of Madras wishing to sell goods : It applies to a clear wishing to purchase goods from another dealer. The High Court was further right in holding that under the scheme of the Central Sales Tax Act and the Rules framed under that Act by the State of Madras the injunction against the purchasing dealers in r. 10(1) did not apply- to dealers in the State of Punjab. [650B-651A]

Accordingly the proviso to r. 10(1) which, directs that no single declaration shall cover more than one transaction of sale except in certain cases has no application to a purchasing dealer outside the State of Madras. Nor does r. 10(2). impose any binding obligation upon the selling dealer in Madras to obtain a separate declaration form in respect of each sale transaction. [651C-F]

The appellants were therefore to be taxed at the rate of one per cent and not seven per cent on the turnover in question.

(ii) A rule prescribing that a declaration by a purchasing dealer shall not contain more than one transaction can only be made by the Central Government under s. 13(1)(d) and the State Governments do not have

646

power under s. 13(3) and s. 13(4)(e) to make any such rule. The situation which had arisen in this case could have been avoided if instead of each State making its rules requiring that no single declaration shall cover more than one transaction, the Central Government in exercise of the power under s. 13(1)(d) of the Act had made the rule. [651G-H; 652A-B]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 604 of 1966. Appeal by special leave from the judgment and order dated August 5, 1964 of the Madras High Court in Tax Case No. 131 of 1963 (Revision No. 87).

G. Ramanujam and A. V. Rangam, for the appellant. K. Srinivasan and R. Gopalakrishnan, for the respondent. The Judgment of the Court was delivered by Shah, J. M/s. R. Nand Lal & Company-hereinafter called 'the assessee are dealers in wool at Vaniyambadi in North Arcot District in' the State of Madras. In proceedings for assessment of sales-tax for the year 1959-60 the assesseees were assessed to pay tax at the rate, of seven per cent. on a turnover of Rs. 2,08,343-05 from sales effected by them to certain registered dealers in the State of Punjab. The assessing authority declined to assess the turnover at one per cent. as prescribed by s. 8(1) of the Central Sales Tax Act, 1956, because in his view the assesseees had submitted declarations in Form 'C' covering two or more transactions contrary to the first proviso to r. 10(1) of the Central Sales Tax (Madras) Rules, 1957. The Appellate Assistant Commissioner and the Sales Tax Appellate Tribunal, Madras confirmed the order of the assessing authority. The High Court of Madras, in exercise of its revisional jurisdiction, set aside the order of the Sales Tax Appellate Tribunal, and declared that the ass s were liable to pay tax on the turnover in dispute at the lower rate. The State of Madras has appealed to this Court with special leave. Section 8 of the Central Sales Tax Act, 1956 (as amended by Act'31 of 1958) insofar as it is material provided "(1) Every dealer, who in the course of inter- State trade or commerce-

(a)

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be one per cent. of his turnover.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1)-

(a).....

(b) in the case of goods other than declared goods, shall be calculated at the rate of seven per cent. or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

(2A) (4) The povisions 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 filed 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).....

It is common ground that the turnover was in respect of goods of the class specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or for use by him in the process of manufacture of goods for sale. A registered dealer selling goods in the course of inter-State trade or commerce of the description referred to in sub-s. (3) is liable under s. 8 (1) of the Central Sales Tax Act, to pay tax only if the rate of one per cent. on his turnover. But to qualify himself for that rate of tax he has to furnish to the prescribed authority a declaration duly filled and signed by the registered dealer to whom the goods are sold. Such a declaration must contain the Prescribed particulars in the prescribed form obtained from the Prescribed authority. If the selling dealer fails to furnish the declaration in the prescribed form, he is liable to pay tax at the higher rate mentioned in sub-s. (2) (b) of s. 8. The respondents did furnish declarations in Form 'C' prescribed under the Rules framed by the Central Government in exercise of the powers vested by S. 13 (1) (d) of the Central Sales Tax Act. But each such declaration covered more transactions of sale than one and the aggregate value of the transactions recorded in each declaration exceeded Rs. 5,000- The sales-tax authorities and the Tribunal were of the view that these declarations contravened the express direction of the rule made by the Madras State in exercise of the powers under s. 13 (4)

(e) of the Central Sales Tax Act. The High Court held that r. 10(1) of the Central Sales Tax (Madras) Rules, 1957, applied only to a transaction of purchase by a dealer in the State of Madras, and not to the purchasing dealer in the State of Punjab; that the Madras State was incompetent to frame rules governing the conduct of the purchasing dealers in the Punjab- that since the corresponding rules framed by the State of Punjab under s. 13 (4) (e) of the Central Sales Tax Act did not include a provision requiring separate form to be used for each sale transaction, the purchasing dealers were not obliged to comply with r. 10(1) of the Madras Rules, and that since the Madras selling dealers could not compel the purchasing dealers to comply with the rules relating to furnishing of separate declaration forms ordained by the Madras Rules, the declarations were not defective. In any event, the High Court held, r. 10(1) of the Madras Rules was directory and not mandatory. The assumption made by the High Court that no rule was framed by the State of Punjab under S. 13 (4) (e) of the Central Sales Tax Act requiring the purchasing dealers in the State of Punjab to issue a separate declaration form in respect of each individual transaction is erroneous. It is conceded before us that the Punjab Government had in purported, exercise of the powers under sub-ss. (3) & (4) of S. 13 of the Central Sales Tax, 1956, made r. 7(2-A) with effect from February 17, 1958 that:

"No single declaration in Form 'C' prescribed under the Central. Sales Tax (Registration and Turnover) Rules ' 1957, shall cover more than one transaction of sale except when the total amount of sales does not exceed five thousand rupees."

But, for reasons which we will presently set out, the judgment of the High Court must still be, affirmed. Sub-section (4) of s. 8 of the Central Sales Tax Act provides that in order to, qualify himself for the lower rate of tax it, respect of sales in the course of inter- State trade or commerce,

the dealer selling goods has to furnish to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold. The expressions "prescribed authority" and "prescribed manner" mean the authority and manner prescribed by rules under the Act. Section 13(1) of the Central Sales Tax Act, 1956, authorises the Central Government to make rules, providing, inter alia, the form in which and the particulars to be contained in any declaration of certificate to be given under the Act. By sub-s. (3) of S. 13 the State Government is authorised to make rules not inconsistent with the provisions of the Act and the rules made under sub-s. (1) to 64 9 carry out the purposes of the Act, and by sub-s (4) of s. 13 the State Government is, in particular and without prejudice to the powers conferred by sub-s. (3), authorised to make rules for all or any of the purposes set out therein including "the authority from whom, the Conditions subject to which and the fees subject to payment of which any form of declaration prescribed under sub-s. (4) of section 8 may be obtained, the manner in which the form shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such declaration may be furnished."

In exercise of the power conferred by S. 131 (d) the Central Government has prescribed the form of declaration to be furnished by the purchasing dealer under s. 8 (4). That is Form 'C'. The form is in three sections-the "counterfoil", the "duplicate" and the "original". The "original" contains at the foot of the Form the following Note:-

"(To be furnished to the prescribed authority in accordance with the rules framed under section 13(4) (e) by the appropriate State Government.)"

The Madras State Government presuming to act in exercise of authority under S. 13(3) and S. 13(4)(e) framed the Central

-Sales Tax (Madras) Rules, 1957, r. 10(1) of which reads as follows':

"A registered dealer, who wishes to purchase goods from another such dealer on payment of tax at the rate applicable under the Act to sales of goods by one registered dealer to another, for the purpose specified in the purchasing dealer's certificate of registration, shall obtain from the assessing authority in the City of Madras and the registering authority at other places a blank declaration form prescribed under rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 for furnishing it to the selling dealer. Before furnishing the declaration to the selling dealer, the purchasing dealer, or any responsible person authorized by him in this behalf shall fill in all the required particulars in the form and shall also affix his usual signature in the space provided in the form for this purpose. Thereafter the counterfoil of the form shall be retained by the purchasing dealer and the other two portions marked "original" and "duplicate" shall be made over by him to the selling dealer Provided that no single declaration shall cover more than one transaction of sales except-

(a) in cases where the total amount covered by one declaration is equal to or less than Rs. 5,000 or such other amount as the State Government may, by a general order,

notify in the Fort. St. George Gazette, and

(b) Ex facie, this rule imposes no obligation upon a dealer in the State of Madras wishing to sell goods : it applies to a dealer wishing to purchase goods from another dealer. The argument that cl. (1) of r. 10 is intended to apply to a registered dealer in the State of Punjab is negated by the scheme of the Central Sales Tax Act and the Rules framed thereunder. By s. 7 of the Central Sales Tax Act, every dealer liable to pay tax under the Act has to make an application for registration under the Act to such authority in the appropriate State as the Central Government may by general order specify. The authority to be specified is designated in the Central Sales Tax (Registration and Turn-over) Rules, 1957, framed by the Central Government under s.

13(1), the "notified authority" : vide r. 2(c). Rule 3 provides that an application for registration under S. 7 shall be made by a dealer to the notified authority in Form 'A'. In exercise of the powers conferred by sub-s. (1) of s. 7 of the Central Sales Tax Act, 1956, the Central Government issued a notification No. S.R.O. 643 dated February 22, 1957, specifying the persons mentioned in Col. (3) of the Schedule thereto as the authorities to whom the dealers of the description in Col. (2) shall make the application for registration. Item 1 of the Schedule requires a dealer having a single place of business in a State to make an application to the authority competent to register him under the general sales tax law of the State if he were liable to, be so registered : and item 2 provides that the dealer having more than one place of business in a State shall make an application to the authority competent to register him in respect of the principal place of business under the general sales tax law of the State if he were liable to be so registered. A registered dealer contemplated by r. 10 is therefore registered in the State where he has his place of business. The expression "assessing authority" is defined in the Central Sales Tax (Madras) Rules, 1957, as meaning any person authorized by the State Government to make any assessment under the Madras General Sales Tax Act, 1959 (Madras Act 1 of 1959). The dealer has again to obtain the form of declaration from the assessing authority in the State of Madras. These are clear indications that the rules framed by the Madras Government were intended to apply to dealers within the State of Madras. The High Court was, in our judgment, right in holding that under the scheme of the Central Sales Tax Act and the Rules framed under that Act by the State of Madras, the injunc-

tion against the purchasing dealers in r. 10(1) did not apply to, dealers in the State of Punjab. It is unnecessary on that view to, express any opinion on the question whether the State Government could, in exercise of the powers under S. 13 (4), impose upon dealers not within the State, obligations to comply with conditions relating to the contents of the 'C' Form declarations.

Since, r. 10 (1) requiring that a separate declaration form in respect of each individual transaction shall be furnished was intended only to apply to dealers in the State of Madras, and not to dealers outside the State, proviso to r. 10(1) which directs that no single declaration shall cover more than one transaction of sale except in certain cases has no application to a purchasing dealer outside the State of Madras. Rule 10(2), provides :

"A registered dealer who claims to have made a sale to another registered dealer shall, in respect of such claim attach to his return in Form the portion marked "original" of the declaration received by him from the purchasing dealer. The assessing authority may, in its discretion, also direct the selling dealer to produce for inspection the portion of the declaration marked "duplicate".

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But this rule does not direct that a declaration covering more than one transaction of sale shall not be given. The rules framed by the Madras Government do not otherwise impose any binding obligation upon the selling dealer in the State of Madras to obtain a separate declaration form in respect of each sale transaction, nor do the rules visit him with a penalty on failure to comply with the requirement. We are constrained to observe that the rule making authorities have failed to appreciate the scheme of S. 13 of the Central Sales Tax Act. We are of the opinion that it was not within the competence of the State authorities under S. 13(3) & (4) of the Central Sales Tax Act to provide that a single declaration covering more than one transaction shall not be made. Authority to prescribe such an injunction cannot have its source in s. 13(3) or s. 13 (4) (e) : it can only be in the authority conferred by cl. (d) of s. 13(1) by the Central Government. The Central Government has, in exercise of the power under s. 13 (1) (d), prescribed the form of declaration and the particulars to be contained in them declaration. A direction that there shall be a separate declaration in respect of each individual transaction may appropriately be made in exercise of the power conferred under s. 13 (1) (d). The State Government is undoubtedly empowered to make rules under sub-ss. (3) and (4) of s. 13 but the rules made by them State Government must not be inconsistent with the provisions of the Act and the rules made under sub-s. (1) of s. 13 to carry out the purposes of the Act. If the authority to make a rule prescribing that the declaration shall not contain more than one transaction can be made only under s. 13 (1) (d), the State Government cannot exercise that authority. The situation which has arisen in this case could have been avoided, if instead of each State making its rules requiring that no single declaration shall cover more than one transaction, the Central Government in exercise of the power under s. 13 (1) (d) of the Act had made the rules. The appeal fails and is dismissed with costs. G.C. Appeal dismissed.