

(1970) 03 OHC CK 0023

In the Orissa High Court

Case No : S.J.C. No. 113 of 1965 and O.J.C. No. 452 of 1969

Belpahar Refractories Ltd.

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 03-03-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 24, 8

Citation : (1970) 26 STC 567

Hon'ble Judges : G.K. Misra, C.J.; S. Acharya, J

Bench : Division Bench

Advocate : S.C. Sinha and D.P. Pal, for the Appellant; S.C. Mohapatra, Standing Counsel (Sales Tax), for the Respondent

Judgement

G.K. Misra, C.J.—The petitioner is the Belpahar Refractories Ltd., having its place of business at Belpahar in the district of Sambalpur in Orissa. It is a registered dealer under the Central Sales Tax Act, 1956 (hereinafter to be referred to as the Act). During the quarter ending 31st March, 1960, various transactions of sale were effected in respect of which three declarations in form "C" were given. The sales were made to the Tata Iron and Steel Company Ltd. in Bihar. One of the declarations was given on 18th March, 1960 and this declaration was filed along with the return and was accepted by the Sales Tax Officer. The subject-matter of this declaration is no longer in controversy. Two other declarations were filed on 13th August, 1960," and 26th March, 1963, but they were not attached to the returns. The Appellate Assistant Commissioner accepted the declaration dated 26th March, 1963.

The only declaration which is in controversy is the declaration dated 13th August, 1960, in respect of a gross turnover of Rs. 4,73,242,31. If this declaration is accepted as valid, then the dealer is entitled to be taxed at the concessional rate of 1 per cent, u/s 8(1)(b) of the Act. If it is rejected, then, the assessment would be at the rate of 7 per cent, under Sub-section (2) of Section 8 read with Sub-section (4).

The assessing authorities and the Tribunal rejected the declaration dated 13th August, 1960 and held that the dealer was liable to pay tax at 7 per cent. The reasons given by the assessing authorities were different. The Sales Tax Officer held that as the declaration was not filed along with the return it should be ignored. The Appellate Assistant Commissioner was of the view that the declaration form could be admitted since it was furnished before completion of assessment, but he rejected the same under Rule 6(a)(ii) proviso of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter to be called the Rules) as it stood during the relevant period, as there were various transactions during the relevant period the total value of which exceeded Rs. 5,000 and could not be covered by one declaration and the supplies were not made in pursuance of a single purchase order. The learned Tribunal rejected the declaration on both the grounds. In his view, the declaration infringed the prescription in Rule 6(a)(ii) proviso as well as in Rule 12(10) first proviso.

The dealer approached the Tribunal for a reference u/s 24(1) of the Act. The Tribunal referred the following two questions to this court:-

- (1) Whether in the facts and circumstances of the case the supplies covered by the declaration form dated 13 th August, 1960, can be treated to form a single transaction of sale requiring only one declaration ?
- (2) Whether rejection of the declaration form on the ground that it was not filed along with the return proper and legal ?

That is how the reference has come before us.

As the dealer wanted to attack both the aforesaid rules as being ultra vires, the writ application was filed. The Tribunal being a creature of the statute had no power to declare the rules ultra vires and the High Court u/s 24(1) of the Act has no powers higher than those of the Tribunal.

2. The question for consideration in the reference as well as in the writ application is whether these two rules are ultra vires and if so whether the dealer is entitled to relief.

3. So far as Rule 12(10) is concerned, the matter is concluded by the decision of this court reported in *Tata Iron & Steel Co. Ltd. v. State of Orissa* 35 C.L.T. 876, where a Division Bench held that Rule 12(10) is ultra vires in so far as it insists on attaching the declarations to the returns furnished by the assessee. It was held that the declarations can be filed within a reasonable time before assessment is made. What would be the reasonable time would depend upon the circumstances of each case and no hard and fast rule can be laid down. The decision went so far as to say that if sufficient explanation is furnished, the declaration can be accepted even at the appellate stage. In view of this decision, our answer to question No. 2 would be that the declaration form cannot be rejected merely because it was not filed along with, the return.

4. We would now proceed to examine the first question, namely, whether Rule

6(a)(ii) proviso is ultra vires. The proviso, as it stood then, so far as relevant is as follows :

Provided that no single declaration shall cover more than one transaction of sale, except in cases where the total amount covered by one declaration is equal to or less than Rs. 5,000.

5. Dr. Pal, appearing for the petitioner, contended that this proviso is not within the rule-making power of the State Government. Section 13(1)(d) of the Act lays down that the Central Government may, by notification in the official Gazette, make rules providing for the form in which and the particulars to be contained in any declaration or certificate to be given under the Act. Section 13(3) prescribes that the State Government may make rules not inconsistent with the provisions of the Act and the rules made under Sub-section (1) to carry out the purpose of the Act. There being a specific provision in Section 13(1)(d) that it is the Central Government which would make the rules providing for the form in which and the particulars to be contained in any declaration or certificate, to be given under the Act, any rule framed by the State Government contrary to such direction would be in contravention of Section 13(1)(d) and as such the proviso is ultra vires Section 13(1)(d) read with Section 13(3).

6. This question came up directly for consideration before the Supreme Court in *State of Madras Vs. R. Nand Lal and Co.*, where their Lordships construed Rule 10(1) proviso (a) of the Central Sales Tax (Madras) Rules, 1957, which is almost identical in terms with the impugned Orissa rule. Their Lordships held that the authority to prescribe that a single declaration covering more than one transaction shall not be made, cannot have its source in Section 13(3) or Section 13(4)(e) of the Central Sales Tax Act, 1956; it can only be in the authority conferred by Section 13(1)(d) on the Central Government and the State Government cannot exercise that authority. Accordingly the Madras rule was declared ultra vires. On the same principle, the impugned Orissa Rule 6(a)(ii) proviso is ultra vires ; it is open to a dealer to give one declaration form covering more than Rs. 5,000 consisting of different transactions.

7. It is now necessary to notice certain facts giving rise to the question. The declaration in form "C" (given at page 20 of the paper book in S.J.C. No. 113 of 1965) gives the various dates on which the transactions were effected and the value of the goods transacted on a particular date. The purchase order is dated 25th June, 1960. The dealings were in between two business concerns. Admittedly, deliveries were made in pursuance of the purchase order. What happened was this. On 24th September, 1959, Tata Iron & Steel Co. made enquiry from the petitioner as to the quality and quantity of the various kinds of goods required by them. The petitioner offered quotations on 30th October, 1959 and the same was accepted by Tata Iron & Steel Co. on 7th January, 1960. After acceptance, the petitioner started making delivery of goods from time to time, prior to the issue of purchase order. The impugned declaration was signed on 13th August, 1960. The learned Tribunal appears to be of the view that as the

delivery was not made after the issue of purchase orders, the impugned declaration signed subsequent to the purchase order cannot be taken advantage of by the dealer, to avail of the concessional rate of tax. Though no question of law was referred to this court arising out of this point, Mr. Mohapatra, learned Standing Counsel, wanted to make a point of it with reference to form "C", wherein there is a column to the effect:

Certified that the goods ordered for in our purchase order No.--dated---

Mr. Mohapatra contended that this is determinative of the fact that the deliveries must be subsequent to the issue of purchase order and that in the present case, the deliveries, having been effected prior to the purchase order, are not "sales" of which the declaration constitutes evidence. There is no substance in this contention. As has already been indicated, the deliveries were effected after the acceptance of the offer made by the petitioner. The moment the acceptance was made, there was a final contract. The subsequent purchase order was merely evidence of the final contract arrived at between the parties under which deliveries were effected and this is bound to happen when the transactions were between two business concerns. In a particular case, there may not be any purchase order in writing. The declaration form obviously referred to the purchase order dated 25th June, 1960, in respect of the contract finalised after acceptance. The learned Tribunal was not careful enough to go through the various documents filed before it. These would have clearly indicated that the purchase order was subsequently issued in respect of deliveries effected during the relevant quarters.

8. Moreover form "C" is not determinative of the law. There is no provision either in the Act or in the Rules that unless deliveries are made subsequent to the purchase order, the declaration cannot be utilised for claiming relief at concessional rate.

Reference may be made in this connection to Deputy Commissioner, Commercial Taxes, Coimbatore v. Needle Industries India (Private) Ltd. [1964] 15 S.T.C. 809

9. We would, now, sum up our conclusions thus :-

(1) The purchase order which was issued on 25 th June, 1960, was in respect of various sales effected in the relevant quarter.

(2) Rule 12(10) of the Rules, in so far as it insists on attaching the declaration to the return furnished by the dealer, is ultra vires the Act.

(3) The impugned proviso to Rule 6(a)(ii), as it stood during the relevant period, is ultra vires to the extent that it insists that different transactions more than Rs. 5,000 in value cannot be covered by one declaration form.

10. Our answers to the questions would be as follows :-

Question No. 1 has, been badly framed and does not properly convey the correct legal concept. The question is reframed thus :-

(I) Whether in the facts and circumstances of the case, the declaration dated 13th August, 1960, should be ignored merely because different transactions more than Rs. 5,000 in value were the subject-matter of the declaration.

The question is answered in the negative.

11. The second question also requires slight modification. It should be:-

(2) Whether the declaration form, if not filed with the return, is to be rejected.

The answer would be in the negative. On the analysis made by us, if the dealer can give sufficient reasons why it was not filed with the return it can be accepted before assessment is made and even at the appellate stage. It would vary according to the facts and circumstances of each case.

12. In the writ application our conclusion is that Rule 6(a)(ii) proviso, as it stood at the relevant time, is ultra vires the Act.

13. In the result we accept the reference and allow the writ application. There will be no order as to costs. The reference fee be refunded.

S. Acharya, J.

I agree.