(1987) 07 OHC CK 0024

In the Orissa High Court

Case No : Original Jurisdiction Case No''s. 12 and 13 of 1980

Edel Cast India — APPELLANT

Vs

Sales Tax Officer and Another — RESPONDENT

Date of Decision : 21-07-1987

Acts Referred:
Central Sales Tax Act, 1956 — Section 3

Citation : (1988) 71 STC 253

Hon'ble Judges : L. Rath, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; R.K. Patra, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—The petitioner having been assessed both under the Central Sales Tax Act and the Orissa Sales Tax Act for the assessment year 1978-79, in respect of the same transaction of sale, has approached this Court in these two writ petitions for quashing of the same. O.J.C. No. 12 of 1980 relates to the assessment under the Central Sales Tax Act and O. J. C. No. 13 of 1980 relates to the assessment under the Orissa Sales Tax Act. The facts, which are not disputed, and appear from the assessment order under the Orissa Sales Tax Act, are that the petitioner is in the trade of securing orders from outside the State, mostly from cement factories, and only from two others, M/s. Hindusthan Zinc Ltd. and M/s. Hindusthan Copper Ltd., for sale of a very hard metal commercially known as cylpebs. The petitioner purchases the articles from M/s. Siva Metal Industries by furnishing declarations in form XXXIV. Thereafter, as appears from the order of assessment under the Central Sales Tax Act, the petitioner issued C form declarations to M/s. Siva Metal Industries and directed the latter to book the goods as consignor to a particular place and transfer the railway receipts or the lorry receipts as the case may be, in a challan to the petitioner. The purpose of such conduct was to show the sales as having been effected u/s 3(b) of the Central Sales Tax Act.

2. The petitioner is a registered dealer under the Orissa Sales Tax Act. The assessing officer assessing the petitioner under the Orissa Sales Tax Act held that since the petitioner had purchased the cylpebs from M/s.. Siva Metal Industries furnishing declarations in form XXXIV for resale of goods in Orissa but had admittedly sold the same outside the State, he had contravened the declaration and as such was covered under the second proviso to Section 5(2)(A)(a)(ii) of the Orissa Sales Tax Act and liable to have the sales included in his gross turnover and assessed under the Orissa Sales Tax Act.

3. The vires of the provisions of Section 5(2)(A)(a)(ii) as amended retrospectively by the Orissa Sales Tax (Amendment) Ordinance, 1977 subsequently enacted as the Orissa Sales Tax (Amendment) Act, 1978 providing that where any goods specified in the certificate of registration is purchased by a registered dealer free of tax furnishing declaration in the prescribed form but are utilised by him for other purpose, the price of the goods so purchased shall be included in his taxable turnover and not in the turnover of the selling dealer, has been upheld by the decision of this Court in [1987] 65 STC 129 (Minerals and Metals Trading Corporation of India Limited v. State of Orissa). Though the constitutional validity of the section was upheld, yet it was decided that since the prescribed amended declaration form came into existence only on 26th of April, 1978 any sale held prior to that date outside the State would not be held to be a contravention of the section and would not be exigible under the Orissa Sales Tax Act. A later decision in (1987) I OLR 132 (State of Orissa, represented by the Commissioner of Sales Tax, Orissa, Cuttack v. K. Suryanarayan and Bros.) also held that the amended provisions of Section 5(2)(A)(a)(ii) were not applicable to the sales effected in the year 1967-68. In view of such decisions, in principle the order of the assessing officer applying the provisions of the amended section to the sales in question cannot be taken exception to. But however since assessment is for the period 1978-79, only the sales effected after 26th of April, 1978 would be subject to the Orissa Sales Tax Act but not the sales effected prior to it. The order of the assessing officer is liable to be modified to that extent.

4. So far as assessment made under the Central Sales Tax Act is concerned, it is fairly conceded by Mr. R. K. Patra, the learned Additional Government Advocate appearing for the department, that it cannot be allowed to stand. There has been never two transactions of sales and it is foregone that a single transaction of sale can be assessed either for State sales tax or for Central sales tax as the case may be but never for both. Since it has been found that the sales are exigible under the State Act after 26th of April, 1978, obviously the assessment order under the Central Sales Tax Act, so far as the said period is concerned, must stand quashed. But however the petitioner would be liable to be assessed under the Central Sales Tax Act for its sales effected before 26th of April, 1978. The assessing officer proceeded on a wrong footing that the petitioner is liable to be taxed under the Central Sales Tax Act since according to him, it was not a registered dealer under the Central Sales Tax Act but somehow or other caught hold of C forms which declarations he gave to M/s. Siva Metal Industries. The

stand is factually not correct. The petitioner has annexed to O.J.C. No. 12 of 1980 an attested copy of his certificate of registration under the Central Sales Tax (Registration and Turnover) Rules, 1957 as annexure-2 which shows Ramesh Chandra Dave, the proprietor of the petitioner-firm, to be a registered dealer for the sale of cylpebs amongst other articles. This position has not been disputed by the department. In that view of the matter, the order of assessment under the Central Act cannot be allowed to stand.

5. In the result, the writ petitions are allowed and the assessment orders both under the Central Sales Tax Act and the Orissa Sales Tax Act are set aside. The assessing officer is directed to make fresh assessment for the year 1978-79 in the light of the discussions as above. Under the facts and circumstances of the case, there shall be no order as to costs.

G.B. Patnaik, J.

I agree.