(1970) 03 OHC CK 0021

In the Orissa High Court

Case No : O.J.C. No. 412 of 1966

Mahadeb Prasad Ganesh Narayan APPELLANT

Vs

State of Orissa and Another RESPONDENT

Date of Decision : 25-03-1970

Acts Referred:

Central Sales Tax (Orissa) Rules, 1957 — Rule 12(11)
Central Sales Tax Act, 1956 — Section 13(3), 8(3), 8(4)

Citation : AIR 1971 Ori 107 : (1971) 27 STC 152

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

Bench : Division Bench

Advocate : R. Mohanty, M.L. Jhunjhunwala and R.K. Kar, for the Appellant; S.C. Mohapatra, S.C., for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—Sub-rule (11) was added to Rule 12 of the Central Sales Tax (Orissa) Rules by Government of Orissa Finance Department Notification No. 6854/CTA/66--dated 4th May, 1966. The sub-rule runs thus:--

"(11) For the purpose of claiming concessional rate of tax under the Act by a dealer, the declaration form issued only by the notified authority of the State wherein the goods are taken delivery of in course of inter-State trade or commerce, shall be accepted."

The sub-rule is attacked in this Writ application as being ultra vires the provisions of the Central Sales Tax Act, 1956 (Act 74 of 1956) (hereinafter referred to as the Act).

2. To appreciate this attack, it would be appropriate to examine some of the provisions of the Act.

Section 3 lays down that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase (a) occasions the movement of goods from one State to another or (b) is effected by a transfer of document of title to the goods during their movement from one State to another.

Explanation 1 appended to this section says:

"Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of Clause (b) be deemed to commence at the time of such delivery, and terminate at the time when delivery is taken from such carrier or bailee."

If a dealer sells to a registered dealer, other than Government goods of the description referred to in Sub-section (3) of Section 8, then under Sub-section (1) of that section, he shall be liable to pay tax under the Act, which shall be 3 per cent of his turnover; otherwise, the rate of tax would be at 10 per cent under Clause (b) of Sub-section (2) of Section 8,

Sub-section (4) of Section 8 runs thus:--

"(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."

This sub-section prescribes that the purchasing dealer shall give a declaration duly filled and signed, containing the prescribed particulars, in the prescribed form obtained from the prescribed authority. The prescribed form is Form C. Thus in order to be entitled to the benefit of tax at the concessional rate, the selling dealer must obtain a declaration in Form C from the purchasing dealer, who must have been a registered dealer entitled to purchase the goods as referred to in Clause (b) of Sub-section (3) of Section 8 of the Act.

3. Mr. Mohanty contended that the impugned Sub-rule (11) of Rule 12 of the Central Sales Tax (Orissa) Rules imposes a further obligation that the declaration in Form C issued by any other States appropriate authorities would not be acceptable except the one obtained from the State of delivery and as such is ultra vires.

In our view, the contention is sound. The Orissa sub-rule goes beyond the prescriptions enjoined upon in Section 8(4) of the Act.

An illustration would make the position clear. A purchasing dealer in the State of Kerala may purchase certain articles for re-sale as found it is (sic) certificate of registration, from a registered dealer in Orissa. In the agreement for purchase the Kerala dealer may direct the Orissa dealer to deliver the goods in the State of Andhra Pradesh. Under Sub-section (4) of Section 8 the declaration form furnished by the Kerala dealer obtained from the appropriate authority in Kerala State, would be sufficient. But under the impugned sub-rule such a declaration would not suffice and a further declaration in Form C must be obtained from the appropriate authority in the State of Andhra Pradesh where the Kerala dealer might not even have been registered. The impugned sub-rule would be inconsistent with the provisions of Sub-section (4) of Section 8.

4. Sub-section (3) of Section 13 of the Act 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 purposes of the Act. Since the impugned sub-rule is clearly inconsistent with the provisions of Sub-section (4) of Section 8, it must be declared ultra vires.

5. The writ application is allowed and the impugned Sub-rule (11) of Rule 12 is declared ultra vires. A writ of mandamus be issued directing the State Government not to give effect to the impugned rule. In the circumstances there will be no order as to cost.

S. Acharya, J.

6. I agree.

