(1998) 08 OHC CK 0060

In the Orissa High Court

Case No : Original Jurisdiction Case No. 46 of 1998

Mardia Instrument Corporation APPELLANT

Vs

State of Orissa and Another RESPONDENT

Date of Decision : 10-08-1998

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1998) 2 OLR 530

Hon'ble Judges : S.N. Phukan, C.J;C.R. Pal, J

Bench : Division Bench

Advocate : P.K. Misra, for the Appellant; S.C. Lal, (Sr. Standing Counsel) (C.T.) and A.K. Mohapatra, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, C.J.—The petitioner is a Corporation with Headquarters at Vijayawada and is registered at Vijayawada under the appropriate State law as well as under the Central Sales Tax Act. 1957 for carrying on business of sale and supply of laboratory equipments, weighing scale and other general items. The Project Co-ordinator-cum-Deputy Secretary to Government of Orissa, Women and Child Development Department, opposite party No. 2, published a tender notice on 28.8.1992 inviting offers for supply of 21,877 number of weighing scales for weighment of babies and children and another 21,877 number of weighing scales for weighment of adults with 100 Kg, capacity. In response to the said notice, the petitioner submitted its tender, which was accepted and the petitioner was asked to supply 30 number of each of the weighing scales to the State Headquarters as sample for signing the contract. The samples were also accepted and thereafter the petitioner entered into an agreement with the Panchayat Raj Department on 23.9.1993 vide Annexure-2 for supply of 21,877 weighing scales of 25 Kg. capacity at the rate of Rs. 518.55 each, and 21,877 weighing scales of 100 Kg. capacity at the rate of Rs. 361.05 each. The above rates included not only the cost of the weighing scales but also the cost of packing, forwarding, stamping and transportation charges and the sales tax chargeable under the Central Sales Tax Act. The agreement further provided that the supply was to be made between September, 1993 and July, 1994. On 2.12.1993 opposite party No. 2 issued another letter as at Annexure-3 clarifying, agreeing and providing that supply should be made directly from New Delhi to different destinations of Orissa. Annexure-3 further provided that opposite party No. 2 would furnish the certificates in Form ''D'' of the Central Sales Tax Act relating to the purchases made. Subsequently, the Panchayat Raj Department by letter dated 31.10.1992 (Annexure-4) asked for clarification from the Sales Tax Officer, Bhubaneswar II Circle regarding the sales tax chargeable for supply of weighing scales. The Sales Tax Officer, by letter dated 5.11.1992 intimated opposite party No. 2 that in case of purchase by Government from dealers outside the State, a certificate in Form ''D'' signed by the authorised officer has to be issued to the selling dealer in order to avail the concessional rate of 4% of the sale price. In compliance with the agreement as at Annexure-2, the petitioner made arrangement with a firm in New Delhi for supplying the aforesaid weighing scales to different destinations in the State of Orissa as per the instruction of opposite party No. 2. The firm supplied weighing machines accordingly and raised bills in the name of the petitioner and charged concessional sales tax as the petitioner is a registered dealer and is entitled to re-sell the said goods as per the endorsement in the Registration Certificate issued under the Central Sales Tax Act. This was done on the strength of Form C for purchasing the goods in course of inter-State sale from New Delhi and sending to different destinations in the State of Orissa to be furnished to the supplier. The goods moved from New Delhi are to be consigned to self to different destinations in the State of Orissa as per Annexure-3 indicating that the same are required by opposite party No. 2 and endorsed the consignment note in favour of the petitioner raising invoice/bill in the name of the petitioner. Opposite party No. 2 furnished Form ''D'' to the petitioner for the financial years 1993-94 and 1994-95, but refused to furnish the same for the financial year 1995-96. The petitioner obtained Form ''E-1'' from the supplier and filed Form ''D'' furnished by opposite party No. 2 in evidence of sale in course of transit for the period 1993-94 and 1994-95. However, as opposite party No. 2 has not furnished Form ''D'' for the year 1995-96, petitioner is unable to furnish the said declaration form in support of its claim for exemption u/s 6(2) of the Central Sales Tax Act. Assessment proceeding against the petitioner at Vijayawada for the period 1995-96 has been fixed several times and the petitioner has sought for number of adjournments to file declaration forms. Unless such declaration in Form ''D'' is furnished, the petitioner will be saddled with the demand at full rate of taxation for its failure to furnish declaration in Form ''D'', which is a condition precedent for availing exemption u/s 6(2) of the Central Sales Tax Act. The petitioner wrote several letters to opposite party No. 2 and also issued a lawyer''s notice by registered post for supply of Form ''D'', but to no avail. Thereafter, the petitioner approached this Court by filing a writ petition, which was registered as O.J.C. No. 14459 of 1996, and this Court directed opposite party No. 2 to dispose of the representations within three months by a speaking order after giving a chance of personal hearing to the petitioner. Opposite party No. 2, after giving a personal hearing to the petitioner, passed the following order on 7.11.1997:

"In case it is decided in a higher forum that the assessment made under the O.S.T. Act is illegal and thereby annulled. ''D'' form can be issued by this Department."

The petitioner has alleged that the above order is illegal. Hence the present writ petition.

2. A point has been raised that this writ petition is not maintainable as no direction can be given in this regard. However, from the decision of Andhra Pradesh High Court in Modern Proteins Ltd. Vs. Food Corporation of India, , we find that such a direction was given to the Food Corporation of India. Of course, Mr. Lal pointed out that that was in respect of Form ''C. But, that by itself will not change the power of the writ Court to issue mandamus. Reference was also made to a decision of the apex Court in Hindustan Vegetable Oils Corporation Limited Vs. Progressive Industries and Others, which was a case between two private parties. In that case, the apex Court issued mandamus.

3. We find from the Central Sales Tax Act that there is an obligation of the State (in this case opposite party No. 2) to issue Form ''D'' and this legal obligation can be enforced by a writ of mandamus.

Therefore, we hold that the contention that a writ of mandamus cannot be issued is not tenable.

4. Annexure-2 is the agreement. Schedule-I thereto runs as follows:

Make : Krups Krups Model : Baby-cum-child Adult (Empress) (a) Unit Cost Rs. 455.77 Rs. 305.77 (b) Central Rs. 18.23 Rs. 12.23 Sales Tax (c) Transportation Rs. 15.00 Rs. 15.00 (d) Packing and Rs. 4.55 Rs. 3.05 Forwarding (e) Stamping Rs. 25.00 Rs. 25.00 Total: Rs. 518.55 Rs. 361.05 (Rupees Five hundred eighteen (Rupees Three Hundred and paise fifty-five) only sixty-one and paise five) only.

From the Schedule it is clear that the price included Central Sales Tax and opposite party No. 2 is bound to issue Form ''D'' so that Central Sales Tax can be cleared by the petitioner before the assessing authority at Vijayawada.

5. Annexure-4 is the letter dated 31.10.1992 issued to the Commercial Tax Officer, Bhubaneswar-II Circle regarding clarification of tax chargeable for supply. We are of the opinion that this letter is highly prejudicial as the Sales Tax Officer being a quasi-judicial authority should not have been asked to give a clarification, more particularly, in view of the agreement as at Annexure-2.

6. By the impugned order dated 7.11.1997 passed by opposite party No. 2, the petitioner was informed that in case it is decided in a higher forum that the assessment made under the O.S.T. Act is illegal and thereby annulled, ''D'' Form

can be issued by this Department. This order has no basis as it is not clear what is the higher forum. If the petitioner is assessed under the Orissa Sales Tax Act, it will approach the Courts of appeal etc. under the Act. If it is denied the benefit under the Central Sales Tax Act, it can also do the same. But, in view of the agreement as at Annexure-2, Form ''D'' has to be issued and consequence as per the taxing statute would follow. We may note here that for a few years Form ''D'' was issued but suddenly it was stopped, which is against the agreement.

7. For the above reasons, this writ petition is allowed and opposite party No. 2 is directed to issue Form ''D'' in favour of the petitioner immediately and positively within two weeks from the date of receipt of this order, so that the petitioner can file return before the assessing authority at Vijayawada. No costs.

C.R. Pal, J.

8. I agree.