(1987) 03 OHC CK 0031

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3034 of 1986

Mohavir Prasad Jain and Another — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 06-03-1987

Acts Referred:
Central Sales Tax Act, 1956 — Section 3, 8

Citation : (1987) 67 STC 376

Hon'ble Judges : S.C. Mohapatra, J;R.C. Patnaik, J

Bench : Division Bench

Advocate : S.C. Roy, P.K. Acharya and N. Roy, for the Appellant; The Standing Counsel, Commercial Taxes Department for opposite parties Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—This writ application is directed against the orders passed by the Sales Tax Officer, Balasore Circle, Balasore (opposite party No. 2) refusing amendment of the registration certificates of petitioner No. 2. Petitioner No. 2 wanted amendment of its registration certificates bearing Nos. BAC-942 and BA-I 3312 by inclusion of the following items :

(1) Generator and its accessories for the purpose of producing electricity for manufacture of goods.

(2) Generator spare parts.

(3) Diesel oil for the purpose of running generator.

2. Petitioner No. 1, who is the director of M/s. Jaikisan Dasmall Jute (P.) Limited at Rupsa in the district of Balasore (petitioner No. 2), a company incorporated under the Companies Act, 1956, has set up a jute mill for manufacture of jute products. The petitioners have alleged that the State of Orissa which was a surplus State in the matter of supply of electricity, gradually became a deficit one

due to large scale industrialisation and due to frequent tripping and load-shedding, their business was affected. So, they wanted to have their own generator for generation of electricity and wanted inclusion of the items with a view to availing the concessional rate of tax. But, the application for inclusion of such items in the registration certificates, as indicated above, was rejected by the Sales Tax Officer on the ground that "when normal conditions prevail, it will not necessitate the use of generator. Moreover, the jute factory which was established in the year 1975 has been able to produce the finished product without the use of generator. Therefore, ultimate manufacture of finished goods is not hampered without generator and as such it cannot be treated to be essential as an integral part for manufacture of finished products. Therefore, the dealer cannot be allowed to avail the opportunity of paying concessional rate of tax for purchase of generator and its accessories". Aggrieved by the orders passed by opposite party No. 2 as per annexures-5 and 5/1, petitioner No. 2 moved the revisional authority (opposite party No. 3) who by cryptic orders as per annexures-6 and 6/1 without assigning any reason rejected the application.

3. Before we deal with the merits, we may say about the manner of disposal of the revision by opposite party No. 3, the Additional Commissioner of Sales Tax, Orissa, Cuttack. When the party aggrieved made an application for revision of the order passed by the Sales Tax Officer and raised certain contentions, it behoved the Additional Commissioner to deal with the contentions and reject the same, if he were so inclined on merits, by stating reasons. But, the revisional order is a bald one. It does not disclose why the contentions of the petitioners did not find favour with the Additional Commissioner.

4. The revisional orders (annexures-6 and 6/1) on that account are vulnerable and are liable to be set aside. But, inasmuch as we are of the view that the rejection of the application for amendment by the Sales Tax Officer is without jurisdiction for the reasons which we would presently indicate, it is unnecessary to remit the matter to the Additional Commissioner and we proceed to dispose of the same on merits.

5. Section 8(1) of the Central Sales Tax Act, 1956 reads as under:

8. Rates of tax on sales in the course of inter-State trade or commerce.- (1) Every dealer, who in the course of inter-State trade or commerce-

(a) sells to the Government any goods; or

(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 four per cent of his turnover.

Section 8(3)(b), so far as is relevant for our purpose, provides that the goods referred to in Clause (b) of Sub-section (1) are goods of the class or classes specified in the certificate of the registered dealer purchasing goods for use by him in the generation of electricity. Petitioner No. 2 required a generator for use by it in the generation of electricity for its factory. Therefore, its case was clearly covered by Clause (b). So also its case for accessories, spare parts of generator and diesel oil would be covered by the said clause.

6. Judicial notice can be taken of the fact that supply of electricity in the State is erratic. In summer, very often, there is load-shedding and power cut-off. At other times, there is discontinuance of supply due to tripping. It is needless to emphasize its effect on an industry depending on supply of electricity.

7. Provision was made in Section 3 and in Clause (b) of Section 8(3) to meet such a situation. The language being wide, it is not open to read it in a restricted manner, as has been done by the Sales Tax Officer. The provision applies, whether the generator is required as the exclusive source of supply of electricity or as a subsidiary one. There is nothing in the provision excluding its applicability to generator, if the same was required as a stand-by measure. In our opinion, therefore, the Sales Tax Officer acted without jurisdiction in rejecting the application. The orders, therefore, are invalid and we accordingly quash annexures-5 and 5/1 passed by the Sales Tax Officer, Balasore Circle, Balasore (opposite party No. 2) as also the orders passed by the Additional Commissioner of Sales Tax (opposite party No. 3) as per annexures-6 and 6/1. Let a mandamus issue to opposite party No. 2 directing amendment of the certificates of registration of petitioner No. 2 by inclusion of items (1) to (3) aforesaid.

8. In the result, the writ application is allowed. But, in the circumstances, there would be no order as to costs.

S.C. Mohapatra, J.

9. I agree.

