
(1989) 02 KL CK 0015
In the High Court Of Kerala
Case No : T.R.C. No. 181 of 1987

M/s Vijayamohini Jills

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 14-02-1989

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A, 6A(1), 6A(2)

Citation : (1989) 1 KLJ 496

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : M. Ramachandran, for the Appellant; N.N. Divakaran Pillai, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.S. Paripoornan, J.—The petitioner herein is a company. It is an assessee under the Central Sales Tax Act. The Revenue is the respondent herein. We are concerned with the assessment year 1975-76. In computing the total taxable turnover, a sum of Rs. 3,71,169.70, representing the amount in respect of stock transfer, was added by the assessing authority to the taxable turnover, on the ground that the assessee failed to produce "F" Forms. It was confirmed in appeal by the Deputy Commissioner of Sales-tax (Appeals). In second appeal, at the instance of the assessee, the orders of the authorities below, on the above aspect, were affirmed, by order dated 19-9-1986. The assessee has come up in revision. We heard counsel for the revision-petitioner, Mr. M. Ramachandran, as also counsel for the Revenue, Mr. N. N. Divakaran Pillai. It is common ground that the petitioner-assessee effected a transfer of goods to the U. P. Depot, the total of which during the relevant assessment year amounted to Rs. 3,71,169.70. All the statutory authorities took the view that the transfer to the U.P. Depot was not proved with necessary "F" Forms. The plea of the assessee was that there was only a stock transfer to its Depot and there was no sale and that it will be evident, on a perusal of the relevant records like delivery notes, invoices,

agreement, statements of account bills issued at the U. P. Depot and the assessment order under the U P, Sales Tax Act, etc. It was not accepted. The authorities took the view, that u/s 6A. (1) of the Central Sales Tax Act, it is a mandatory requirement that "F" Forms should be furnished to prove that the transfer of goods to the Depot in U. P. was otherwise than by way of sale.

2. The short question that arises for consideration in this revision is, whether the filing of "F" Forms is a mandatory requirement under Sec. 6A (1) of the C.S.T. Act? In order to understand the scope of the relevant statutory provision, it will be useful to quote Sec. 6A(1) and 6A (2) of the C. S. T. Act.

6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.

(1) Where any dealer claims that he is not liable to pay tax under this Act. in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods.

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true he may. at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale

Under Sec. 6A (1) of the C. S. T. Act, the burden of proof is certainly on the dealer to prove that the movement of goods was occasioned not by reason of sale, but was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal. In discharging the burden so cast on him, it is open to the dealer to furnish to the assessing authority, within the prescribed time or within such further time the authority may permit, a declaration in the prescribed form and in the prescribed manner ("F" Forms) along with the evidence of despatch of such goods. The assessing authority should conduct an enquiry and satisfy himself that the particulars contained in the declaration furnished by the dealer are correct and true. It is only then he can pass an order to the effect that the movement of goods was by reason of transfer of such goods by the assessee to any other place of his business or to

his agent or principal and not by reason of sale. Section 6A (1) of the C. S. T. Act is in two parts. The first part mandates that the burden of proof is on the dealer to prove that the movement of goods was occasioned by reason of transfer of such goods to any other place of his business or to his agent or principal and not by reason of sale. The language contained therein is peremptory. On the other hand, in the second limb of Sec. 6A (1) of the C. S. T. Act, the dealer is permitted to discharge the burden of proof cast on him by furnishing the declaration as prescribed (F Forms) along with the evidence of despatch of such goods. The language used in the second limb is permissive. It should be noticed, that in the first limb, the legislature has used the word "shall", whereas in the second limb, the legislature has cautiously used the word "may". In the same sub-section, both these words occur. Whereas in the first limb, it is compulsive, in the second limb, the language used is only permissive. It may also be noticed that even after the production of "F" Forms, it is open to the assessing authority to make further enquiry to satisfy himself that the particulars contained in the declaration (F Forms) are true and correct. Then only the officer is enjoined to pass an order.

3. In the light of the above clear provisions in the statute, we are unable to hold that furnishing of the declaration (F Forms), as enjoined by Sec. 6A(1) of the C. S. T. Act, is in any way composite or mandatory. It is only permissive. The dealer can discharge the burden of proof cast on him under the first limb of Sec. 6A(1) of the Act, either by filing the "F" Forms or by adducing other evidence. Sec. 6A (2) of the C. S. T. Act shows that production of form "F" is not conclusive proof that the inter State transfers are otherwise by way of sale. So, we are of the view that filing of "F" Forms is not mandatory or compulsory and non-compliance thereof cannot be visited with any penal or adverse consequences on the dealer. It is open to the dealer to discharge the burden of proof cast on him in any other manner in accordance with law. We are fortified in taking this view by three decisions of the Orissa High Court - *State of Orissa Vs. Orissa Small Industries Corporation*, ; *State of Orissa Vs. Ramnarayan Sitaram*, and *Shree Hanuman Rice Mill Vs. The State of Orissa*, . We concur with the above three decisions.

4. It is interesting to note that the Government of India has addressed a communication, dated 22nd January, 1974, to the Revenue Secretaries of all State Governments and Union Territories stating that the furnishing of declaration in Form "F" for claiming non-liability to Central Sales Tax in respect of branch transfers is not mandatory. The said communication of the Central Government is referred to in *Central Sales Tax Laws* by K. Chaturvedi P. Kothari, 5th Edn. 1981 Vol. I, page 497. The said communication issued by the Central Government shows how Sec. 6A of the C. S. T. Act was understood by the concerned department of the Government. In construing the scope of Sec. 6A of the C. S. T. Act, it will be relevant to take into account the contents of the said circular. It is contemporaneous exposition by the administrative authorities who are concerned with the administration of relevant law. The said communication of the Central Government is a very useful and relevant guide to understand and the

scope of the expressions contained in Sec. 6A of the C.S T. Act. We are of the view that the communication aforesaid of the Central Government affords good evidence and bass''s for the conclusion reached by us to the effect that the production of the declaration (F Form) is not mandatory. We are fortified in the above statement of law by the decisions of the Supreme Court in The State of Orissa Vs. Dinabandhu Sahu and Sons, ; State of Tamil Nadu v. Mahi Traders (1989 (1) S C. 196 at p. 198 para 8), and The State of Tamil Nadu Vs. Polyweb Private Ltd., .

5. In the light of the above, we hold that the Appellate Tribunal committed an error of law in holding that production of the declaration (F Form) under Sec. 6A (1) of the C. S. T. Act is mandatory. The provision s only directory in character. The requirements of Sec. 6A (1) of the Act does not compel or oblige the assessee to discharge the burden of proof cast on him only by filing the declaration in C. Forms. It is open to the assessee to discharge the burden cast on him in any other reasonable manner in accordance with law.

6. We set aside the order of the Appellate Tribunal in T. A. No. 1314 of 1982 dated 19th September, 1986, to the above extent The Appellate Tribunal shall modify the order in the appeal in accordance with this judgment. The above Tax Revision Case is allowed.