

(1978) 03 OHC CK 0004

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 184 and 185 of 1975

Oriental Chemical Industries

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 10-03-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 6

Citation : (1979) 44 STC 241

Hon'ble Judges : R.N. Misra, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : N.N. Bhattacharya, for the Appellant; Standing Counsel (S.T.), for the Respondent

Judgement

R.N. Misra, J.—These are two references made by the Sales Tax Tribunal u/s 24(1) of the Orissa Sales Tax Act of 1947 at the instance of the assessee. The following two questions have been referred for opinion of the Court:

(1) Whether, in the facts and circumstances of the case, the Tribunal was correct in disallowing the declarations in form C and the certificates in form E-1 furnished before the first appellate authority ?

(2) Whether the assessee gave sufficient explanation for furnishing the declarations in form C and the certificates in form E-1 for the first time before the first appellate authority ?

2. The assessee is a registered dealer under the Central Sales Tax Act and bears registration certificate No. R.L.C. 660. It manufactures and sells pharmaceuticals and chemicals and has its place of business within the Industrial Estate of Rourkela. During the year 1969-70, the assessee purchased goods from M/s. Sarabhai Chemicals and others and had a sales turnover of Rs. 18,191.77 through transfer of documents of title to the goods while the same were still in transit. The assessee, however, did not produce the declarations in form C and the certificates in form E-1 before the assessment was completed in spite of the

requirement to so produce before the assessing officer. For the year, it had also shown inter-State sale in respect of Rs. 885.55 and had paid concessional rate of tax at 3 per cent, though the declaration in form C was not produced to support the claim for concessional rate. The Sales Tax Officer, in the circumstances, raised a demand on the turnover of Rs. 18,191.77 and assessed the turnover of Rs. 885.55 at the usual rate rejecting the claim for being assessed at the concessional rate. For the year 1970-71, the assessee had effected inter-State sale to the tune of Rs. 10,169.04 and had supported the transactions by declarations in form C. It, however, claimed exemption u/s 6(2)(b) of the Central Sales Tax Act in respect of a turnover of Rs. 85,416.52. In spite of opportunity being given by the assessing officer, appropriate declarations in form C were not produced and, therefore, the Sales Tax Officer disallowed the claim and proceeded to tax the turnover.

3. The assessee preferred appeals before the Assistant Commissioner of Sales Tax and produced the relevant declarations in form C and certificates in form E-1 in support of its various claims referred to above. The assessee contended that these forms in spite of its best of efforts could not be obtained prior to the completion of the assessment and, therefore, the same might be accepted at the stage of first appeal. Reliance was placed on a Bench decision of this Court in the case of *Tata Iron and Steel Co. Ltd. v. State of Orissa* [1970] 25 S.T.C. 171. The appellate authority, however, refused to act on these documents and confirmed the demands for both the years.

4. In the second appeals before the Tribunal, the assessee contended that the explanation offered before the first appellate authority should have been accepted and the forms should have been received and consequential benefits should have been given. The Tribunal dealt with the matter and found against the assessee by saying:

The only point to be decided is whether the appellant had sufficient cause not to produce the necessary corresponding C and E-1 forms at the assessment stage and whether the appellant had reasonable ground for which he was unable to produce such form before the assessing officer. It appears from the record that the appellant got several adjournments either on his petition or suo motu by the assessing officer to file the necessary forms before the assessing officer. The claim that, due to non-availability of the form, the appellant could not file the necessary forms is not a convincing ground to hold that the appellant was not in a position to file the necessary forms at the assessment stage. Of course, the appellant filed the copies of letters issued by Sarabhai Chemicals, which indicated that the aforesaid firm was trying to obtain E-1 form. But, such a vague plea, if accepted, would lead nowhere. The appellant would get an unbridled scope to file the form as and when it likes. As rightly observed by the learned Assistant Commissioner, when he claimed exemption, it was his duty to obtain the necessary form before the assessment was completed. In such a circumstance, the appellant got sufficient opportunity to obtain the necessary forms. As the

appellant did not file the form before the assessing officer and filed only after the first appellate authority, I am of the view that the first appellate authority was justified in not accepting the form filed before him. In short, I hold that the assessing officer in the circumstances of the case was justified in not allowing the claim of exemption as claimed by the appellant. . . .

5. Mr. Bhattacharya, for the assessee, contends, relying on a decision of the Calcutta High Court in the case of Mohatta Brothers v. Additional Member, Board of Revenue, West Bengal [1975] 36 S.T.C. 582, that the assessee was entitled as of right to produce the forms in question before the first appellate authority, and the forums below have gone wrong in sustaining the assessment. In the Calcutta case [1975] 36 S.T.C. 582, the Commercial Tax Officer had fixed the hearing of the assessment matter to 3rd May, 1960, and had asked the dealer to produce the books of account for the said period. On that day, the case was adjourned to 10th August, 1960, and on 10th August, 1960, the dealer's lawyer appeared and prayed for time as the books of account were not fully adjusted. The case was accordingly adjourned to 18th August, 1960. The dealer's lawyer appeared on the date and again prayed for time on the same ground. The Commercial Tax Officer did not grant the dealer further time and proceeded to assess the dealer ex parte to the best of his judgment. The assessee had ultimately carried a revision before the Additional Member, Board of Revenue, against this assessment. It was urged, among other points, before the Board that, both before the Assistant Commissioner as also the Additional Commissioner, mention had been made about the declaration forms, which had been enclosed with the petition of appeal, yet the Assistant Commissioner and the Additional Commissioner did not refer to the same. The learned Judges considered the question as to whether the declaration forms that were given before the Assistant Commissioner and the Additional Commissioner should have been taken into consideration by these authorities. Reference was made to Rule 4 of the Central Sales Tax (West Bengal) Rules, 1958, which enjoined that the declaration forms should be produced at the time of assessment. The court referred to an amendment to the Central Sales Tax (Registration and Turnover) Rules, 1957, where, with effect from 1973, the following was introduced:

The declaration in form C or form F or the certificate in form E-1 or form E-II shall be furnished to the prescribed authority up to the time of assessment by the first assessing authority:

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit

and the court ultimately concluded:

Therefore, the dealer was entitled to produce and rely on the said declaration forms before the Assistant Commissioner and the Additional Commissioner.

Though no reference has been made in the decision to certain observations of the Supreme Court in the case of *State of Orissa v. Babu Lal Chappolia* [1966] 18 S.T.C. 17 (S.C.), Mr. Bhattacharya has contended that the Calcutta High Court had these observations in view while coming to its conclusion in the manner aforesaid. The Supreme Court was examining the powers of the Assistant Commissioner under the Orissa Sales Tax Act in the matter of disposal of appeals and observed:

There is no express provision for making the Sales Tax Officer a party to the appeal or requiring the appellate authority to issue a notice to the Sales Tax Officer. There is no such provision as exists in Section 31(1) of the Indian Income Tax Act, 1922, requiring that "at the hearing of an appeal against an order of the Income Tax Officer, the Income Tax Officer shall have a right to be heard either in person or by a representative". In view of the absence of such a provision, it seems to us that the appellate authority is virtually in the same position as the Sales Tax Officer and the Act and the Rules do not contemplate that a notice should be issued to the Sales Tax Officer. . . .

This observation of the Supreme Court is indeed not relevant for our purpose. The Supreme Court nowhere said that the stage of first appeal would be considered as a part of the assessment proceeding.

We have been referred to certain precedents by Mr. Bhattacharya. In the case of *Shirahatti v. Commercial Tax Officer* [1967] 19 S.T.C. 306, a Bench of the Mysore High Court was considering the scope of Rule 6 of the Central Sales Tax (Mysore) Rules, 1957, where a proviso to the following effect arose:

Provided that in cases of delayed receipt of declaration forms or certificate, the dealer may submit them at any time before the assessment is made.

The court decided that if, in the opinion of the appellate authority, the original authority had not given sufficient opportunity to the petitioner to produce the forms, it was open to the appellate authority to receive them because it had power in law to do those things which the original authority had. This decision has no bearing on the point in question. In the case of *Sales Tax Officer Vs. K.I. Abraham*, , the Supreme Court was considering the effect of the third proviso to Rule 6(1) of the Central Sales Tax (Kerala) Rules, 1957. The court proceeded on the basis that the Central Act nowhere conferred jurisdiction on the rule-making authority to fix a time-limit in the matter of filing and acceptance of the forms and the proviso, which provided the time-limit, was, therefore, struck down. This again does not directly decide the point in issue. A Bench of the Madras High Court in the case of *Tirukoilur Oil Mills Ltd. v. State of Madras* [1967] 20 S.T.C. 388 was considering the effect of Rule 5(1) of the Central Sales Tax (Madras) Rules, 1957, and the court held, on the facts of the case, that the rectified forms produced in first appeal should have been accepted. It relied on the principle indicated in the *Abraham's* case¹ for its view. A Bench of this Court in the case of *Tata Iron and Steel Co. Ltd. v. State of Orissa* [1970] 25 S.T.C. 171 considered

the effect of Rule 12(10) of the Central Sales Tax (Orissa) Rules, 1957. This Court followed the ratio in *Sales Tax Officer Vs. K.I. Abraham*, and directed the Tribunal by issuing a writ of mandamus to rehear the appeal. In the case of *Commissioner of Sales Tax v. Kanpur Dal and Rice Mills* [1970] 25 S.T.C. 511, a Bench of the Allahabad High Court examined the scope of Rule 5-A of the Central Sales Tax (Uttar Pradesh) Rules. It came to hold that it was open to the appellate authority to accept the C forms produced at the appellate stage.

6. We are not prepared to accept the conclusion of the Calcutta High Court that the assessee has a right to produce the documents at the appellate or the second appellate stage. If that be so, the scheme of the Act would be frustrated. There is no dispute that the mandate is that these should be produced before the assessment is made. It is a different matter to contend that what has not been possible before the assessment is made, may be placed for consideration before the appellate authority and the assessment may be asked to be modified. That, however, would not mean that it is open to the assessee to choose whether he would produce the forms either before the assessing officer or the first appellate authority. The contention of Mr. Bhattacharya that the assessee was entitled to produce the same at the first appellate stage must, therefore, be discarded.

There is no dispute in any quarter that the first appellate authority was entitled to accept the declaration forms, particularly, when Rule 12(7) of the Central Sales Tax Rules was not in existence when the assessments were made. From the documents referred to in the statement of the case, it is clear that the assessee was keen to obtain the declarations and the certificates. In spite of its best of efforts, the same could not be obtained before the assessment was completed. The Tribunal has rightly found that the Sales Tax Officer had given many opportunities to the assessee. In view of the correspondence, there can yet be no doubt that, notwithstanding the several efforts of the assessee, the documents were made available to it only after the assessments were completed. In the facts of the case, there can thus be no second opinion that the declarations and the certificates could not be obtained by the assessee in spite of its best of efforts before the assessments were completed.

7. There is no dispute by the learned standing counsel that, if sufficient cause is shown, it is within the jurisdiction of the first appellate authority to admit these documents into the record. We do not find any mention of the correspondence which is forthcoming from the statement of the case in the order of the first appellate authority; nor is there any adequate reference to it in the order of the second appellate authority though the question was directly mooted. It is not the stand of the learned standing counsel that the documents appearing in the statement of the case are not part of the record. That being the position, we are of the view that a sufficient explanation had been placed before the appellate authorities as to why these documents could not be brought to the record before the assessments were completed and, therefore, the same should have been accepted. We are inclined to hold, in the facts and circumstances of the case,

that the assessee had given sufficient explanation in the matter of furnishing the declarations in form C and the certificates in form E-1 for the first time before the first appellate authority and the same should, therefore, have been acted upon. In the view, we have already indicated, there is no justification for answering the first question. Accordingly, the second question is only answered in the manner indicated above.

There would be no direction for costs.

Mohanti, J.

I agree.