(1986) 12 OHC CK 0012

In the Orissa High Court

Case No : S.J.C. No''s. 111 and 112 of 1979

Orissa State Tribal Development Co-Operative Corporation Ltd. APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 24-12-1986

Acts Referred:
Central Sales Tax Act, 1956 — Section 8, 9

Citation : (1988) 68 STC 217

Hon'ble Judges : H.L. Agrawal, C.J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : B. Kr. Mohanty, for the Appellant; Standing Counsel (Commercial Taxes), for the Respondent

Judgement

S.C. Mohapatra, J.—These two references on the applications of the dealer u/s 24(1) of the Orissa Sales Tax Act, 1947, read with Section 9 of the Central Sales Tax Act, 1956 (for short "the Act") arise in respect of the assessment for the years 1974-75 and 1975-76. In both the cases, the questions of law relate to the acceptance of form C by the appellate authority.

2. The dealer is a co-operative society under the Orissa Co-operative Societies Act, 1962. It carries on business of purchase and sale of goods in respect of which it is registered under the Act. In respect of the two years, it could not furnish declarations in form C for some of the sale transactions before the assessing officer as a result of which its claim for being assessed in respect of those turnovers at concessional rate of tax as provided u/s 8(1) of the Act was not accepted by the assessing officer in view of the exception provided u/s 8(4). Against the orders of assessment, the dealer filed appeals before the Assistant Commissioner who is the first appellate authority and some declarations in form C were filed before him. The Assistant Commissioner did not entertain the same on the ground that Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (hereinafter referred to as "the Rules") does not authorise

the appellate authority to receive the same. The appellate orders were confirmed in second appeal before the Member, Additional Sales Tax Tribunal.

3. Section 8(1) of the Act provides for concessional rate of tax where the sale is made in the course of inter-State trade or commerce to registered dealers. Sub-section (4) thereof, however, provides that the concessional rate would not be available under the circumstances indicated therein. Excluding the portions not relevant to this case, Section 8(4) reads as follows:

(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)....

Provided that the declaration referred to in Clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

The Central Government prescribed in Rule 12(1) of the Rules that the declaration of registered dealers is to be in form C. In Sub-rule (7) thereof, it provided the manner and time of furnishing the declaration in form C. Omitting the unnecessary portions, it reads as follows:

(7) The declaration in form C...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...within the aforesaid time, that authority may allow such declaration...to be furnished within such further time as that authority may permit.

4. The statement of fact made to this Court reveals that the dealer did not apply for adjournment to furnish the declaration in form C before the assessing officer. Thus, no cause was shown before the assessing officer to consider the question of giving opportunity to the dealer to furnish the declaration in form C. It had no material to come to the conclusion that the dealer was prevented by sufficient cause from furnishing the declarations. Therefore, there was no scope for the assessing officer to exercise the power under the proviso to Rule 12. The dealer having filed some declarations in form C before the Assistant Commissioner, the scope and ambit of the appellate authority to deal with such declarations is to be considered in these two cases.

5. A decision of the Calcutta High Court reported in [1975] 36 STC 582 (Mohatta Brothers v. Additional Member, Board of Revenue, West Bengal) is to the effect that the dealer was entitled to produce and rely on the declaration forms before

the Assistant Commissioner and the Additional Commissioner. This decision of the Calcutta High Court was considered and dissented from by a Division Bench of this Court in the decision reported in [1979] 44 STC 241 (Oriental Chemical Industries v. State of Orissa). It was observed:

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 reason for the failure to furnish the declarations in form C before the first assessing authority was considered in the decision of this Court and finding that the declaration could not be obtained by the assessee in spite of the best efforts before the assessments were completed, it was held that sufficient explanation had been placed before the appellate authorities as to why those documents could not be brought to the record before the assessments were completed and, therefore, the same should have been accepted. On such finding, it was held that in the facts and circumstances of the case, the assessee having given sufficient explanation in the matter of furnishing the declarations in form C for the first time before the first appellate authority, the same should have been acted upon.

6. In view of the aforesaid decision of this Court, the Member, Additional Sales Tax Tribunal was not correct in not considering the receipt of the declarations in form C in the absence of a petition by the dealer explaining the cause of his inability to furnish the declaration.

7. In the result, the references are answered in favour of the assessee. No costs,

H.L. Agrawal, C.J.

8. I agree.

