(1980) 08 OHC CK 0017

In the Orissa High Court

Case No : S.J.C. No. 184 of 1976

Sheo Sankar Trading Co. APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 27-08-1980

Acts Referred:
Central Sales Tax Act, 1956 — Section 6A

Citation : (1982) 50 STC 389

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

Bench : Division Bench

Advocate : B. Agarwalla, M.R. Panda, R.S. Agarwalla and H. Kedia, for the Appellant; Standing Counsel (Sales Tax), for the Respondent

Judgement

R.N. Misra, J.—At the instance of the assessee this case has been stated and the following question has been referred for opinion of the court by the Additional Sales Tax Tribunal u/s 24(1) of the Orissa Sales Tax Act:

Whether on the facts and in the circumstances of the case and on an interpretation of Section 6A of the Central Sales Tax Act, 1956, which came into force with effect from 1st April, 1973, goods which moved from Orissa to outside the State on 26th February, 1973, for commission sale can be taxed at the ordinary rate on account of non-submission of form F ?

2. The assessee is a registered dealer both under the State as also the Central Sales Tax Acts and carries on business on minor forest produce in the district of Mayurbhanj. It claimed despatch of articles worth Rs. 27,627.59 on 26th February, 1973, to its commission agent outside the State of Orissa for sale. As declaration in form F was not produced the assessing officer rejected the claim and assessed the turnover at 10 per cent. The claim of the assessee that for the transaction in question Section 6A of the Central Sales Tax Act has no application has been rejected.

3. Section 6A admittedly came into the statute book with effect from" 1st April,

1973, and as far as material provides thus :

(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....

4. The assessee took the stand that there was no obligation to produce the declaration in form F for the transaction in question inasmuch as admittedly the goods had moved more than a month prior to insertion of Section 6A into the Act. The material date obviously is the date of movement, and it is not disputed that the goods moved by train from some place in Mayurbhanj to Bombay. Judicial notice can be taken of the fact that the goods must have gone out of the State before the new provision came into the statute book. In the circumstances we are inclined to hold that for the transaction in question declaration u/s 6A was not necessary and without the declaration the assessee was entitled on the basis of its accounts to prove that the goods had so moved. Merely on account of non-production of the declaration by the assessee, the turnover of the goods sent to its commission agent could not have been assessed to tax. Our answer to the question, therefore, is in favour of the assessee, and we state that on the facts and in the circumstances of the case, Section 6A of the Central Sales Tax Act was not applicable, and the assessee''s claim could not be rejected for non-production of the declaration in form F.

No costs.

N.K. Das, J.

5. I agree.