
(1987) 08 OHC CK 0027
In the Orissa High Court
Case No : S.J.C. No. 28 of 1981

Singal Trading Co.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 29-08-1987

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A

Citation : (1988) 69 STC 329

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

Bench : Division Bench

Advocate : B. Agarwala, M.L. Agarwala, R.S. Agarwala and S.S. Rout, for the Appellant; Standing Counsel (Commercial Taxes), for the Respondent

Judgement

S.C. Mohapatra, J.—This is a reference u/s 24(1) of the Orissa Sales Tax Act (in short "the Act") at the instance of the assessee, a partnership firm. The following question of law has been referred by the Member, Sales Tax Tribunal, Orissa, for a decision of this Court:

Whether, on the facts and in the circumstances of the case, the learned Member, Sales Tax Tribunal, Orissa, Cuttack, was correct to hold that the production of official declaration form is mandatory for claim of deduction for sales made to registered dealers u/s 5(2)(A)(a)(ii) of the Orissa Sales Tax Act, 1947 ?

2. As revealed from the statement of the case by the Tribunal, the assessee is a dealer registered under the Act. It claimed deduction of Rs. 2,26,781.77 as sale to other registered dealers u/s 6(2)(A)(a)(ii) of the Act in respect of the year 1977-78. The claim of the dealer was not accepted by the assessing officer since the relevant declarations of the purchasing dealer in statutory form No. XXXIV in support of its claim, were not produced before the assessing officer. Having failed both in the first appeal and second appeal, the assessee prayed for a reference which was allowed.

3. The only contention of Mr. B. Agarwala, the learned counsel for the petitioner,

is that in order to claim deduction u/s 5(2)(A)(a)(ii) of the Act, furnishing the declaration of the purchasing dealer in the prescribed statutory form No. XXXIV is not mandatory and the selling dealer can otherwise also satisfy the assessing authorities that the dealer is entitled to such deduction.

Apparently, submission of Mr. Agarwala finds support from the decision of this Court reported in [1961] 12 STC 25 (Member, Sales Tax Tribunal, Orissa v. S. Lal & Co.) and of the Supreme Court reported in [1964] 15 STC 641 (State of Orissa v. M.A. Tulloch and Co. Ltd.) where it has been held that Rule 27(2) is directory and substantial compliance of the same is permissible. However, the aforesaid decisions were rendered in respect of assessments for periods prior to 1955 when Section 5(2)(B) was not in the statute. There is a complete change in position after the section was amended, adding Clause (B) to Section 5(2). This provision is directly contrary to the submission of Mr. Agarwala. It reads as follows :

For the purpose of ascertaining the deductions under this sub-section, the same shall be proved in the prescribed manner.

The manner in which the claim for deductions of sales to registered dealers are to be claimed has been prescribed in Rule 27(2) which provides that such sales can be proved by furnishing declarations in form No. XXXIV to the Sales Tax Officer.

4. The next contention of Mr. Agarwala, is that purchase by a registered dealer and sale by it to a registered dealer constitute a series and levy of tax at each point in the series would violate Section 8. In support of his contention, Mr. Agarwala relied upon the decision of this Court reported in (1987) 1 SLR 297 (Chhatriya Trading Co. v. State of Orissa), I am not able to appreciate how this decision is of any assistance to Mr. Agarwala. In this decision, the dealer paid tax on the commodities to different Sales Tax Officers and produced receipts. In the aforesaid facts, it was observed :

But in view of the fact that under the scheme of the Act multi-point tax is not intended, we feel inclined to hold that the dealer should be entitled to claim adjustment of taxes which are paid for the same commodities by him at places other than the check-gates in similar manner. In this case, we find that the dealer had paid the tax to different Sales Tax Officers after obtaining receipts in proof of the payments. But in the subsequent assessment proceeding, these payments were disallowed on the sole ground that there was no such provision for adjustment in the statute. In spite of this omission, the court should give such an interpretation which should subserve the purpose of the legislation and advance its intention so as to escape the peril of challenge in a court of law.

In the said decision, it has been observed. The observation is from Ashok Service center and Others Vs. State of Orissa, which has been referred to in Chhatriya Trading Co.:

The proviso to Section 8 of the principal Act which is of considerable significance in these cases clearly lays down that the same goods cannot be taxed under the principal Act at more than one point in the same series of sales (or purchases) by successive dealers. Section 8 of the principal Act which begins with a non obstante clause is given an overriding effect over the rest of the provisions of the principal Act and the proviso found in it also naturally has a similar overriding effect. Levy of tax at a single prescribed point and prohibition against levy of tax at more than one point is an important characteristic of the scheme of the principal Act and such prescription was introduced deliberately by the State Legislature to prevent hardships to consumers which would be caused by the gradual increase of prices as the goods pass from dealer to dealer before they reach the consumer which would be the natural result of a multi-point levy of sales tax and also to make collection of sales tax more convenient. Even though the language of Section 8 of the principal Act by itself was sufficient to prevent a multi-point levy and to prescribe a single point levy in order to emphasise the principle of single point levy of tax, Section 4(1) of the principal Act was expressly made subject to Section 8.

From the aforesaid observations as well as the scheme of the Act, it is clear that the selling dealer cannot be made liable more than once on a single transaction of sale in his hand. This is also the view of this Court in ILR [1974] Cut 1091 (Carom Sahu Company Ltd. v. Commissioner of Sales Tax, Orissa) where assessment of the same turnover by two different assessing officers was shunned. Similarly, several transactions of sales of the same commodity by different dealers would not be liable to levy more than once if they are in the same series. Where the transactions are not in a series but are disjointed, the levy of tax on each transaction of sale by different dealers of the same commodity is liable to tax.

5. In Section 8, therefore, the meaning of "series" has great importance. The word has not been defined under the Act. Where two transactions are so clearly linked that one is a continuation of the other, it is said to be a series. Normally, on completion of a sale, the transaction comes to an end. However, under the scheme of the Act tax is to be levied at one point of sale only. A dealer who sells the goods in course of business is liable to pay the tax on such sale. If he is not registered under the Act, he has no right to collect the tax from the purchaser. Only where he is registered, he is given the option to collect the tax from the purchaser as provided in Section 9-B. If the selling dealer chooses not to collect the tax, there is no compulsion on him. He may prefer to take the burden on himself. In order to facilitate the business and to protect the consumers from price hike on account of taxation on different transactions, the legislature provided that the selling dealer would not be liable to be taxed on a transaction of sale to another registered dealer if the goods to be sold to the purchasing dealer is mentioned in the certificate of registration of the purchasing dealer for being purchased without payment of tax to the selling dealer. This is not the only precondition. The purchasing dealer is to furnish a declaration to the selling

dealer in the statutory form No. XXXIV to that effect. It is the liability of the selling dealer to be satisfied that the goods to be sold is incorporated in the purchasing dealer's certificate of registration. Where the assessing officer finds that the goods sold was not mentioned in the certificate of registration of the purchasing dealer, the liability is fixed on the selling dealer even if a declaration in form No. XXXIV is furnished by the purchasing dealer. The purchasing dealer is made liable when he has purchased the goods mentioned in his certificate of registration by furnishing a declaration but utilises the goods otherwise than the purpose mentioned in his certificate of registration. The scheme of the Act is thus, so clear that Section 5(2) is supplemental to Section 8 and is not inconsistent with it. Where there would be inconsistency between Section 5 and Section 8, the latter provision is to prevail in view of the non obstante clause.

If a plain reading and literal interpretation of the two provisions would have led to inconsistency, I would have searched for the intention of the legislature so as to interpret the same by modifying the language as has been laid down by the Supreme Court in the decision reported in Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri, it has been observed :

Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature, the court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of dictionary but remember that statute always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.

However, keeping the object of the legislation to augment revenue of the State and also to protect the consumer as has been held in (1987) 1 SLR 297 (Chhatriya Trading Co. v. State of Orissa), I find that Section 8 and Section 5 supplement each other and are not inconsistent. As has been held by the Supreme Court in the aforesaid decision Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri, :

...If the purpose of a particular provision is easily discernible from the whole scheme of the Act...we should find out the intention from the language used by the legislature and if strict literal construction leads to an absurd result, i.e., result not intended to be subserved by the object of the legislation found out in the manner indicated before, then if other construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to

the literal construction....

When a seller is made liable under the Act and gets the exemption if the transaction comes within the conditions prescribed, it would be unjust to interpret the taxing statute in a manner which would defeat the purpose of the Act to augment the revenue. Mr. Agarwala claims that the assessee has not collected the tax from the purchasing dealer. If that be so the other object u/s 8 that the consumer is not to be victim of enhanced price is also satisfied even if the purchasing dealer collects the tax from the consumer. The assessee not having satisfied the conditions for getting the benefit of deduction cannot demand equity in his favour.

6. Mr. Agarwala relied upon the decision in O.J.C. No. 474 of 1979 (Ali Husein v. Sales Tax Officer, Cuttack I East Circle) decided on 22nd April, 1987 (unreported) [1988] 68 STC 319 and submitted that this Court has interpreted the provision in Section 5(2)(A)(a)(ii) liberally in permitting the assessee to furnish the declaration in form No. XXXIV other than the one supplied by the purchasing dealer. In the said decision, it has been clearly held that to get deduction u/s 5(2)(A)(a)(ii) the selling dealer is to furnish the declaration in form No. XXXIV whether it is the original or either of the counterfoil or duplicate. The language of the section permits such interpretation. To further liberalise the scope as suggested by Mr. Agarwala would be a violation of the requirement of Section 5(2)(B) of the Act.

7. Mr. Agarwala relied upon another decision of this Court in S. J. C. No. 99 of 1980 decided on 28th February, 1987 (State of Orissa v. Orissa Small Industries Corporation) (unreported) [1987] 67 STC 262 where it has been held that a transfer of goods to another State which is not sale under the Central Sales Tax Act can be proved otherwise than furnishing the F form in view of the language of Section 6A of the Central Sales Tax Act. In this case, the specific language of Section 5(2)(B) is otherwise. Accordingly, the said decision is of no assistance to Mr. Agarwala.

8. In view of the aforesaid discussions, the question referred to by the Tribunal is answered against the assessee. There shall, however, be no order for costs.

H.L. Agrawal, C.J.

I agree.