(2001) 07 OHC CK 0026

In the Orissa High Court

Case No : Tax Revision No. 71 of 2001

South Eastern Coal Fields Limited — APPELLANT

Vs

State of Orissa — RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Central Sales Tax (Orissa) Rules, 1957 — Rule 12(5)
Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12(7)
Orissa Sales Tax Act, 1947 — Section 23(1), 23(2), 24(1), 24(2)
Orissa Sales Tax Rules, 1947 — Rule 47, 50

Citation : (2001) 124 STC 606

Hon'ble Judges : R.K. Patra, J;L. Mohapatra, J

Bench : Division Bench

Advocate : Sanjit Mohanty, S.C. Samantray, N.C. Sahoo and S.P. Panda, for the Appellant; M.K. Badu, Additional Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The short question that arises for consideration in this revision u/s 24(1) of the Orissa Sales Tax Act, 1947 is whether the first appellate authority has power to receive "C" declaration forms in appeal and grant relief.

2. The petitioner is a Government of India concern having certificate of registration bearing No. SA-III-C-561. It carries on business in coal in course of inter-State sale, The Sales Tax Officer, Sambalpur-III Circle, Jharsuguda, issued notice to it under Rule 12(5) of the Central Sales Tax (Orissa) Rules, 1957 for production of accounts relating to the year 1976-77 on November 1, 1977. The petitioner applied for adjournment on the date fixed which was allowed. Subsequently, it took further adjournments and it was specifically informed to produce the accounts with all supporting documents on October 22, 1979 failing which assessment was to be completed ex parte. Although further opportunity was given to it to produce the accounts with supporting documents, it failed to produce the same. Ultimately the Sales Tax Officer completed the assessment to the best of his judgment on materials available on record by his order dated

December 22, 1979. Against the said order, the petitioner filed Sales Tax Appeal No. AA. 12-C(SA-III-C) of 1979-80 before the Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur. At the time of hearing, it produced "C" declaration forms but the Assistant Commissioner in his order dated November 18, 1982 (annexure 2) observed as follows :

"..........The declaration forms furnished at the appellate stage cannot be accepted in view of the restriction placed under Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957..."

He, however, set aside the assessment and remanded the matter to the assessing officer for fresh disposal. The petitioner being aggrieved by the aforesaid order of the Assistant Commissioner preferred Second Appeal No. 75(C) of 1983-84 before the Orissa Sales Tax Tribunal which by its order dated October 19, 1990 (annexure 3) dismissed the appeal.

It may be noted here that the petitioner thereafter filed an application before the Sales Tax Tribunal u/s 24(1) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as "the Act") to move this Court by way of reference. The prayer having been rejected, it made an application to this Court u/s 24(2)(b) of the Act. While this application was pending, Section 24 of the Act was amended by Orissa Sales Tax (Amendment) Act, 2000 and by virtue of that amendment, the reference application has now come to be registered as tax revision.

3. In this matter we are concerned with the limited question relating to the power of the first appellate authority to receive the "C" declaration forms which were not furnished before the assessing authority. We may hasten to add here that the Sales Tax Tribunal as the second appellate authority is authorised to receive additional evidence (which may include "C" declaration forms) by virtue of Rule 61 of the Orissa Sales Tax Rules, 1947 (hereinafter referred to as "the Rules") which provision is practically in the same terms as provided in order 41, Rule 27 of Civil Procedure Code. The contention of the department is that Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 prohibits reception of "C" declaration forms at the first appellate stage. In view of such contention, it would be profitable to quote the aforesaid provision which reads as under :

"12(7). The declaration in form C or form ''F'' or the certificate in form ''E-I'' 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."

4. To get hold of the issue, it is relevant to notice here the provisions dealing with first appeals under the Act.

Section 23(1) of the Act provides that any dealer or person, as the case may be, may in the prescribed manner appeal to the prescribed authority against the orders mentioned therein. Sub-section (2) thereof provides that the appellate authority, in disposing of any appeal under sub-section, (1) may--

(a) confirm, reduce, enhance or annul the assessment or the penalty or interest, if any ; or

(b) set aside the assessment or the penalty or interest, if any, and direct the assessing authority to pass a fresh order after such further enquiry as may be directed.

Rule 47 of the Rules enumerates the first appellate authorities. Rule 50 lays down that if the appeal is not summarily rejected, the appellate authority shall fix a date and place for hearing of the appeal and it may before disposing of any appeal make such further enquiry as it thinks fit or cause further enquiry to be made by the Assistant Sales Tax Officer, or the Sales Tax Officer, as the case may be.

5. Perusal of the aforesaid appellate provision would show that the power of the first appellate authority is quite wide inasmuch as it can confirm, reduce, enhance or annul the assessment or direct the assessing officer to make further enquiry or pass such order as he thinks fit. That power includes the power of setting aside the assessment and remanding the matter. There is absolutely no limitation as to the exercise of its power. In absence of any such limitation, there is no reason to deny the first appellate authority the power to entertain a prayer of the assessee to consider "C" declaration forms provided the assessee is able to satisfy the authority that due to reasons beyond his control he could not produce them before the assessing authority. Generally appeal is nothing but the continuation of the original proceeding. This being the fundamental principle, an appeal under the Act is a continuation of the assessment proceeding. Therefore, Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 cannot restrict the power of the first appellate authority to receive "C" declaration forms which were not produced before the assessing authority provided sufficient cause is shown by the assessee for its earlier non-production.

6. A question similar to the present one arose before the Karnataka High Court in AS. Nasiruddin v. Commissioner of Commercial Taxes in Karnataka [1994] 94 STC 399 wherein it has been held that "C" forms can be entertained by the appellate authority if sufficient cause is shown for not producing it before the assessing authority. This Court also in Tata Refractories Limited v. Commissioner of Sales Tax, Orissa [1994] 95 STC 343 observed on the power of the appellate authority to receive "C" declaration forms as follows :

"It is trite law that when the assessee shows sufficient cause for non-production of declaration forms at the stage of assessment, they can be accepted at the first appellate stage, and in a given case they may also be accepted as additional evidence by the Tribunal. The assessee does not gain by withholding the declaration forms in support of its claim of deduction. A liberal attitude should be taken because law permits in certain cases exemption/deduction/concession subject to filing of declaration forms. If declaration forms are produced it would be equitable and proper to accept the forms and grant concession/deduction/ exemption. However, where the assessee is negligent, callous and does not place materials to show that effort was made to get the declaration forms, the situation would be different. When the assessee offers plausible explanation, then the taxing authorities would not be justified in refusing to accept the declaration forms.

7. In the case at hand, the petitioner did not produce the "C" declaration forms before the assessing authority. It filed the same before the Assistant Commissioner who was the first appellate authority. He had not considered the circumstances under which the petitioner could not produce the forms earlier. For the aforesaid reasons, we are of the opinion that the Assistant Commissioner of Sales Tax as the first appellate authority erred in law in refusing to receive the "C" declaration forms submitted by the petitioner before him on the ground that he lacked power of reception of such document at the appellate stage.

8. In the result, the order of the Sales Tax Tribunal (annexure 3) and that of the Assistant Commissioner of Sales Tax (annexure 2) are hereby quashed. The matter is remitted to the Assistant Commissioner to consider the circumstances in which the petitioner could not produce the "C" declaration forms earlier. If he is satisfied with the cause to be shown by the petitioner, he would accept the forms and pass appropriate order according to law.

The revision is accordingly allowed.

L. Mohapatra, J.

9. I agree.

