
(2000) 07 OHC CK 0006
In the Orissa High Court
Case No : S.J.C. No. 77 of 1988

State of Orissa

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 17-07-2000

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 10, 12(4), 12(8), 24(1), 5(1)

Citation : (2002) 93 CLT 364

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

Bench : Division Bench

Advocate : D. Behura, Addl. Standing, for the Appellant; S. Udgata and P.K. Nayak, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—The Orissa Sales Tax Tribunal (for short, "Tribunal") has referred the following question of law by drawing up a statement of case for determination by this Court.

"Whether on the facts and in the circumstances of the case, the Sales Tax Tribunal is justified to hold that the assessee is not liable to pay tax on the sale of furnace oil to the purchasing dealer merely on the ground that he gave a declaration in Form-I although the said furnace oil was not utilised by him as a raw material ?"

2. The facts of the case are that the assessment for the period 1979-80 was completed u/s 12(4) of the Orissa Sales Tax Act, (1947) (for short "the Act") by allowing deduction of a sum of Rs. 4,39,599.02 sold to M/s Orissa Textiles and Steel Ltd. against furnishing declaration form in Form-I. But subsequently, the assessment was re-opened u/s 12(8) of the Act on the ground that the purchasing dealer who was a manufacture of hardware, iron and steel goods could not have used furnace oil purchased from the opp.party on the strength of Form-I as it did not go into composition of the finished products. Accordingly,

said deduction allowed on account of sale against Form-I to M/s. Orissa Textiles and Steel Ltd. was disallowed. Against the said order the opp.party preferred First Appeal before the Assistant Commissioner contending that the furnace oil was recorded in the purchase registration certificate to be used in the manufacturing of goods and necessary declaration had been furnished. The selling dealer after being satisfied about these two conditions having sold goods to the purchasing dealer, the selling dealer had no further responsibility. It was further submitted that omission of furnace oil from the registration certificate was not done during the year 1979-80. The Assistant Commissioner accepted the contentions of the opposite party and annulled the assessment raised u/s 12(8) of the Act. Being aggrieved by the aforesaid order, State of Orissa filed appeal before the Tribunal. The Tribunal dismissed the appeal filed by the State and on an application of the State of Orissa, the Tribunal has referred the aforesaid question of law for determination of this Court.

3. On a perusal of the order of the Tribunal along with the orders of the Assistant Commissioner and Sales Tax Officer, it is clear that the purchasing dealer's registration certificate for the period 1979-80 had endorsement of furnace oil under the heading "The dealer intends to use the following goods in the manufacture/ processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power inside the State of Orissa."

It is relevant to indicate that there is no separate heading in the registration certificate with regard in raw material. Raw material are other goods required for manufacturing are mentioned in the aforesaid column. It is also not disputed by any of the forums that the purchasing dealer is entitled to furnish declaration form in Form-I for purchasing goods free of tax and this Form-I is to the following effect :

"I/We ... hereby declare that the goods purchased by me/us in Bill/Cash Memo No. ... dated ... from ... shall be used as raw materials for the purpose of manufacture inside the State, i.e. as goods which will directly go into the composition of the finished product to be manufactured by me/us. I/We further declare that the manufacturing unit have started production from ... and the finished product shall be sold in Orissa or in course of inter-State trade or commerce or export.

Dealer/Authorised Agent,"

The aforesaid Form-I had been furnished by the purchasing dealer to the opp.party, the selling dealer for purchasing furnace oil free of tax. In view of these facts, objection of the revenue that furnace oil could not have been used as raw material for manufacturing finished product of the purchasing dealer or in other words, declaration filed by the purchasing dealer is false as furnace oil is required only for the purpose of lubricating material for running the machinery cannot be sustained.

4. At this stage, it is necessary to quote 5th proviso to Section 5(1) of the Act.

"5. Rate of tax :

(1) *** ** Provided further that where a registered dealer purchases goods of the class or classes specified in his Certificate of Registration as being intended for use (within the State of Orissa) by him in the manufacture or processing of goods for sale or in mining or in generation or distribution of electricity or any other form of power at concessional rate of tax or free of tax after furnishing a declaration in the prescribed form, but utilises the same for any other purpose (or outside the State of Orissa), he shall pay the difference in tax or the tax, as the case may be, payable had he not furnished the declaration."

The provision makes it clear that once there is an endorsement in the certificate of registration that a class or classes of goods specified therein are intended to be used by him in the manufacture or processing of goods for sale and furnishes a declaration in the prescribed form, the selling dealer need not pay tax on such turn over. Here, the purchasing dealer satisfies both the conditions. Therefore, it has to be seen whether the selling dealer has any further responsibility to satisfy the assessing officer for claiming deduction of such material sold to a purchasing dealer against appropriate declaration forms.

5. Law is well settled since long in *The State of Madras v. Radio and Electricais Ltd. and Anr.*, (1996) 18 STC 222. While dealing with a declaration under the Central Sales Tax Act, their Lordships of the Apex Court at page 232 and 233 held as follows :

"... If therefore goods are specified in the certificate of registration in Form "B", it is not open, when a claim is made in respect of the purchase of those goods for the application of concessional rate of tax, to the Sales Tax Officer to deny to the selling dealer of those goods the benefit on the ground that the goods specified cannot be used by the purchasing dealer for the purpose of his business. It is open to the Tax Officer to ascertain whether the goods in respect of which a claim for concessional rate is made are specified in the certificate of registration, but if the class of goods is included in the certificate of registration in Form "B" he cannot say that the class of goods should not have been specified."

Their Lordships at page 233 have further held as follows

"...Indisputably the seller can have in these transactions no control over the purchaser. He has to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate : but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form "C" the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplies the goods he incurs a penalty u/s 10. That penalty is incurred by the purchasing dealer and cannot be visited upon the selling dealer. The selling dealer is under the Act authorised to collect from the

purchasing dealer the amount payable by him as tax on the transaction, and he can collect that amount only in the light of the declaration mentioned in the certificate in Form "C". He cannot hold an enquiry whether the notified authority who issued the certificate of registration acted properly, or ascertain whether the purchaser, notwithstanding the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate in Form "C". There is nothing in the Act or the Rules that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty may be visited upon the selling dealer."

The same principle has also been laid down by this Court in *Tilakraj Mediratta v. State of Orissa and Ors.*, (1992) 86 STC 453 wherein it has been hold as follows :

"... In our view, the stand is fallacious. It is not for the selling dealer to go after the purchasing dealer to find out as to in what manner the latter utilises the goods which it has purchased on the strength of the declaration forms in order to be entitled to the deduction. Such a requirement would fasten an impossible burden on the selling dealer. *** "

A perusal of the aforesaid decisions with the facts of the present case leaves no doubt in our mind that once there is an endorsement in the certificate of registration of the purchasing dealer and the purchasing dealer satisfies other conditions of furnishing requisite declaration form, concessional or no tax is to be charged by the selling dealer depending on the form furnished to him and in this case, Form-I has been furnished as per entry in SI. 26 of the entry of tax free goods. As the selling dealer has no control over the use of the purchasing dealer of the goods purchased on the strength of declaration, the 5th proviso to Section 5(1) of the Act authorises to tax such turn over purchases used in violation of declaration in the hands of the purchasing dealer. Original assessment order passed u/s 12(4) of the Act allowing deduction of a sum of Rs. 4,39,599.02 sold by opp. party to M/s Orissa Textiles and Steel Ltd., the purchasing dealer was in accordance with law. Therefore, the Assistant Commissioner is right in annulling the assessment order passed u/s 12(8) of the Act and the Tribunal is correct in dismissing the appeal filed by the State against such order of the Assistant Commissioner.

6. In view of the aforesaid discussion, we answer the question against the Revenue in the following manner.

"On the facts and in the circumstances of the case, the Sales Tax Tribunal is justified to hold that the assessee , is not liable to pay tax on the sale of furnace oil to the purchasing dealer once necessary declaration form was furnished by the purchasing dealer and necessary endorsement is available in the registration certificate of the purchasing dealer even if purchasing dealer does not utilise the said goods in the manner he has undertaken to utilise the same as per declaration form."

7. The reference application is accordingly, dismissed.