

(1970) 02 OHC CK 0019
In the Orissa High Court
Case No : S.J.C. No. 61 of 1967

State of Orissa

APPELLANT

Vs

Orissa Polish Works

RESPONDENT

Date of Decision : 13-02-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (1970) 26 STC 480

Hon'ble Judges : G.K. Misra, C.J; S. Acharya, J

Bench : Division Bench

Advocate : B. Agarwala, for the Respondent

Judgement

G.K. Misra, C.J.—The following questions have been referred to this court by the Sales Tax Tribunal, u/s 24(1) of the Orissa Sales Tax Act:

(1) Whether on the facts and circumstances of the case the Tribunal was right in allowing the concessional rate of tax on the basis of the declaration Form C, No. 656707, dated 22nd September, 1962, obtained from the purchasing dealers ?

(2) Whether the Tribunal was competent to allow additional evidence to prove the correct declaration Form C mentioned above ?

The facts leading to this reference may be stated in brief. The opposite party was assessed to sales tax for the quarter ending 30th September, 1962, under Rule 12(2) of the Central Sales Tax (Orissa) Rules, 1957. The opposite party effected inter-State sales and obtained a declaration in Form C from the purchasing dealer. Both the opposite party and the purchasing dealer were registered under the Central Sales Tax Act. The declaration form produced before the Sales Tax Officer contained the correct registration number of the purchasing dealer, but the date of registration was wrongly given therein as 30th October, 1962, the correct date being 30th November, 1961. As a wrong date was given in the declaration form, it was not accepted as valid and the opposite party was not allowed the exemption of paying at the concessional rate of one per cent. In

appeal before the Assistant Commissioner of Sales Tax the opposite party supplied another wrong registration number ; he also did not supply the correct date of registration. The order of the Sales Tax Officer was confirmed by the Appellate Assistant Commissioner. When the matter came up before the Sales Tax Tribunal the opposite party produced a letter from the Sales Tax Officer, Broach, in Gujarat, that the correct date of registration was 30th November, 1961. The learned Tribunal was of opinion that it was open to him to admit the letter of the Sales Tax Officer, Broach, by way of additional evidence. He accordingly held that the correct date of registration having been supplied, the opposite party was entitled to the exemption claimed. Aggrieved by this order of the Tribunal, the State of Orissa asked for a reference. That is how the matter has come before us.

2. Before examining the questions in issue, it would be appropriate to refer to Section 8 (1)(2) and (4) of the Central Sales Tax Act, 1956, whereunder the exemption is claimed.

Section 8(1) as it stood during the relevant period-omitting portions which are immaterial-runs thus :

(1) Every dealer, who in the course of inter-State trade or commerce....

(b) sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3), shall be liable to pay tax under this Act, which shall be one per cent. of his turnover.

Section 8(2) lays down :

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within Sub-section (1)....

(b) in the case of goods other than declared goods, shall be calculated at the rate of seven per cent., or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher; and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

Sub-Section (4) says :

(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.

On an analysis of the aforesaid provisions, it would be clear that the exemption

claimed u/s 8(1) would (sic) be admissible unless the conditions prescribed in Sub-Section (4) are satisfied. That Sub-section clearly lays down that the selling dealer should furnish to the assessing officer a declaration duly filled and signed by the purchasing dealer and that the declaration form shall contain the prescribed particulars in the prescribed form obtained from the prescribed authority.

3. The form prescribed is Form C. It contains three similar declarations : one is the original, the second is the duplicate and the third is the counterfoil. This form has been prescribed under Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957. A note has been appended at the foot of the form that the original is to be furnished to the prescribed authority, i.e., the assessing officer, the duplicate is to be retained by the selling dealer and the counterfoil is to be retained by the purchasing dealer. A similar provision is made in Rule 6 of the Central Sales Tax (Orissa) Rules, 1957. The form contains various headings, against which entries are to be filled up. These are : name of issuing State, office of issue, date of issue, name of the purchasing dealer to whom issued, registration certificate number and date from which registration is valid. u/s 8(4) of the Act all these particulars must be filled up by the purchasing dealer before the original is produced before the assessing officer for grant of exemption.

4. As has already been indicated in the narration of facts, the date of the registration certificate of the purchasing dealer was wrongly given as 30th December, 1962, though the correct date is 30th November, 1961. The opposite party produced a letter from the Sales Tax Officer, Broach, giving the correct date and wanted to utilise it to fill up the lacuna in the declaration form. The Tribunal allowed the exemption on the basis of this letter.

5. The question for consideration is whether the Tribunal has the power to take in additional evidence in support of any of the entries in Form C and then say, on the basis of such additional evidence, that the correct declaration form was produced, so as to entitle the dealer to exemption.

6. Rule 22 of the Central Sales Tax (Orissa) Rules prescribes that the provisions of the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) and the rules made thereunder shall mutatis mutandis apply in respect of all procedural and other matters incidental to the carrying out of the purpose of the Act, for which no provision was made in those rules or in the Central Sales Tax (Registration and Turnover) Rules, 1957. Admittedly, there is no provision either in the Central Sales Tax (Orissa) Rules or in the Central Sales Tax (Registration and Turnover) Rules relating to the acceptance of additional evidence. Accordingly, Rule 61 of the Orissa Sales Tax Rules, 1947, would govern cases coming under the Central Sales Tax Act. Rule 61 runs thus :

61. Fresh evidence and witnesses.-(1) No party to an appeal or application for reference shall be entitled to adduce fresh evidence whether oral or documentary, before the Tribunal:

Provided that-(a) If the authority from whose order the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) If any party including the State Government seeking to adduce additional evidence satisfies the Tribunal that such evidence, notwithstanding the exercise of due diligence was not within its knowledge or could not be produced by it, or before the time when the order under appeal was passed ; or

(c) If the Tribunal requires any documents to be produced or any witness to be examined to enable it to pass order, or for any other substantial cause, the Tribunal may allow such evidence or documents to be produced or witnesses examined and in such case the other party shall be entitled to produce rebutting evidence, if any.

(2) When fresh evidence has been adduced the parties may, if they so desire, address the Tribunal on points arising out of the fresh evidence.

7. If additional evidence can be accepted on the strength of Rule 61 for correction of entries in Form C, clearly the Tribunal's view would be correct. Mr. Agarwala placed reliance on *Shri Anil Kumar Dutta and Others Vs. Additional Member, Board of Revenue, and Tirukoilur Oil Mills v. State of Madras* [1967] 20 S.T.C. (Mad.) in support of his contention that it is open to the appellate or revisional authorities to allow correction of the declaration form by the selling dealer at the appellate or revisional stage. In our opinion, even though the Tribunal has got power to allow additional evidence in respect of other matters, such additional evidence is not permissible for correcting or rectifying any entry in the declaration form which was given by the purchasing dealer. This is based on the fundamental principle that the declaration form is a document prepared by the purchasing dealer. Section 8(4) of the Central Sales Tax Act enjoins that the purchasing dealer would fill up the necessary particulars. Except the purchasing dealer, therefore, no other person is entitled to correct that document; that would mean tampering with the document. Neither the assessing officer nor the selling dealer has any power to correct the entries in that document. The power of the Tribunal to admit additional evidence cannot therefore be extended to correction of entries in Form C.

8. The analysis made in *Shri Anil Kumar Dutta and Others Vs. Additional Member, Board of Revenue*, . would support this conclusion. That was a case decided u/s 5(2)(a)(ii), proviso, of the Bengal Finance (Sales Tax) Act, 1941. The provisions therein are almost identical with those in Section 8 (1) and (4) of the Central Sales Tax Act. In that case the declaration forms given by the purchasing dealer were missing. The selling dealer, despite best efforts, could not find them out. He wanted to produce duplicate copies of the declarations from the purchasing dealer. Due to the adverse attitude taken by the departmental authorities, he was unable to procure them. He accordingly took steps before the assessing officer, to summon the purchasing dealer for giving a statement that the selling dealer sold the articles to him and could obtain from him the necessary

particulars enjoined upon in Form C. Their Lordships observed that the proviso was mandatory and that the claim for exemption was subject to the condition that the declaration form in its original must be produced before the assessing officer. Even if the declaration form would be missing, either due to accident like fire, or due to theft, no other evidence was admissible to substitute or supplement the declaration form prescribed under the law. Such a stringent view was taken as, according to their Lordships, this provision had been made in order to prevent fraud and for administrative convenience. Their Lordships were also conscious of the position that as a result of such strict construction, honest dealers may be penalised for faults for which they are not responsible. This decision is an authoritative pronouncement that the declaration Form C, unless produced with all the entries correctly filled, in original, cannot be substituted by any other evidence at the instance of the selling dealer.

The same view was reiterated in a subsequent decision of the Supreme Court in *The State of Madras Vs. Radio and Electricals Ltd. etc.*, . While examining the scheme of,, Section 8 (1) and (4) their Lordships observed thus :

If the certificate is defective in that it does not set out all the details, or that it contains false particulars about the order, bill, cash memo., or chalan, or about the number and date of the registration certificate and specifications of goods covered by the certificate of the purchasing dealer, the transaction will not be admitted to concessional rates.

These two decisions would also negative any plausible argument that the non-filling up or the incorrect filling up of the particulars required to be given in the declaration form would constitute a mere irregularity and not an illegality.

9. The result of the foregoing discussions may be summed up thus :

(1) The declaration in Form C must be filed in original.

(2) If, for some reason or other, such declaration form is lost-for which the selling dealer is not responsible-no other evidence is admissible in support of his case that, in fact, the particular goods were sold by the selling dealer to the registered purchasing dealer so as to entitle him to claim exemption.

(3) No evidence is admissible, at the instance of the selling dealer, to show that a particular entry in the declaration form was inadvertently made or wrongly made.

10. A question may arise as to what would happen in a case where a declaration form in Form C is wrongly filled up, in certain particulars, by the purchasing dealer and the selling dealer who had filed the same before the assessing authorities and also before the Tribunal, wants to take return of the same for rectification by the purchasing dealer. In our view, such a course is permissible. As has already been stated, the declaration form is the document of the purchasing dealer and he alone can rectify any mistake found in it. Supposing at the time when the form is filled up the purchasing dealer, through inadvertence, makes certain wrong entries, he is not precluded from correcting the same and

putting his initials. If some mistakes in the entries are found out, at a later stage, he can correct the same; there is no prohibition, in law, that he cannot correct his own document at a later stage when the mistake is brought to his notice. It would, therefore, be open to the selling dealer to ask for return of the document and to send it to the purchasing dealer for correction. But this again is subject to a rider. It is always open to the assessing authority to consider whether the steps to rectify the mistake were taken with due diligence and within a reasonable time. That would vary according to the facts and circumstances of each case and no hard and fast rule can be laid down. It is sufficient to say that there may be cases justifying the return of the document to the selling dealer who has produced them, so that he may get it rectified by the purchasing dealer.

11. On the aforesaid analysis, we are of opinion that the view taken by the Tribunal is wrong. The questions referred to us are answered in the negative.

12. It is unnecessary for us to say as to what the Tribunal should do after getting the answers to this reference. The position has been clearly stated in *E. Aswathiah v. Income Tax Commissioner, Mysore* [1967] 66 ITR 478 (S.C.). The following observations in paragraph 9 of the judgment may be quoted in this connection :

Section 66(5) of the Indian Income Tax Act, 1922, requires the Tribunal on receiving a copy of the judgment of the High Court to pass such orders as are necessary to dispose of the case conformably to such judgment. This clearly imposes an obligation upon the Tribunal to dispose of the appeal in the light of and conformably with, the judgment of the High Court. Before the Tribunal passes an order disposing of the appeal, there would normally be a hearing. The scope of the hearing must of course depend upon the nature of the order passed by the High Court. If the High Court has agreed with the view of the Tribunal, the appeal may be disposed of by a formal order : if the High Court disagrees with the Tribunal on a question of law, the Tribunal must modify its order in the light of the order of the High Court: if the High Court has held that the judgment of the Tribunal is vitiated, because it is based on no evidence or that it proceeds upon conjectures, speculation or suspicion, or has been delivered after a trial contrary to the rules of natural justice, the Tribunal would be under a duty to dispose of the case conformably with the opinion of the High Court and on the merits of the dispute. In all cases, however, opportunity must be afforded to the parties of being heard.

Section 66(5) of the Income Tax Act in relation to which the aforesaid observations were made corresponds to Section 24(5) of the Orissa Sales Tax Act and as such they are fully applicable here.

13. In the result the reference is accepted and the questions are answered in the negative. In the circumstances, there will be no order as to costs.

S. Acharya, J.

I agree.