(1987) 02 OHC CK 0015

In the Orissa High Court

Case No : Special Jurisdiction Case No. 99 of 1980

State of Orissa APPELLANT

Vs

Orissa Small Industries Corporation RESPONDENT

Date of Decision : 28-02-1987

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 24(5)

Citation : (1987) 67 STC 262

Hon'ble Judges : S.C. Mohapatra, J;R.C. Patnaik, J

Bench : Division Bench

Advocate : S.C. Ray, for the Respondent

Judgement

R.C. Patnaik, J.—On an application made by the Revenue u/s 24(1) of the Orissa Sales Tax Act, the following questions were referred for opinion of this Court along with the statement of the case :

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the burden was on the Revenue to prove the inter-State sale even if no evidence was adduced by the assessee in support of the claim of branch transfer ?

(ii) If the answer of the Honourable Court is in the negative, whether claim of branch transfer could be proved by other evidence in lieu of form F ?

2. The assessee, a Government of Orissa undertaking, is engaged in manufacture of television sets at its factory at Industrial Estate, Bhubaneswar. It despatched T.V. sets worth Rs. 5,24,460.00 from Bhubaneswar to Calcutta. The assessing officer was of the view that the despatch of T.V. sets to Calcutta amounted to inter-State sale. Appeal by the assessee proved unsuccessful. It, however, succeeded before the Tribunal. The Tribunal upset the views of the original and appellate authorities holding that when the Revenue has failed to adduce any evidence to show that the transactions were covered by inter-State sales, the burden was not on the assessee to show that the sales were branch transfer.

Mere despatch of goods from Orissa to outside the State was not exigible to Central sales tax. The Revenue could assess the sales turnover if it proved that the transactions were inter-State sales.

3. Inasmuch as the Central sales tax is not leviable in respect of transactions of transfer of goods from a head office or a principal to a branch or an agent or vice versa as these do not amount to sales, dealers evaded tax by showing genuine sales to third parties as transactions of transfer. With a view to plugging this loophole, Section 6-A was incorporated into the Central Sales Tax Act, 1966 providing that the burden of proving that the transfer of goods in such cases was otherwise than by way of sale would lie on the dealer who claimed exemption from tax on the ground that there was in fact no sale. The notes on clauses accompanying the statement of objects and reasons for the incorporation of Section 6-A read as under :

This clause seeks to insert a new Section 6-A in the principal Act for the purpose of providing that the burden of proving that any movement of goods from one State to another was occasioned otherwise than by way of sale shall be on the dealer making such claim. For the purpose of discharging this burden the dealer may produce a declaration in the prescribed form from the person in the other State to whom the goods have been sent along with evidence of such despatch of goods.

And Section 6-A reads as under :

6-A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.-(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, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods.

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under Sub-section (1) are true, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.

On a reading of Sub-section (1) of Section 6, there can be little doubt that the burden is on the dealer to prove that it is a mere branch transfer or transfer from the principal to the agent, and the movement of goods from one State to another was occasioned not by reason of sale. The Tribunal, therefore, was not right in holding that the Revenue was to prove the inter-State sale even if no evidence was adduced by the assessee in support of the claim of branch transfer. As we have said, the burden is on the assessee. The section is in clear and categorical terms and having regard to the purpose of incorporation of Section 6-A, it does not admit of any controversy. Answer to question No. (i) is, therefore, in the negative.

4. Whether branch transfer can be proved by other evidence-even without filing the prescribed F forms ?

Section 6-A(1) provides that where any dealer claims certain movement of goods from one State to another was not occasioned by reason of sale, for that purpose, he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may permit, a declaration duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods and as provided in Sub-section (2), if the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by the dealer are true, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed to have been occasioned otherwise than as a result of sale. Mere filing of F forms is not conclusive. It is open to the assessing authority to make an enquiry at that stage. The dealer has to satisfy him that the movement of goods from one State to another was occasioned otherwise than as a result of sale. Sub-section (1), therefore, categorically states that the dealer has to make an application in the prescribed form along with the evidence of despatch of such goods. The provision contained in Section 6-A is, therefore, an enabling provision. But does it estop the dealer who has not submitted the declaration in form F from proving aliunde that the movement of goods from one State to another was occasioned by reason of transfer of such goods and not by reason of sale ? In our opinion, there is nothing in Section 6-A to persuade us to hold that filing of declaration in form F is the only mode for discharging the burden. Filing of F form may be an easier and convenient mode. It does not prevent the dealer from discharging the burden by other relevant evidence. He is not estopped from proving by other evidence that he is not liable to pay tax. It has been held in Commissioner of Sales Tax v. Agra Food, Product Private Ltd. (printed as appendix at page 266 infra) 1984 STJ 136 (All.) and Commissioner of Sales Tax v. Camphor and Allied Products 1984 STJ 312 (All.) that the dealer can discharge the burden which lies upon him under Sub-section (1) of Section 6-A by other modes as well, apart from submitting declaration in form F to the assessing authority.

We, therefore, answer the second question in the affirmative.

5. In course of argument, it was contended on behalf of the dealer that at the hearing before the Tribunal he had the required declaration in form F to prove his claim of branch transfer and the Tribunal should have allowed the dealer the advantage thereof, if necessary, by a remand. We express no opinion thereon inasmuch as the Tribunal shall have to dispose of the matters u/s 24(5) in accordance with the opinion on the two questions now given by us.

6. The reference is answered accordingly.

S.C. Mohapatra, J.

7. I agree.

