

(1987) 08 OHC CK 0009

In the Orissa High Court

Case No : Special Jurisdiction Case No. 22 of 1981

State of Orissa

APPELLANT

Vs

Ramnarayan Sitaram

RESPONDENT

Date of Decision : 29-08-1987

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A, 8

Citation : (1988) 68 STC 153

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

Bench : Division Bench

Advocate : A. Pasayat, R. Chimanka, D.N. Mohanty and C. Behera, for the Respondent

Judgement

S.C. Mohapatra, J.—This is a reference u/s 24(1) of the Orissa Sales Tax Act, 1947 at the instance of the Revenue on the following questions of law arising out of the order :

(i) Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal is legally right to hold that production of F form in support of commission sales is not mandatory ?

(ii) Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal is justified in holding that the turnover of the dealer-opponent under the Central Sales Tax Act is not exigible to tax during the year 1974-75 if purchase tax has been paid on the very same turnover ?

2. From the statement of the case, it is revealed that the assessee is a partnership firm registered as a dealer under the Central Sales Tax Act read with the Central Sales Tax (Registration and Turnover) Rules. It carries on purchase and sale of jute in the course of inter-State trade and commerce. In the year 1974-75, it despatched jute weighing Q. 2,782.59 kgs. outside the State which was sold through commission agent. Those sales were not supported by the declaration in form F. Accordingly, deduction was disallowed and tax was

demanded on such sale. In respect of another Q. 3,640.53 kgs. of jute sold in the course of inter-State trade and commerce, no tax was paid by the dealer claiming that purchase tax was paid by it at the time of purchase under the Orissa Sales Tax Act. The assessing officer also demanded tax on the said sale. Assessment was confirmed in first appeal but in second appeal, the Tribunal held that the proof of sale through commission agent in respect of inter-State trade and commerce can be proved otherwise than furnishing F form, since production of F form is not mandatory. Since the question of non-liability to pay tax in respect of jute sold in the course of inter-State trade and commerce for which purchase tax had been paid was not enquired into, the assessment was set aside with direction to the Sales Tax Officer to find out after enquiry if purchase tax under the Orissa Sales Tax Act was paid on the jute which was subsequently sold in the course of inter-State trade and commerce.

3. The first question has been directly answered in favour of the assessee in a decision of this Court in (1978) TTJ 353 (T.M. Veener Industries v. State of Orissa) and a 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 [1987] 67 STC 262. In the latter decision it has been held :

...In our opinion, there is nothing in Section 6A 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 from proving by other evidence that he is not liable to pay tax....

4. Mr. A. B. Misra, the learned Standing Counsel, submitted that in the aforesaid decision, rule 12(5) and (7) of the Central Sales Tax (Registration and Turnover) Rules have not been considered which would lead to the conclusion that the only mode of proof, that the goods were transferred from one State to the other otherwise than as a result of sale. They read as follows :

Rule 12:

(1) to (4)...

(5) The declaration referred to in Sub-section (1) of Section 6A shall be in form F :

(6) ...

(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 :

....

Mr. Misra submitted that the use of the word "shall" in both the provisions make it clear that the same is mandatory. Reliance is placed by him on the decision of the Madhya Pradesh High Court reported in [1980] 46 STC 298 (opichand v.

Commissioner of Sales Tax, M. P., Indore) where it has been observed :

...The declaration referred to in Section 6A(1) of the Central Act as to be made in form F as provided under rule 12(5) of the Central Sales Tax Rules, 1957....

This observation of the Madhya Pradesh High Court was made in the context of considering whether the Sales Tax Officer was correct in supplying less than the required number of F forms applied for by the dealer. When the decision is not on the question as in this case, an observation in another context does not persuade me to accept the contention of Mr. Misra.

Mr. Misra relied upon two decisions of the Madras High Court reported in [1962] 13 STC 686 (Deputy Commissioner of Commercial Taxes v. Manohar Brothers) and [1979] 44 STC 239 [State of Tamil Nadu v. Chellaram Garments (P.) Ltd.] and a decision of the Allahabad High Court reported in [1969] 24 STC 81 (Commissioner, Sales Tax, Uttar Pradesh v. Indo Overseas Agencies, Kanpur) in support of his contention that declaration in F form is mandatory to get the benefit u/s 6A. These decisions are in respect of liability to pay tax by a dealer at a lesser rate as provided in Section 8 by filing C or D form. Apart from the difference in language of Section 6A and Section 8(4) of the Act, in the latter situation, there is admitted liability on account of sale of goods and the dealer would get a benefit by producing the C or D form but in the former case, there being no sale, the dealer is not liable. But to avoid an inference that there was a sale under the Act, the dealer has the option to prove the same by producing the F form. This is not a conclusive proof. The assessing officer has to come to a definite conclusion that the transactions claimed to be transfers to another State are not otherwise than sale, but are sales in the course of inter-State trade and commerce and for that purpose has the jurisdiction to make further enquiry to find out whether the transaction covered under the F form is a sale in the course of inter-State trade and commerce or only a transfer as claimed by the dealer not amounting to such sale. Moreover, the word "shall" used in Sub-rules (5) and (7) of rule 12 being in a procedural statute cannot be held to be mandatory when non-compliance has not been provided with any adverse effect. The decision in S. J. C. No. 99 of 1980 [State of Orissa v. Orissa Small Industries Corporation [1987] 67 STC 262 (Ori)] is not in any way affected by non-consideration of the provisions of the sub-rules. The provisions in the Rules cannot override the provisions in the Act. Accordingly, the question No. 1 is answered against the Revenue and in favour of the assessee. The Tribunal is correct in its conclusion.

5. As regards the second question, the assessment in that regard was set aside. The Tribunal would have been correct in view of a decision of the Full Bench of this Court reported in [1980] 46 STC 384 (Kamal Kumar Agarwal v. Sales Tax Officer, Cuttack-I, East Circle). In the statement of case, it has been observed that the notification dated 8th December, 1966, referred to by the Full Bench had been withdrawn with effect from 1st April, 1973, by the State Government. Mr. Misra submitted that on withdrawal of the notification, the decision of the Full Bench would no more have any effect. Answering the question as framed without

necessary facts at this stage would be prejudicial to both the assessee-dealer and the Revenue. However, it can safely be concluded that non-consideration of the notification while setting aside the assessment in that regard makes the decision of the Tribunal vulnerable. The Tribunal is directed to consider the question afresh with reference to the said notification.

6. In the result, question No. 1 is answered against the Revenue and question No. 2 is answered in a modified form in favour of the Revenue to the extent indicated above. There shall be no order as to costs.

H.L. Agrawal, C.J.

7. I agree.