(1970) 02 OHC CK 0025

In the Orissa High Court

Case No : S.J.Cs. No''s. 32 to 38 of 1966

Subhash Chandra Ghosh APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 09-02-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 7

Citation : (1970) 26 STC 211

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

Bench : Division Bench

Advocate : K.C. Lenka, for the Appellant; Standing Counsel (Sales Tax), for the Respondent

Judgement

G.K. Misra, C.J.—The assessee carries on business in timber and has been assessed under Rule 12(6) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as the Orissa Rules) for the quarters ending 31st of March, 1959 to 30th of September, 1960. The facts leading to assessment under Rule 12(6) may be mentioned in short. On 20th of February, 1959, the assessee filed an application for registration u/s 7 of the Central Sales Tax Act, 1956 (hereinafter referred to as the Act). Section 7(1) of the Act says that every dealer liable to pay tax under that Act shall, within such time as may be prescribed for the purpose, make an application for registration under that Act to such authority in the appropriate State as the Central Government may, by general or special order, specify and every such application shall contain such particulars as may be prescribed. Rule 3 of the Central Sales Tax (Registration and Turnover) Rules, 1957 (hereinafter referred to as the Registration and Turnover Rules) provides for filing an application for registration u/s 7 of the Act by a dealer to the notified authority in Form ''A''. Form ''A'' prescribes various particulars. It appears that there were various defects. From time to time the assessee was given an opportunity to remove the defects and ultimately the application for registration was granted in December, 1962. The department treated the assessee as not having been registered from 20th of February, 1959, till December, 1962, when the registration certificate was granted and accordingly assessed to sales tax Under Rule 12(6). The assessee contended that as ultimately the registration certificate was granted it must be operative from the date of the application and that during the relevant period he must be treated as a registered dealer and not as an unregistered dealer. The assessee''s stand was rejected although. Being aggrieved by the order of the Tribunal, the assessee asked for a reference. The reference application was rejected. The assessee approached this court. On 12th December, 1966, a Bench of this court was of opinion that the following question of law arose out of the appellate order :

Whether on the facts and circumstances of the case the assessments made under Rule 12(6) of the Orissa Rules framed under the Central Sales Tax Act are valid in law.

2. The answer to the aforesaid question would depend upon a decision as to whether the assessee would be treated as a registered or unregistered dealer from 20th of February, 1959, till December, 1962.

3. Rule. 5 of the Registration and Turnover Rules runs thus:

5. (1) When the notified authority is satisfied, after making such enquiry as it thinks necessary, that the particulars contained in the application are correct and complete and the fee referred to in Sub-rule (3) of Rule 4 has been paid, it shall register the dealer and grant him a certificate of registration in Form ''B'' and also a copy of such certificate for every place of business within the State other than the principal place of business mentioned therein.

(2) When the said authority is not satisfied that the particulars contained in the application are correct and complete, or where the fee referred to in Sub-rule (3) of Rule 4 has not been paid, he shall reject the application for reasons to be recorded in writing:

Provided that before the application is rejected, the applicant shall be given an opportunity of being heard in the matter and, as the case may be, of correcting and completing the said particulars or complying with the requirements of Sub-rule (3) of Rule 4.

It is clear from Sub-rule (2) that if the particulars in the application are not correct and complete or if the appropriate fee has not been paid, the application shall be rejected for reasons to be recorded in writing. This is, however, subject to the proviso that before the application is rejected, the applicant shall be given an opportunity of being heard in the matter and of correcting and completing the particulars or complying with other requisites.

4. In this case though the application was defective in many particulars, by virtue of the proviso to Rule 5(2) of the Registration and Turnover Rules, the assessee was being given an opportunity from time to time to rectify the defects and when the defects were rectified the registration certificate was granted in December, 1962. Once the registration certificate was granted, it must be operative from

the date of the application. It was not open to the department after the grant of registration certificate to say that during the relevant period the assessee was an unregistered dealer. That conclusion was possible only if the application had been rejected for non-removal of defects when it could be said that no application for registration had been filed.

5. Rule 12(6) of the Orissa Rules lays down that if a dealer is liable to pay tax under the Act and has nevertheless not applied for registration, the Commissioner shall after complying with the provisions of Rule 9 assess to the best of his judgment, the amount of tax due from the dealer and may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount, provided that no penalty shall be levied for the quarter during which the dealer first becomes liable to pay tax under the Act. There is no doubt that the dealer was liable to pay tax under the Act during the relevant period. The controversy is whether he had not applied for registration. The department treated the assessee as not having applied for registration on the ground that the application was defective on the date it was filed. As we have already said that once the application for registration is ultimately allowed it must be operative from the date of its filing. It could have been treated as not having been filed if it would have been ultimately rejected. We cannot, therefore, say that the dealer had not applied for registration. Accordingly Rule 12(6) has no application.

6. On the aforesaid analysis, the conclusion of the assessing authorities that the assessee was an unregistered dealer during the relevant period cannot be supported.

7. We would, accordingly, answer the question by saying that in the facts and circumstances of the case the assessments made under Rule 12(6) of the Orissa Rules framed under the Central Sales Tax Act are not valid in law.

8. The references are accepted, but in the circumstances there will be no order as to costs. The reference fee deposited in each of these references be, however, refunded to the petitioner.

S. Acharya, J.

I agree.

