(2001) 09 OHC CK 0014

In the Orissa High Court

Case No : Original Jurisdiction Case No. 560 of 1999

Sundaram Finance Ltd. APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 26-09-2001

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 6(2)
Orissa Sales Tax Act, 1947 — Section 12(4)
Orissa Sales Tax Rules, 1947 — Rule 94A(3)

Citation : (2002) 125 STC 565

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

Bench : Division Bench

Advocate : A.K. Ray, S. Ray, S. Dey, A. Mohanty, S.P. Das and S.R. Panigrahi, for the Appellant; S.P. Mohanty, Additional Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, Ag. C.J.

1. In this writ petition, the petitioner seeks to assail the validity of the assessment order dated November 6, 1998 (annexure 1) made by the Sales Tax Officer, Bhubaneswar-I Circle for the year 1997-98 u/s 12(4) of the Orissa Sales Tax Act, 1947. The petitioner feels aggrieved by that portion of the order in which the Sales Tax Officer has treated the value of the goods supplied to the lessee, International Aluminium Products Limited (in brief "I.A.P.L.") as per the agreement as "intra-State sale".

2. The case of the petitioner is that it is a company registered under the Companies Act, 1956. It is essentially a financial institution and extends financial assistance to industrial houses/special contractors who are engaged by it for setting up of plants and machineries. As per the prevalent practice, they entered into agreement with their customers either by way of hire-purchase agreement or lease agreement. As both types of transactions are now brought into the

definition of "sale", the petitioner has obtained registration certificates both under the Orissa Sales Tax Act, 1947 as well as under the Central Sales Tax Act, 1956.

For the year 1997-98 the petitioner returned a gross turnover of Rs. 91,75,899.50 and taxable turnover at nil on the ground that such turnover is in relation to inter-State sale. It had also entered into transaction with Mukund Ltd., for financing design, engineering, manufacturing and supervision of erection of 220 KV switch yard equipments and supply of spare parts and design engineering, manufacturing, supply supervision of and commission 33/11 KV receiving station at I.A.P.L., Angul. The number of contracts with I.A.P.L. are IAPL/KEC/E-96-97-003 dated July 19, 1996 and IAPL/KEC/96-97/E/ 004 dated November 28, 1997. The I.A.P.L. and Mukund Ltd., had entered into separate agreements with Kirloskar Electric Company Ltd., for the aforesaid projects to be erected at Angul. The I.A.P.L. and Mukund Ltd., made arrangements with the petitioner for financing the aforesaid projects for maximum value of Rs. 800 lakhs and accordingly entered into an agreement to the effect that when the equipments would be transported by Kirloskar Electric Company, the assessee-dealer would release value of the goods to the Kirloskar Electric Company under intimation to I.A.P.L. and the invoice would be raised on the petitioner and on account of I.A.P.L. and transported to the campus/work-site at Angul.

Copy of the agreement with I.A.P.L. is at annexure 3 which provides as follows :

"...........AND WHEREAS the intending lessee requested the intending lessor to extend to the intending lessee the facility of lease finance for acquiring/ purchasing by import from countries abroad and/or from established manufacturers in India the equipment which may be required by the intending lessee from time to time for a value not exceeding Rs. 800 lacs.

AND WHEREAS the intending lessor has acceded to the said request and sanctioned a limit of Rs. 800 lacs for import or purchase of equipment locally as may be required by the intending lessee and lease them to the intending lessee on such terms and conditions as are stipulated herein and in the lease agreements (s) to be executed by and between the intending lessor and the intending lessee in respect of each of such arrangements.

NOW IN CONSIDERATION of the intending lessor agreeing at the intending lessee''s request to purchase by import or otherwise such equipment as may be required by the intending lessee from time to time for lease to the intending lessee the intending lessor and the intending lessee agree, covenant and declare as follows :

1. At the request of the intending lessee and subject to the intending lessee complying with the terms and conditions herein contained and the lease agreement(s) to be executed by and between the intending lessor and the intending lessee in respect of the subject-matter thereof, the intending lessor agrees to purchase (by import or otherwise) the equipment as per the particulars

contained in the intending lessee''s request............".

In terms of this agreement, petitioner placed order with Kirloskar for supply of the aforesaid materials to I.A.P.L. and Mukund Ltd., with instructions to raise invoice in the name of the petitioner and on account with I.A.P.L. which is evident from annexure 3. As a consequence of this order, Kirloskar and other suppliers supplied goods from outside the State of Orissa to the destination in Orissa and the petitioner endorsed transit document in favour of the lessee which were received by them.

On the basis of the aforesaid, the assessing officer found transaction during the year of supply from Kirloskar was to the tune of Rs. 2,20,04,963.68 for which petitioner supplied way bills in form No. XXXII for its movement. The assessing officer further found that the goods though moved from outside the State as a result of the contract between ''the petitioner and such outside supplier, goods have been supplied by petitioner which were subsequently sold to I.A.P.L. when the goods were in transit. Since the transaction as admitted by the dealer prime facie falls u/s 6(2)(B) of the Central Sales Tax Act, 1956 (for short, "the CST Act"), the assessee was asked to produce the relevant document in support of such transaction. The assessing officer further concluded that as per provisions laid down under Clause (B) of Sub-section (2) of Section 6 of the CST Act, the dealer was required to furnish the declaration forms in "C" to the first selling dealer in course of inter-State trade and commerce and to obtain declaration in form "E" from him for claiming exemption from payment of further tax on the turnover of sale effected by it.

3. As already stated for the disputed year 1997-98 the petitioner returned G.T.O. of Rs. 91,75,899.50 disclosing the taxable turnover at nil. In course of the assessment proceedings the petitioner produced relevant documents disclosing the sale of goods amounting to Rs. 91,75,899.50 as goods subject to tax at the first point in the series of sales and claimed that they are exempt from payment of tax. The assessing officer on being satisfied with the invoices produced before him accepted the stand taken by the petitioner that under the scheme of the Orissa Sales Tax Act, 1947, there is no scope for double taxation particularly when the goods are subject to tax at the first point in the series of sales.

The allegation of the petitioner is that having held so in its favour, the assessing officer fell into error in observing as follows :

"But, however, apart from the above turnover, there found to be certain transactions which the dealer-company found to have effected on the strength of declaration in form XXXII issued from this office, which stand at Rs. 2,20,04,963.68. But found to have not disclosed in the return tiled. Such transaction when enquired, stated to be their purchases from outside the State from Kirloskar Electric Co. Ltd., Bangalore, Premier Power Products (Cal) (P) Ltd., Calcutta, Torrent Cables (P) Ltd., Nadiad, Driescher Panickkar Switchgear Ltd., Sriperumbudur, Kirloskar Power Equipments Ltd., Pune, which were subsequently sold to one I.A.P.L. of Angul, when the goods were in transit. Since the transaction as admitted by the dealer prima facie falls u/s 6(2)(B) of the C.S.T. Act, Sri V. Sukumar was asked to produce the relevant document in support of such transactions. Sri Sukumar in his turn, furnished a statement disclosing the name of the consignor, consignee, description of goods, invoice No., date, way bill No., place of despatch, destination, vehicle No. etc., for a total turnover of Rs. 2,20,04,963.68 duly signed. But could not produce any other evidence for such sales which has been effected by way of transfer of documents to the title of the goods as admitted by Sri Sukumar. On the other hand, he disowned their tax liability on the plea that the subsequent sales has been effected pursuant to a prior agreement (in the nature of lease contract)."

4. Shri Ray, learned counsel for the petitioner contended that the above findings recorded by the assessing officer are not tenable in law. Learned counsel appearing for the department supported the impugned order on the ground that on the basis of facts the above observations are justified.

5. Careful perusal of the findings recorded by the assessing officer would show that the goods were supplied by the outside State supplier in course of inter-State sale which is taxable as per provision of Section 2(a) of the C.S.T. Act, and when title of goods are transferred in course of transit by endorsement of the transit document in favour of the lessee ; subsequent sale are transit sale u/s 3(b) of the C.S.T. Act. The question of exemption u/s 6(2) is a matter which can be looked into during C.S.T. assessment, but mere filing of form XXXII would not change the inter-State sale to intra-State sale specially when as per provision of the Orissa Sales Tax Act a dealer who is making purchases from the outside the State is required to supply way bill to the outside state supplier so as to facilitate its movement inside the State of Orissa and as such, supply of from XXXII by the petitioner to the outside supplier would not change the character "Sale" from intra-State sale to inter-State sale. Further more, the Assessing Officer having found that the first sale from the supplier to the petitioner being inter-State sale, taxability of event is a matter in the appropriate State from which movement of the goods had started. There is no requirement for assessing the sale turnover of said goods in Orissa under the provisions of the Orissa Sales Tax Act. We may note that the Assessing Officer has also found, as stated above, that there is subsequent sale between the petitioner and I.A.P.L. in course of transit of said goods and whether subsequent sale is exempt from tax as per the provisions of section of the C.S.T. Act is a matter to be looked into while assessment under the C.S.T, Act if and when taken up against the petitioner. Therefore, adducing evidence in the shape of declaration forms "C" and "E" during the assessment proceedings under the Orissa Sales Tax Act is not necessary. The Assessing Officer clearly erred in law in drawing adverse inference for non-production of these documents as he has himself concluded otherwise in the impugned order passed under the Orissa Sales Tax Act.

6. Learned counsel for the department by referring to a judgment of the

Supreme Court in 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, submitted that taxability of goods for which transfer of right to use which is a sale as taxable in the place where the contract is executed, on our direction, learned counsel for petitioner has produced before us contract entered into between it and I.A.P.L. which indicates that contract has been executed at Madras Therefore, even if subsequent sale is to be taxable, it is an inter-State sale and the subsequent sale having been a transit sale is covered u/s 3(b) of the C.S.T. Act and assessment under the O.S.T. Act of turnover of sale of the aforesaid goods is without jurisdiction.

7. For the reasons aforesaid, the impugned order of assessment made u/s 12(4) of Orissa Sales Tax Act, 1947, cannot be supported in law and is hereby quashed.

The writ petition is allowed.

It is needless to say that it is open for the department to initiate a proceeding, if so advised, under the Central Sales Tax Act in accordance with law to find out whether subsequent transit sale is exempt u/s 6(2).

P.K. Misra, J.

8. I agree.