

(1969) 07 OHC CK 0015

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 86 to 89 and 99 to 102 of 1964

Tata Iron and Steel Co. Ltd.

APPELLANT

Vs

The State of Orissa : No. 2

RESPONDENT

Date of Decision : 10-07-1969

Acts Referred:

Central Sales Tax Act, 1956 — Section 8
Constitution of India, 1950 — Article 226, 227

Citation : (1970) 25 STC 177

Hon'ble Judges : G.K. Misra, C.J.;B.K. Patra, J

Bench : Division Bench

Advocate : H. Sen, S.S. Hazra and S. Ghosh, for the Appellant; Standing Counsel (Sales Tax), for the Respondent

Judgement

G.K. Misra, C.J.—The petitioner is a company under the Companies Act, 1956, and carries on business at Gormahisani in the district of Mayurbhanj. It is a registered dealer under the Central Sales Tax Act. The assessments were in respect of four quarters ending with 30th June, 1958, 30th September, 1958, 30th December, 1958, and 31st March, 1959. The assessments relate to sales of ferro manganese ores by the petitioner to various parties outside the State of Orissa in the course of inter-State trade and commerce. They were sold to registered dealers and such goods were specified in the certificate of registration of such registered dealers as being required by them for the purpose of resale or use in the course of manufacture. In law, the petitioner is to pay Central sales tax during the relevant period at the concessional rate of one per cent, if the declarations in "C" Form were attached to the returns in support of the claim.; otherwise, tax was payable at the full rate of five per cent. The Sales Tax Officer assessed the petitioner at the full rate of five per cent. The Assistant Commissioner of Sales Tax (first appellate authority) held that the petitioner was entitled to pay at the concessional rate and reduced the assessment to nil as tax at the rate of one per cent, had already been paid. The Tribunal restored the order of the Sales Tax Officer. It held that the petitioner was not entitled to the

concessional rate as the declarations were not attached to the returns but were filed beyond the period of limitation. It accordingly held that the petitioner was liable to pay Central sales tax at the full rate of five per cent. Against the appellate order of the Tribunal the petitioner filed four separate applications u/s 24 of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the Act) in respect of each of the aforesaid quarters, for reference to the High Court-of 14 questions of law arising out of the appellate order of the Tribunal. The 14 questions framed by the petitioner are as follows :

1. Whether the order of the Tribunal was made in contravention of Rule 12(7) of the Central Sales Tax (Orissa) Rules, 1957.
2. Whether under Rule 12(8) of the said Rules the said order could be made.
3. Whether power of assessment had been delegated to the Sales Tax Officer, Mayurbhanj, and whether he had jurisdiction to assess.
4. Whether the order of assessment of the said Sales Tax Officer against Tata Iron and Steel Co. is valid and binding against TISCO Ltd. or whether it is an assessment against the said Limited Company.
5. Whether the order of the said Sales Tax Officer was passed in contravention of Rule 12(7) of the said Rules and beyond the requisite period of 36 months.
6. Whether the Tribunal should have in second appeal and in the absence of specific ground of appeal allowed a new plea to be raised or should have accepted the plea that the declaration forms were not filed in respect of more than one transaction of sale.
7. Whether any authority was duly or at all prescribed u/s 8(4) of the Central Sales Tax Act, 1956, before whom the declaration forms were to be filed.
8. Whether Rule .12(8) [Rule 12(10)?] of the said Rules fixing a timelimit for filing declarations or providing that the same must be filed with the returns is ultra vires and of no effect.
9. Whether the amendment to the said Rule 12(10) made on 22nd June, 1963, had retrospective effect.
10. Whether the question whether the declaration forms were filed in time or with the returns or were prevented from being filed by the sales tax authorities along with the returns, is a question of record and not a disputed question of fact and whether the Tribunal should have gone into this question and whether it allowed the applicant to produce oral evidence on that question.
11. Whether in the facts and circumstances of the case valid declaration forms were filed before the Sales Tax Officer and the Assistant Commissioner.
12. Whether there was any evidence or material or admission to come to a finding that the declaration forms had been filed in respect of more than one transaction of sale or before actual sales had been effected, and if so are the

declaration forms invalid.

13. Whether the Sales Tax Officer and the Assistant Commissioner impliedly condoned the irregularity, if any, in the matter of filing the declaration form and whether in view of the notification dated 25th March, 1963, the Tribunal was justified in holding that the declaration forms were" not filed in the prescribed manner u/s 8(4) of the said Act.

14. Whether in the facts and circumstances of the case the applicant was liable to be taxed only at the concessional rate and whether the applicant was liable to be assessed to sales tax for Rs. 91,858 or any part thereof.

The Tribunal's order of reference is very cryptic. It does not purport to state the facts out of which the aforesaid questions of law arose. Without making any discussion regarding facts or law the Tribunal expressed its view in a slipshod manner as follows :

It is unnecessary to submit an unwieldy number of questions of law when a general question of law will suffice the purpose and the petitioner can raise all his legal contentions under that general question of law. So, I frame the following question for the purpose of reference :

Whether in the circumstances of the case the Tribunal was justified in holding that the petitioner was not entitled to the concessional rate and whether the Orissa Sales Tax Act and the Rules framed thereunder support the legal finding of the Tribunal.

Accordingly the Tribunal referred the aforesaid compendious question only as framed by him. The four cases referred to by the Tribunal have been numbered as S.J.Cs. 86 to 89 of 1964.

2. The petitioner was not satisfied with the order of reference made by the Tribunal as that was contrary to the provisions of Section 24 of the Act and as the Tribunal did not state the facts on the basis of which the various questions framed by the petitioner were urged, nor did it give its opinion on each of the questions of law. The petitioner accordingly filed four applications u/s 24(2)(b) of the Act and these references have been numbered as S.J.Cs. 99 to 102 of 1964.

3. As all these references relate to the identical questions inter partes they were analogously heard.

4. In the course of hearing of these S.J.Cs. a preliminary objection was taken by the learned Standing Counsel that question No. 8 could not be answered by the High Court in exercise of its advisory jurisdiction u/s 24 of the Act. The petitioner accordingly filed writ applications under articles 226 and 227 of the Constitution challenging the vires of Rule 12(10) of the Central Sales Tax (Orissa) Rules, 1957, as it stood during the relevant period.

5. Mr. Ghosh for the petitioner urges that the four references made by the Tribunal in S.J.Cs. 86 to 89 of 1964 are not in accordance with law inasmuch as

there is no statement of facts and the points of law framed by the petitioner have not been discussed in the reference orders and as such these four references should be discharged and the Tribunal should be called upon to make reference in accordance with law in S.J.Cs. 99 to 102 of 1964. This contention seems to be well-founded and must be accepted for reasons given hereunder.

6. Section 24(1) of the Act lays down that either the dealer or the State Government may require the Tribunal to refer to the High Court any question of law arising out of the appellate order of the Tribunal. If the Tribunal makes a reference it must draw up a statement of the case and refer it to the High Court. The question for consideration at this stage is : what is the meaning of the expression "any question of law arising out of such order". The matter is concluded by Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., , which arose u/s 66(1) of the Income Tax Act, 1922. The majority of their Lordships laid down the following propositions in paragraph 31 of the judgment:

(1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

(2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is, therefore, one arising out of its order.

(3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.

(4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it.

Stating the position compendiously, it is only a question that has been raised before or decided by the Tribunal that could be held to arise out of its order.

The aforesaid propositions apply in terms to the identical expression used in Section 24(1) of the Act. If the learned Tribunal had kept these propositions in view, it would have stated the relevant facts, examined each of the questions framed by the petitioner and seen whether it came within the ambit of the first three propositions so as to be a question of law arising out of the order. That requires a thorough application of the mind, investigation into questions of fact and law with reference to the grounds of appeal filed before the Tribunal, its appellate order and the questions and contentions urged at the time of hearing of arguments. In N. N. Sur v. State of Orissa 31 (1965) C.L.T. 83, a Bench of this Court pointed out how the Tribunal should exercise its power and jurisdiction u/s 24(1) of the Act. In paragraph 4 of the judgment it was observed thus :

It is elementary that whenever a question of law is raised before the Tribunal it must apply its mind to the question, categorically give an answer whether it raises any question of law or not, and thereafter refer the question if it is one of

law arising out of its appellate order.

The Tribunal is not to indulge in slipshod discussions and should not shirk its duty conferred by the section. It was also pointed out in that case that the duty of the High Court is to start with the statement of the case and the final statement of facts and to answer the question of law with reference to these statements. The reference order of the Tribunal is bereft of any discussion and expression of its opinion on each of the questions posed in order to see whether it is a point of law arising out of its order. The references made by the Tribunal being in illegal exercise of its jurisdiction are not valid references u/s 24(1) of the Act and are accordingly discharged.

7. On the aforesaid analysis the references filed by the petitioner (S.J. Cs. 99 to 102 of 1964) are maintainable as these questions were not referred at all to the High Court. It may be taken that the Tribunal refused to make the reference to the High Court in exercise of its powers u/s 24(2) of the Act and the petitioner was therefore entitled u/s 24(2)(b) to apply to the High Court against such refusal. Upon hearing the arguments of the parties we are satisfied that the refusal of the Tribunal to refer such questions was not justified. We would have accordingly directed the Tribunal to state a case and refer those questions to the High Court which according to it are questions of law arising out of its order.

8. Asking for a statement of the case in S.J.Cs. 99 to 102 of 1964 does not however arise in view of our order passed in O.J.C. No. 450 of 1969* heard inter pares on the identical matters. Therein we have quashed the appellate order of the Tribunal and have directed it to rehear the four appeal cases in accordance with the observations made therein and in accordance with law. As the appellate order of the Tribunal no longer exists in view of our decision in O.J.C. No. 450 of 1969,¹ the question of calling for further references does not arise.

In this view of the matter all the eight references are discharged. In the circumstances the parties to bear their own costs.

B.K. Patra, J.

I agree.

1. Since reported at p. 171 supra