
(1970) 03 OHC CK 0004

In the Orissa High Court

Case No : Special Jurisdiction Case No. 85 of 1967

Vijaya Lakshmi Stores

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 10-03-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (1970) 26 STC 509

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

Bench : Division Bench

Advocate : N.N. Bhattacharya, for the Appellant; S.C. Mohapatra, Standing Counsel (Sales Tax), for the Respondent

Judgement

G.K. Misra, C.J.—The question referred to this court u/s 24(1) of the Orissa Sales Tax Act, 1947, runs thus :-

Whether on the facts and circumstances of the case, the non-acceptance of the duplicate declaration form "C" by the first appellate authority in respect of the goods worth Rs. 10,496.80 and thereby denying the concessional rate of tax u/s 8(1)(b) of the Central Sales Tax Act, is justified.

2. The assessment relates to the quarter ending 31st March, 1962. The dealer took time before the assessing officer for production of declaration in form "C" on the ground that the original, being defective, had been returned to the purchasing dealer for being sent back after correction and that it was not received by the time the assessment was completed on 30th September, 1963. The Sales Tax Officer accordingly did not allow the concessional rate at 1 per cent. but made the assessment at 7 per cent. u/s 8(2)(b) of the Central Sales Tax Act. Before the first appellate authority the duplicate declaration in form "C" was produced but the same was not accepted. The Tribunal also did not accept it. Accordingly the assessee asked for a reference and that is how the aforesaid question has been referred to us.

3. Rule 6(d) of the Central Sales Tax (Orissa) Rules, 1957, was amended on 1st October, 1958, by Notification No. 31729 C.T.A.-4/58F. Clause (iv) of the amended Rule 6(d) reads as follows :

If a duly filled in and signed declaration form after issue by the purchasing dealer is lost in transit or from the custody of the selling dealer, the latter shall obtain a duplicate copy of the declaration from the registered dealer to whom he sold the goods and produce it before the Sales Tax Officer or the Assistant Sales Tax Officer, as the case may be, in support of his claim u/s 8(1) of the Act:

Provided that no duplicate copy of the declaration form shall be valid unless the purchasing dealer granting the duplicate copy endorses, in each of the three parts thereof, a certificate in red ink in the following form :

I hereby certify that this is the duplicate of the declaration form No...signed by...on...and issued to...who is a registered dealer of....(State) and whose registration certificate number is....

As appears from the statement of fact in the order of reference, the original was lost in transit and that was why the duplicate was issued.

4. The short question that arises for consideration is whether the first appellate authority should have accepted the duplicate declaration in support of the petitioner's claim for concessional rate.

5. The legal position has, in the meantime, been settled by this court in *Tata Iron & Steel Co. Ltd. v. State of Orissa and Ors.* [1970] 25 S.T.C. 171. Therein it has been pointed out that it may so happen in certain cases that declarations might be filed for the first time at the appellate stage. If sufficient explanation is furnished by the assessee as to why they were not filed when the order of assessment was made, it will be open to the appellate authority, in the facts and circumstances of the case, to entertain the declaration if he is satisfied with the explanation so furnished. The assessing authorities as well as the Tribunal rejected the declaration form on the erroneous view that unless it is attached to the return, it could not, in law, be accepted. That view is no longer sustainable. The Tribunal therefore shall have to consider whether the dealer has made out a case for acceptance of the duplicate form at the appellate stage as laid down in the aforesaid decision.

6. Our answer to the question would be that the Tribunal was not justified in rejecting the declaration form "C" filed at the first appellate stage without further examining the question whether there were justifiable reasons for filing it at that late stage.

7. The reference is accordingly accepted, but in the circumstances there will be no order as to costs. Reference fee be refunded.

S. Acharya, J.

I agree.