

Supreme Court of India

Jeypore Suger Company Ltd. vs Sales Tax Officer And Ors. on 6 November, 1995

Equivalent citations: JT 1998 (8) SC 11 a, (1998) 9 SCC 358

Bench: B Hansaria, K Paripoornan

ORDER

1. Special leave granted.

2. Heard counsel for the parties.

3. The appellant had initially challenged its exigibility to sales tax on the transactions in question on the ground that the sale was in the course of export. This contention came to be rejected ultimately even by this Court. On this being done, a petition was filed seeking clarification of the order dated 2-5-1991, by which the contention of the appellant relating to non-eligibility had been rejected. In that application, the prayer was to permit the appellant to approach the sales tax authority concerned for appropriate relief on the basis of "C Forms" issued by the MMTC of India and direct it to pass appropriate orders in accordance with law. That petition was dismissed as withdrawn.

4. The appellant, thereafter, approached the High Court of Orissa challenging the order of the Tribunal and this time the prayer was that the benefit of "C Forms" be made available in calculating the amount of sales tax to be paid. This prayer has been rejected by the High Court on the ground of constructive res judicata.

5. We have heard Shri Salve, the learned Senior Counsel for the appellant, and Shri Mohanty for the respondents. Shri Mohanty has sought to support the impugned order of the High Court on the ground that as the point now raised by the appellant was available earlier and was not taken and as the aforesaid application for clarification was withdrawn, the appellant may not be permitted to raise the same ground. According to us, it would not be just and proper to deny relief to the appellant, which is otherwise due, on the ground that earlier it had only assailed the question of exigibility to tax. It is correct that the plea now taken could have been advanced earlier as well, but the fact this was not done, should not be a ground to deny the relief which is otherwise due to the appellant. The technical plea of constructive res judicata should not stand in the way of the appellant in a case of the present nature.

6. The appeals are, therefore, allowed. The assessing authority is directed to take note of "C Forms" and thereafter to pass assessment orders in accordance with law.