(1987) 04 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 474 of 1979

Ali Husein and Another — APPELLANT

Vs

Sales Tax Officer and Another — RESPONDENT

Date of Decision : 22-04-1987

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 12(4), 5(2)(A)(a)(ii)

Citation : (1988) 68 STC 319

Hon'ble Judges : S.C. Mohapatra, J;R.C. Patnaik, J

Bench : Division Bench

Advocate : B. Agarwal, M.R. Panda and R.S. Agarwal, for the Appellant; Standing Counsel (Commercial Taxes) for opposite party No. 1, for the Respondent

Judgement

S.C. Mohapatra, J.—This is a writ application by the registered dealer under the Orissa Sales Tax Act (in short "the Act") and one of its partners to quash the order of assessment for the year 1976-77 passed by the Sales Tax Officer who refused to deduct the turnover of sales tax-free to the registered purchasing dealers for computing the taxable turnover as envisaged u/s 5(2)(A)(a)(ii) of the Act. The registered dealers purchased the goods tax-free from the dealer giving declarations as envisaged in Rule 27(2) of the Rules made under the Act.

2. Section 5(2)(B) of the Act provides that the deductions shall be ascertained by proving the same in the prescribed manner. The manner of proof has been provided in Rule 27(2). In the year 1976-77 in respect of the period from 1st April, 1976 to 31st May, 1976, Rule 27(2) provided that the registered purchasing dealer shall give the declaration in form No. XXXIV which is to be given by him in his own stationeries. With effect from 1st June, 1976 Section 5(2)(A)(a)(ii) was substituted and as a consequence the Rule 27(2) was amended. It was provided that the declaration forms shall be obtained by the registered purchasing dealer from the Sales Tax Officer within whose jurisdiction he is to be assessed on payment. Form No. XXXIV was substituted. It consisted of two

parts, counterfoil and original. The counterfoil is to be retained by the purchasing dealer and the original was to be given to the selling dealer by a purchasing dealer.

Form No. XXXIV was again amended. Thus, in the year 1976-77, the dealer on 28th October, 1976 was required to prove three types of declarations in form No. XXXIV, for determination of the taxable turnover by the assessing officer. One type for the period 1st April, 1976 till end of 31st May, 1976, the second type from 1st June, 1976 till end of 27th October, 1976, and the third type from 28th October, 1976 till 31st March, 1977 which is the end of the year 1976-77.

3. On receipt of the notice of assessment for the year 1976-77, petitioner No. 1 appeared before the Sales Tax Officer and filed an application stating that the declarations made over to it by the purchasing dealers have been lost and therefore,

(i) the counterfoils to form No. XXXIV, in custody of the Sales Tax Officer of different circles as per the list enclosed to the application may be called for at the cost of the dealer;

(ii) the purchasing registered dealer may be summoned at the cost of the dealer to adduce evidence in support of the purchases by them; and

(iii) it may be permitted to produce other evidence relating to the sales to the purchasing registered dealers.

This application was rejected and the deductions claimed by the petitioner No. 1 were not taken into consideration for determining the taxable turnover.

4. For the period from 1st April, 1976 to 31st May, 1976, the deductions were to be proved by producing the declarations in form No. XXXIV, given by the purchasing dealers to the petitioner No. 1. No other mode of proof was available to the petitioner No. 1. Accordingly, the Sales Tax Officer is justified in refusing the prayer of the petitioner. The refusal of deductions of the sales to registered purchasing dealers during this period is justified.

5. In respect of the period from 1st June, 1976 to 27th October, 1976, form No. XXXIV had counterfoil and original. Rule 27(2) provides that the dealer who wishes to deduct from the gross turnover the amount of sale on the ground that he is entitled to get such deduction u/s 5(2)(A)(a)(ii) is to furnish declaration in form No. XXXIV to the Sales Tax Officer. Blank declaration forms numbering 25, are to be obtained by a purchasing dealer from the Sales Tax Officer on payment. The form is divided into two parts, counterfoil and original. The original is to be furnished by the purchasing dealer to the selling dealer and the counterfoil is to be retained by him. Excepting the word counterfoil and original in both the parts of the form all other requirements to be filled up are the same. Rule 27(2) does not provide that the original of form No. XXXIV which has been made over to the assessee is to be produced before the Sales Tax Officer in proof of the deduction claimed u/s 5(2)(A)(a)(ii) of the Act. It only provides that the declarations in

form No. XXXIV are to be furnished. Therefore, the counterfoils of form No. XXXIV, in possession of the purchasing dealers could have been furnished to the Sales Tax Officer by calling upon the purchasing dealers to furnish the same for proving the sales to them in support of the deductions claimed u/s 5(2)(A)(a)(ii) of the Act. The Sales Tax Officer was not justified in refusing to summon the purchasing dealers to give evidence in this case.

6. As regards the period from 28th October, 1976 to 31st March, 1977, form No. XXXIV was in three parts, counterfoil, duplicate and original. Rule 27(2)(iii) as amended on 28th October, 1976 provides that the purchasing dealer is to make over the portion marked original to the selling dealer and is to submit the portion marked duplicate to the Sales Tax Officer who issued the forms and is to retain the counterfoil of each declaration form. The three parts of the form when compared indicate that excepting the words counterfoil, duplicate and original, all other requirements to be filled up are the same. Therefore, any part of the form No. XXXIV could have been furnished by the petitioner No. 1 before the Sales Tax Officer. He could have produced the original made over to him by the purchasing dealer, or could have called upon the purchasing dealer to produce the counterfoils in possession of the purchasing dealer or could have summoned the duplicates from the Sales Tax Officers issuing form No. XXXIV to the purchasing registered dealers for proving the sales to them by furnishing form No. XXXIV. The Sales Tax Officer was not justified in stating that the rule being mandatory, the prayer of the petitioner could not be allowed.

7. Language of Section 21 of the Act authorises the assessing officer to exercise the power of a court trying a suit under the CPC to summon and enforce attendance of witnesses and also to compel production of documents. The Sales Tax Officer (opposite party No. 1) failed to exercise the power vested in him as has been indicated in the earlier paragraphs which is an error of law apparent on the face of the record.

8. In the result, the order of assessment is quashed and the Sales Tax Officer is directed to assess the petitioner No. 1 afresh u/s 12(4) of the Act in the light of the observations made in this judgment. There shall be no order as to costs.

R.C. Patnaik, J.

9. I agree.

