

(1971) 10 OHC CK 0009

In the Orissa High Court

Case No : S.J.C. No's. 34 to 38 and 14 to 18 of 1968

Allied Dealers

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 14-10-1971

Acts Referred:

Citation : (1971) 37 CLT 1218 : (1972) 29 STC 484

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

Bench : Division Bench

Advocate : A.B. Misra and D.C. Ray, for the Appellant; S.C. Mohapatra, Standing Counsel (Sales Tax), for the Respondent

Judgement

G.K. Misra, C.J.—The material facts may be stated in short to answer the questions referred and the questions called for by this court. The Allied Dealers (petitioner) has been assessed to sales tax for the quarters ending 31st March, 1958, to 31st March, 1959. The Orissa Sanitary Mart, alleged to be another firm, supplied goods worth Rs. 14,717 in quarters ending 31st March, 1958, 30th September, 1958, and 31st December, 1958, to the Public Health Division, Bhubaneswar. One Kunjabehari Swain was the proprietor of the Orissa Sanitary Mart. K.C. Panda was the manager of the Orissa Sanitary Mart and also the manager of the petitioner-firm. Manmohan Lal and K.C. Panda became partners of the petitioner-firm in 1959, i.e., after the impugned period of five quarters for which the assessment was made. The S.D.O., Intelligence Circle, got information that the transaction effected on behalf of the Orissa Sanitary Mart to the tune of Rs. 14,717 was really effected by the Allied Dealers. Accordingly, the Sales Tax Officer, Cuttack Circle-I, after issue of necessary notice, assessed the petitioner. The turnover, which the petitioner had returned for the aforesaid impugned quarters, was enhanced by 50 per cent. on the finding that there was a suppression of certain sale transactions. The assessee's stand, that the sales were not effected by it, was rejected all through up to the stage of the Tribunal. The petitioner accordingly asked for a reference and the Tribunal made a

reference of the following question:

Whether in the facts and circumstances of the case the report of the Intelligence Circle could be legally utilised against the assessee M/s. Allied Dealers without making independent enquiry by the assessing officer before passing the assessment order for the quarters ending March, 1958, to March, 1959.

The petitioner, not being satisfied that the aforesaid question would cover all the points of law raised by it, filed an application in this court asking for some other questions to be called for from the Tribunal. After the preliminary hearing was made, this court directed the Tribunal to make a statement of the case with reference to the following questions of law :

(1) Whether it is legal to take the transactions of another firm (i.e., Orissa Sanitary Mart) as the transactions of the petitioner-firm in the circumstances of the case.

(2) Whether the petitioner-firm is legally bound and answerable for any dealing of any partner for any period prior to his partnership in the petitioner-firm and, if not, if the assessments made are legal in the circumstances of the case.

(3) Whether the bald enhancement of 50 per cent, of the gross turnover is not purely arbitrary, pure guess and illegal in the circumstances of the case and also discriminatory.

(4) Whether the assessing officer was not bound to give notice for enhancement of the turnover and his basis thereof prior to assessment and, if not, if the assessments are legal and justified in the circumstances of the case.

(5) Whether there is any legal, reliable, admissible evidence to justify the inference that the impugned transactions are the transactions of the petitioner-firm, and, if not, if the assessments are legal.

(6) Whether there was any material to assess for the quarters ending 30th June, 1958, to 31st March, 1959, and if the assessments are legal.

2. After having heard Mr. Misra for the petitioner and the learned standing counsel for the opposite party, we are satisfied that two important questions of law require examination in this case. They are: (i) whether the finding of the taxing authorities that the transaction to the tune of Rs. 14,717 has been effected by the Allied Dealers, is based on any evidence and (ii) assuming that the finding is based on materials on record, whether the taxable turnover can be enhanced by 50 per cent, even though the suppression was only to the tune of Rs. 14,717.

3. We now deal with the first point, namely, whether on the evidence on record, the conclusion of the taxing authorities that the transaction alleged to have been effected by the Orissa Sanitary Mart to the tune of Rs. 14,717 was in fact effected by the petitioner is correct in law. In other words, whether the transaction was done benami by the petitioner in the name of the Orissa Sanitary

Mart. In this regard the following are the materials on the basis of which the conclusion against the petitioner has been reached:

(1) During the impugned period, when the alleged transaction is said to have been effected, the Orissa Sanitary Mart had no existence.

(2) The transaction of sale was effected by K. C. Panda, who admittedly was the manager of the petitioner.

(3) Money was received from the Public Health Division by Manmohau Lal alone on 10th December, 1958.

(4) Admittedly, Manrnohan Lal and K.C. Panda were not partners of the Allied Dealers during the impugned periods. They became partners subsequent to 31st March, 1959.

4. The question for consideration is, even if all the materials accepted by the taxing authorities are accepted, whether a conclusion in law arises that the transaction was effected by the petitioner benami in the name of the Orissa Sanitary Mart. Each of these features may now be separately examined.

If during the impugned periods the Orissa Sanitary Mart had no existence, obviously the sale in its name was fictitious. It cannot be disputed that K. C. Panda effected the sale. At that time he was not a partner of the Allied Dealers, but was only its manager. There are no materials that the goods supplied by K. C. Panda to the Public Health Division belongs to the Allied Dealers. This material link is lacking. Once the material link is lacking, in the eye of law it cannot be held that the goods belonged to the Allied Dealers, and it is those goods that K.C. Panda sold to the Public Health Division.

It is well settled that if a finding is based on no evidence, then a point of law arises. Here, all the facts, even if accepted, do not fulfil all the necessary legal requirements for coming to a conclusion that the transaction was effected benami by the petitioner in the name of the Orissa Sanitary Mart. It may be that K.C. Panda effected sale of his own goods or certain fraud was committed. Merely because a fraud was committed by somebody, it does not follow that the petitioner would be liable for the same.

5. We would deal with the second point now. The total taxable turnover before enhancement comes to about rupees three lakhs and odd.

By 50 per cent, enhancement, the petitioner has to pay additional tax on a taxable turnover of about more than Rs. 1 1/2 lakhs, Thus, even assuming that the petitioner concealed the transaction of sale to the tune of Rs. 14,717, his taxable turnover has been enhanced to the tune of about more than rupees 1 1/2 lakhs. The judgments of all the sales tax authorities do not indicate the basis or the materials on which this enhancement has been made. Law is well settled that on the basis of a concealment if an enhancement is to be made, then there must be sufficient evidence and materials to indicate the nexus between the

concealment and the enhancement. Reference may be made to Raghubar Mandal Harihar Mandal Vs. The State of Bihar, .

After having perused all the judgments under consideration, we are satisfied that there are no materials indicating the nexus, and the enhancement is based purely on conjecture and surmise. The enhancement cannot, therefore, be supported.

6. We, therefore, sum up our conclusion thus : (i) The finding of the sales tax authorities that the alleged transaction to the tune of Rs. 14,717 was effected by the petitioner-firm is based on no evidence and is contrary to law. (ii) Even assuming that in fact the petitioner effected such a transaction, then the taxable turnover of the petitioner would be enhanced only to the tune of Rs, 14,717. There are no other materials on record to establish a rational nexus between the amount suppressed and the amount enhanced.

7. In view of our aforesaid answer, we propose to answer the questions referred by the Tribunal and called for by us thus:

It is agreed amongst the learned counsel for the parties that the question referred by the Tribunal and question No. (4) called for by the court need not be answered. Questions Nos. (1) to (5) and 6 are answered in the negative.

8. The references are accordingly answered as indicated above, but in the circumstances there will be no order as to costs.

The reference fee deposited be refunded.

S. Acharya, J.

I agree.