
(2000) 09 OHC CK 0020

In the Orissa High Court

Case No : Original Jurisdiction Case No. 7307 of 1999

Balaji Store

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 06-09-2000

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 23(4)
Orissa Sales Tax Rules, 1947 — Rule 80

Citation : (2000) 2 OLR 506 : (2000) 121 STC 171

Hon'ble Judges : R.K. Patra, J;P.K. Misra, J

Bench : Division Bench

Advocate : S.K. Das, A. Mohanty and M.K. Das, for the Appellant; I. Pangari, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—Is it imperative for the Commissioner to record his reasons before invoking the suo motu revisional power u/s 23(4)(a) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as "the Act") read with Rule 80 of the Orissa Sales Tax Rules, 1947 (hereinafter referred to as "the Rules") ? This is the moot point that arises for consideration in this writ petition filed by the dealer.

2. The petitioner is a partnership firm which carries on business in purchase and sale of grocery items on wholesale basis at Charampa Bazar, Bhadrak. It has been registered as a dealer under the provisions of the Act in Bhadrak Circle, Bhadrak, with registration No. BD-803. The Sales Tax Officer, Bhadrak (opposite party No. 1) in regular course for the year 1997-98 made assessment order u/s 12(4) of the Act on May 20, 1998 at annexure 2. On the basis of a fraud report submitted by the Inspector of Sales Tax, Keonjhar the order of assessment dated May 20, 1998 at annexure 2 was sought to be reopened u/s 12(8) of the Act by issuing notice to the petitioner who duly appeared and produced the relevant books of accounts for verification. After examining the books of accounts vis-a-vis the fraud report, the Sales Tax Officer by his order dated August 5, 1998 at

annexure 2 dropped the proceeding and sustained order passed by him earlier u/s 12(4) of the Act holding, inter alia, that the transactions have been duly accounted for and the petitioner has correctly paid the tax and the suppression as alleged in the fraud report had no basis. The Assistant Commissioner of Sales Tax (opposite party No. 2) issued notice in Memo No. 4146/CT dated November 27, 1998 at annexure 4 u/s 23(4)(a) of the Act read with Rule 80 of the Rules calling upon the petitioner to show cause as to why the order dated August 5, 1998 dropping the proceedings u/s 12(8) of the Act would not be revised. Pursuant to the notice, the petitioner appeared and raised objections. The Assistant Commissioner (opposite party No. 2) by his order dated January 16, 1999 at annexure 4 rejected the books of accounts and holding that there was suppression of transactions enhanced the gross turnover by Rs. 36,90,000 and re-determined the same, The petitioner challenged the aforesaid order of the Assistant Commissioner by filing revision before the Commissioner of Sales Tax, Orissa (opposite party No. 3) who by his order dated March 6, 1999 at annexure 5 set aside the order of the Assistant Commissioner and remanded the matter to him for fresh disposal according to law. Thereafter, the Assistant Commissioner (opposite party No. 2) issued a fresh notice bearing No. 1504/CT dated March 30, 1999 at annexure 1 calling upon the petitioner to show cause as to why the order dated August 5, 1998 passed by the Sales Tax Officer at annexure 3 should not be revised u/s 23(4)(a) of the Act read with Rule 80 of the rules. The petitioner, on receipt of the said notice appeared before the Assistant Commissioner and filed its objection on April 9, 1999 at annexure 7. The Assistant Commissioner by his order dated April 30, 1999 at annexure I/A held that the petitioner had indulged in fraudulent business by suppressing transactions and accordingly revised the order of the Sales Tax Officer dated August 5, 1998 made u/s 12(8) of the Act and enhanced to same figure of gross turnover by Rs. 36,90,000 which is eighteen times of the amount of alleged suppression which he did in his previous order dated January 16, 1999 and re-determined the gross turnover and directed the petitioner to pay the balance amount of Rs. 1,95,976.76 and penalty of Rs. 40,000.

3. From the aforesaid narration of facts, it may be seen that the impugned proceeding was commenced by issuance of notice No. 4146/CT dated November 27, 1998 at annexure 8. The contention of the learned counsel for the petitioner is that before the Assistant Commissioner invokes the suo motu revisional power u/s 23(4)(a) of the Act read with Rule 80 of the Rules he must record in writing that the order which he intends to revise was erroneous in so far as it is prejudicial to the interest of the Revenue and in absence of recording of such reasons the entire proceeding culminating in the final order dated April 30, 1999 at annexure 1/A is vitiated.

The learned Standing Counsel for the department contended that since there is mention in the first notice dated November 27, 1998 at annexure 8 and the subsequent notice dated March 30, 1999 at annexure 1 to the effect that "assessment order appears to be prejudicial to the interest of the Revenue for

the reasons" mentioned therein, the final order passed by the Assistant Commissioner cannot be faulted with.

4. To get a hang of the issue involved it is necessary to note Section 23(4)(a) of the Act and Rule 80 of the Rules. They are extracted hereunder :

"Section 23(4)(a) : Subject to such rules as may be made and for reasons to be recorded in writing, the Commissioner may, upon application by a dealer (or person) or on his own motion revise any order made under this Act or the rules made thereunder by any person other than the Tribunal, appointed under Sub-section (3) of Section 3 to assist him :

Provided that the Commissioner shall not entertain any such application for revision if the dealer (or person) filing the same having a remedy by way of appeal under Sub-section (1), or Sub-section (3) did not avail of such remedy or the application is not filed within the prescribed period.

Explanation.--Any provision contained elsewhere in this Act which provides for determination of any specific matter shall not debar the Commissioner from determining such matter in exercise of the powers conferred upon him under this sub-section."

"Rule 80. Revision by the Commissioner suo motu.--The Commissioner may on his own motion at any time within three years from the date of passing of any order by the Sales Tax Officer or within two years from the date of passing of any order by the Additional Commissioner, Special Additional Commissioner or Assistant Commissioner, as the case may be, call for records of the proceedings in which such order was passed and if he considers that any order passed therein is erroneous in so far as it is prejudicial to the interest of the revenue he may after giving the dealer an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary revise any such order :

Provided that the Commissioner shall not revise any order under this rule--

(1) Where an appeal against the order is pending before the appellate authority u/s 23, or

(2) Where time-limit for filing an appeal u/s 23 has not expired."

On a reading of the aforesaid, it would appear that the Commissioner if he considers that the order passed by a subordinate authority is erroneous in so far as it is prejudicial to the interest of the Revenue, he may on his own motion revise that order subject to the conditions stated therein. But before invoking the suo motu revisional power he has to record the reasons in support of his belief that the order which he seeks to revise is erroneous in so far as it is prejudicial to the interest of the Revenue. Fulfilment of this pre-condition is not a mere formality ; rather it is mandatory. Such recorded reasons must be germane providing the foundation for assumption of jurisdiction. Before initiation of proceeding u/s 23(4)(a) read with Rule 80 of the Rules recording of reasons is a

condition precedent. In absence of that no proceeding can be held to have been validly initiated and the entire proceeding culminating in the final order would be vitiated.

5. In order to satisfy ourselves, we directed the learned Standing Counsel of the department to produce the relevant record which was produced today. On its perusal, we find that the Assistant Commissioner on November 27, 1998 has recorded as follows :

"Seen the report and perused the record. It appears that S.T.O. has not evaluated the fraud report in record properly. Hence, issue show cause notice under Rule 80 of the Orissa Sales Tax Rules, 1947 to produce books of accounts before the undersigned for verification fixing date to December 11, 1998."

In our considered opinion, the aforesaid statement of reasons does not fulfil the pre-condition required under law inasmuch as there is no mention that the order which the Commissioner intended to revise is erroneous so far as it is prejudicial to the interest of the Revenue. Therefore, the initiation of the proceeding by issuing the impugned notices which have culminated in the final order is vitiated and the same cannot be supported in law. The contention of the learned Standing Counsel that in the impugned notices at annexures 6 and 1 there is statement to the effect that the assessment made is prejudicial to the interest of the Revenue and as such the final order cannot be struck down, has no merit. The validity of the initiation of the proceedings depends on whether the basic fact as required under Rule 80 was present in the mind of the revisional authority as it goes to the root of the jurisdiction. Therefore, mention in the notices that the assessment was prejudicial to the interest of the Revenue cannot remunerate to a void proceeding. For the aforementioned reasons, the impugned notices at annexures 6 and 1 and the final order dated April 20, 1999 at annexure I/A as well as the demand notice at annexure 1/B are hereby quashed being without jurisdiction.

In the result, the writ petition is allowed.

CH. P.K. Misra, J.

6. I agree.