(2000) 08 OHC CK 0024

In the Orissa High Court

Case No : Original Jurisdiction Case No. 12492 of 1997

Bath Plaza APPELLANT

Vs

Sales Tax Officer RESPONDENT

Date of Decision : 18-08-2000

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 12(8)

Citation : (2000) 2 OLR 517 : (2001) 121 STC 90

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

Bench : Division Bench

Advocate : B.P. Mohanty, N. Paikray, R.P. Kar, A.N. Ray, M.K. Babu and A. Das, for the Appellant; M.K. Das, Additional Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—In this application under Articles 226 and 227 of the Constitution of India the petitioner seeks to assail the validity of initiation of the proceeding and its culmination in the order of assessment u/s 12(8) of the Orissa Sales Tax Act, 1947 on the ground that there was no material available with the Sales Tax Officer for initiation of the proceeding.

2. The case of the petitioner is that it is a registered dealer under the Orissa Sales Tax Act, 1947 (hereinafter referred to as "the Act") having certificate of registration bearing No. BH-I-684. It is engaged in trading activities of sanitary wares and fittings on retail basis. For the assessment year 1990-91 the assessment was completed u/s 12(4) of the Act on December 28, 1991 in which the Sales Tax Officer raised an extra demand of Rs. 9,847,60 paise. On March 8, 1996 the Sales Tax Officer issued the impugned notice at annexure 1 in the prescribed form No. VI under Sections 11(1) and 12(8) of the Act calling upon the petitioner to submit return in form No. IV showing the particulars of its turnover for the year ending 1990-91. Pursuant to the said notice, the counsel for the petitioner appeared before the Sales Tax Officer on February 26, 1997 and prayed for time on medical ground, but the prayer for adjournment was

rejected and on that day itself ex parte order of assessment was passed u/s 12(8) of the Act raising extra demand of Rs. 46,26,698 as per annexure 2/A. The Sales Tax Officer passed another assessment order raising a demand of Rs. 33,018 towards Orissa additional sales tax as per annexure 2/B.

3. The counsel for the petitioner contended that there was absolutely no material available with the Sales Tax Officer to initiate a proceeding u/s 12(8) of the Act and yet he did so just to save the proceeding from the law of limitation which is not permissible in law.

4. Section 12(8) of the Act empowers the taxing authority to assess the amount of tax due from the dealer on specified grounds mentioned therein. It states that--

"If for any reason the turnover of a dealer for any period.....has escaped assessment or has been under-assessed or where tax has been compounded when composition is not permissible under this Act and the rules made thereunder, the Commissioner may at any time within five years from the expiry of the year to which that period relates call for return under Sub-section (1) of Section 11 and may proceed to assess the amount of tax due from the dealer in the manner laid down in Sub-section (5) of Section 12.........."

A bare perusal of the aforesaid provision would show that the taxing authority is competent to initiate proceeding and assess the amount of tax due from the dealer if for any reason his turnover for any period has escaped assessment or has been under-asseased or tax has been compounded when composition is not permissible. The initiation of the proceeding has however to be done within five years from the expiry of the year to which that period of turnover of the dealer relates.

At this stage, we may refer and extract the relevant portion of the impugned notice at annexure 1 which reads as follows :

"FORM VI

[See Rules 22, 23 and 28(2)]

Notice to a dealer under Sections 11(1) and 12(8) of the Orissa Sales Tax Act, 1947.

Bath Plaza (dealer)

Cuttack Road, Bhubaneswar (address)

BH-I-684

.... Whereas I have reason to believe that your turnover of sales and/or purchases for the year ending 1990-91 (OST & OAST) on which tax payable under the Orissa Sales Tax Act, 1947 has been under-assessed.

You are hereby required to submit within one calendar month from the date of receipt of this notice a return in form IV showing the particulars of your turnover for the year ending 1990-91 (OST & OAST).

.... In the event of your failure to comply with all the terms of this notice, I shall proceed to assess you u/s 12 of the Act to the best of my judgment without further reference to you.

Place : Bhubaneswar Sd/-Illegible Date : 8-3-1996 Signature Designation."

From the aforesaid, it may be seen that the Sales Tax Officer issued the notice because he had reason to believe that the turnover of the petitioner for the year 1990-91 had been "under-assessed".

5. Pursuant to our direction, the learned counsel for the department has produced the relevant record before us. On its perusal, we find that the Sales Tax Officer initiated the proceeding u/s 12(8) of the Act on March 8, 1996 not because he had reason to believe that the petitioner had been under-assessed for the period 1990-91, but it had to be done to save the assessment from being hit by law of limitation. In fact, he has in unequivocal terms observed that to save the assessment from being barred by time, he has directed issuance of the impugned notice. His anxiety to save the proceeding from limitation is apparent from his order dated February 25, 1997 when the prayer of the petitioner for adjournment on the ground of self-illness was rejected on the apprehension that it was going to close down the business and assessment had to be completed when substantial amount of revenue was involved. The aforesaid ground to initiate the proceeding finds corroboration from the impugned order of assessment made u/s 12(8) of the Act at annexure 2/A in which it has been observed that the proceeding was initiated on priority basis as the "year related to time-barred period" and the assessment was "re-opened and kept in force to take necessary steps to save the report from barred by limitation."

6. May it be stated that condition precedent for initiation of proceeding u/s 12(8) of the Act is the existence of "reason" for "escaped assessment", "under-assessment" or "composition of tax not permissible in law". The impugned notice shows that the Sales Tax Officer issued it as "he had reason to believe that the petitioner was under-assessed" for the year in question. As we have noticed, the Sales Tax Officer had no material before him to believe that the petitioner was "under-assessed" for the year 1990-91 yet he commenced the proceeding to retrieve the assessment from limitation inasmuch as he could not have re-opened the assessment u/s 12(8) of the Act for the year 1990-91 after March 31, 1996 in view of the bar contained in the provision which provides time-limit of five years from the expiry of the year to which the period of turnover of the concerned dealer relates. The aforesaid ground which persuaded the Sales Tax Officer to initiate the proceeding cannot be held to be the existence of "reason" to believe that the petitioner was "under- assessed" for its turnover of sales for the relevant period. In our considered opinion, the Sales Tax Officer invoked Section 12(8) of the Act on an extraneous "reason" not envisaged thereunder. As

it is a clear case of irregular and illegal exercise of power not vested on him by law, we have no hesitation to quash the impugned notice at annexure 1 as well as the final orders of assessments at annexures 2/A and 2/B.

The writ application is allowed. No costs.

CH. P.K. Misra, J.

7. I agree.

