

(1971) 10 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 181 of 1968

Bhagirathi Agarwal and Brothers

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 28-10-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1971) 37 CLT 1232

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

Bench : Division Bench

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

Judgement

G.K. Misra, C.J.—The Petitioner is a dealer registered under the Central Sales Tax Act. The Orissa Rice Procurement (Levy) Order, 1964 (hereinafter to be referred to as the Order) was brought into force on 1-12-1964. Pursuant to the provisions of the said order the Petitioner supplied rice and dispatched the same on behalf of the Assistant Director of Food, Khurda Road to various places outside the State. The railway consignment was made by the Petitioner on behalf of the Food Department. In respect of such supplies the Petitioner was assessed to Central Sales Tax for the year 1965.66. The Petitioner objected to the assessment on the ground that the supply of rice was by virtue of the order which he had no volition left in him to refuse to supply, and consequently there was no element of sale in the transaction. This contention was negated by the assessing authority by his assessment order dated 10-3-1967. To quash this order this writ application has been filed under Articles 226 and 227 of the Constitution for issue of a writ of certiorari.

2. We have carefully gone through the assessment order and must confess our inability to understand the import of the same. Excepting the use of certain bombastic words like method of pricing, conditions of ownership nature of dispatches and so on, the assessment order does not indicate that the assessing

authority applied his mind to the facts and law of the case, and came to a conclusion to do justice to the parties.

3. Law is no longer in doubt that if the supply was under the compulsory levy then it is not eligible to sales tax. See *Union of India v. Sales Tax Officer* 1971 (1) C.W.R. 693. The same view had been taken by a Bench of this Court as early as 1961 in *Cement Ltd. Vs. The State of Orissa*, . The assessing authority was, under the law bound to refer to our decisions, and if he was not inclined to follow them, to distinguish them on facts. Without understanding anything he simply disposed of the matter by overruling the objection of the Assessee.

4. The learned Standing Counsel filed a counter which, as he ultimately stated before us, may not be accurate. In view of his statement we did not examine the counter carefully; but we cannot allow a relief to the Petitioner in this writ application upholding his entire claim without further investigation into question of fact as to which portion of the supply made by him was under the order and what was a sale in open market either inside or outside the State. Under the Order 50 per cent of the stock is to be compulsorily supplied to the Union of India. The residual 50 per cent may be sold to the Government of India under open sale. These are questions of fact which the assessing authority should carefully examine.

5. In the result we quash the impugned order by issuing a writ of certiorari and remand the case to the assessing authority for re-examination and re-computation in accordance with law and our observations made above. In the circumstances there will be no order as to costs.

6. It may be noted for future that in an Endowment case- *Bhimsen Dixit v. B.K. Misra*, Commissioner of Hindu Religious Endowments, Orissa, this Court has held that the Commissioner of Endowments was guilty of contempt for not having followed the decision of this Court though the matter was brought to his notice. We clarify the position that Subordinate authorities are bound to acquaint themselves with the decisions of this Court and in case these authorities are not followed, in appropriate cases they are liable to be proceeded with for contempt.

S. Acharya, J.

7. I agree.