(1960) 04 OHC CK 0018

In the Orissa High Court

Case No : O.J.C. No. 150 of 1959

Bhubanananda Mohanty — APPELLANT

Vs

The State of Orissa — RESPONDENT

Date of Decision : 19-04-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1961) 12 STC 649

Hon'ble Judges : R.L. Narasimham, C.J;G.C. Das, J

Bench : Division Bench

Advocate : Asoka Das, for the Appellant; G.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Narasimham, C.J.—This is an application under Articles 226 and 227 of the Constitution for quashing the certificate proceedings pending against the petitioner, for realization of arrears of sales tax and penalty, imposed by the Sales Tax Officer, Puri, on the ground that the petitioner is not liable to pay any sales tax.

2. The petitioner was a dealer in paddy. He failed to submit any return to the Sales Tax Officer, Puri, in respect of his turnover, for the two quarters ending 31st December, 1953, and 31st March, 1954. Thereafter, the Sales Tax Officer issued a notice u/s 12(4) of the Orissa Sales Tax Act, but the petitioner neither filed a return nor produced any accounts relating to his turnover. Then the Sales Tax Officer proceeded to assess him to the best of his judgment. He called for the records of the Puri Civil Supplies Office and found that the petitioner had received certain payments from Government for supply of paddy and also for supply of gunny bags. From these figures he estimated his gross turnover and, after deducting the money paid for the supply of paddy which was an exempted article, he assessed the petitioner to sales tax for sale of the gunny bags to Government. The tax was assessed at Rs. 1,312-8-0 for the quarter ending 31st December, l953, and Rs. 285-6-0 for the quarter ending 31st March, 1954. In

addition, he imposed a penalty on him for non-submission of returns. The petitioner did not go up on appeal for revision to the superior authorities of the Sales Tax Department as provided in the Statute. A certificate was in due course issued against him for realization of the aforesaid amounts. During the pendency of the certificate proceedings, a Division Bench decision of this Court in Dasarathi Mohapatra v. State of Orissa [1957] 8 S.T.C. 720 came to the notice of the petitioner. In that decision it was held that where a person acts as a purchasing agent of Government and supplies paddy and rice in gunny bags to Government, no sales tax was assessable on the money paid for the gunny bags inasmuch as there was no sale in respect of the same and the supply of gunny bags was within the scope of the agency for the supply of paddy. The petitioner then came up to this Court with this petition alleging that his case came well within the principles laid down in the aforesaid decision, and that the entire certificate proceedings should be quashed as he was not liable to pay any sales tax on the price of gunny bags paid to him by Government.

3. On behalf of the Sales Tax Department a counter affidavit was filed to the effect that the order of the Sales Tax Officer showed that the transaction dealing with the sale of gunny bags was treated as a separate and distinct transaction from that relating to the supply of paddy. Hence, it was urged that the necessary finding on facts for the purpose of applying the aforesaid decision was wanting in this case and that the petitioner was not entitled to any relief.

4. In my opinion this contention of Mr. Misra appearing for the Department is well founded. The powers of this Court under Articles 226 and 227 of the Constitution are very limited. It cannot enter into disputed questions of fact and come to an independent finding of its own : see Satyanarayan v. Mallikarjuna AIR 1956 S.C. 137. Doubtless if, on the facts admitted by both parties or conceded by the Sales Tax Department, it is clear that no sales tax is payable, then this Court may be justified in quashing the certificate proceedings notwithstanding the fact that the petitioner did not question the assessment either by way of revision or appeal under the provisions of the Sales Tax Act. This principle was laid down in Orient Paper Mills v. The State of Orissa [1957] 8 S.T.C. 749, but where the necessary facts for deciding whether sales tax is payable or not were not admitted and the petitioner, by his own negligence, refused to lead any evidence regarding those facts, it will not be proper for this Court, at this belated stage, to examine this disputed question and come to a finding of its own as against the finding of the Sales Tax Officer.

5. Before the petitioner can rely on the principle laid down in Dasarathi Mohapatra v. State of Orissa [1957] 8 S.T.C. 720, he must show firstly that he was not a seller of paddy to Government but merely supplied the same by virtue of an agency or agreement entered into between him and the Government and secondly that there was no distinct agreement between the parties for sale of gunny bags for an adequate price and that the relationship of principal and agent which existed between the petitioner and the Government so far as supply of

paddy was concerned subsisted by implication for the ancillary purpose of purchasing gunny bags for the supply and storage of such paddy. The terms of the agreement entered into between the Government and the petitioner are not known. The petitioner by his own default left no other option to the Sales Tax Officer except to assess him to the best of his judgment on the basis of figures supplied by the Puri District Civil Supplies Office. I must therefore hold that the necessary finding on facts for the purpose of applying the principle laid down in the aforesaid decision are totally wanting in this case and the petitioner is solely responsible for this omission.

6. Mr. Das, on behalf of the petitioner, then urged that the matter may be remanded to the Sales Tax Officer for rehearing so that the petitioner may get an opportunity to prove the necessary facts to bring the case within the scope of the aforesaid decision. We are not satisfied, at this belated stage, that this prayer should be allowed.

The petitioner should have challenged the order of assessment and levy of penalty by the Sales Tax Officer by way of appeal and revision before the appropriate authorities of the Sales Tax Department as provided in the Act, and should have exhausted all the remedies provided by the Statute. It will not be proper, after the lapse of five years from the date of assessment, to remand the case for the purpose of re-assessment with a view to enable the petitioner to escape the law of limitation.

7. The application is therefore dismissed with costs. Hearing fee is assessed at Rs. 32 (Rupees thirty-two only).

G.C. Das, J.

8. I agree.