(1990) 01 OHC CK 0003

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4281 of 1989

Bipin Kumar Nanda APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 18-01-1990

Acts Referred:

Citation : (1990) 78 STC 364

Hon'ble Judges : V. Gopalaswamy, J;L. Rath, J

Bench : Division Bench

Advocate : R.B. Roy, for the Appellant; A.B. Misra, (C.T.), for the Respondent

Final Decision : Allowed

Judgement

L. Rath and V. Gopalaswamy, JJ.—The sole relief claimed by the petitioner is for a direction to the opposite party 2 to adjust the amount paid by him as "sales tax" to the Assistant Soil Conservation Officers while purchasing the quantities of cashewnuts from them towards the purchase tax payable by him on such purchases and to quash the judgment of the Sales Tax Tribunal in appeal deciding against the petitioner on the issue. The facts briefly stated arc that the petitioner, who is a dealer in cashewnuts amongst other things, purchased quantities of cashewnuts during the financial year, 1983-84. The Assistant Soil Conservation Officers from whom he purchased the cashewnuts realised different amounts totalling a sum of Rs. 12,250.22 from him towards sales tax. There is no dispute, and it is a matter of fact which also appears from the appellate order of the Sales Tax Tribunal, that the Assistant Soil Conservation Officers have already deposited the amounts so collected from the petitioner in Government Treasury and that such payments have also been certified by the concerned Sales Tax Officers. Such tax was, however, not collectible by the Assistant Soil Conservation Officers since sale of cashewnuts is subject to purchase tax only. For such reason the Sales Tax Officer, Cuttack-II Circle, the opposite party 2, assessed the petitioner to purchase tax on the basis of his turnover of purchases and demanded, as per assessment order in annexure-2, a sum of Rs. 13,297 towards purchase tax. The petitioner claimed Rs. 12,250.22 paid by him as "sales tax" to the Assistant Soil Conservation Officers to be adjusted towards the tax assessed and for a direction to pay only the balance amount. It is submitted by Mr. Roy, learned counsel for the petitioner, that in accordance with the orders passed by the first appellate authority, the petitioner has also already paid a sum of Rs. 2,000 and hence, together with the sum deposited by the Assistant Soil Conservation Officer, he has no further liability to pay.

2. Since this case involves only a question of adjustment of tax, we had issued notice to the opposite parties, who are respectively the State of Orissa, represented by the Commissioner of Sales Tax, the Sales Tax Officer, Cuttack-II Circle and the Sales Tax Tribunal, Orissa, that the case may be deposed of finally at the stage of admission. Notice is sufficient against all the opposite parties. The opposite parties 1 and 2 arc represented by the Standing Counsel of the department, but the opposite party 3, the Tribunal, has not appeared. This being a case of issue of a writ of certiorari, the appearance of the opposite party 3 is merely of a formal nature. A request was made today on behalf of the opposite parties 1 and 2 for adjournment to file counter-affidavit to find out whether the amount paid by the petitioner to the Assistant Soil Conservation Officers has been paid to the Commercial Tax Department. Since it was submitted by the learned Standing Counsel that the counter-affidavit would only consist of such fact, but the very appellate order of the Tribunal itself states that the concerned Sales Tax Officer has himself certified the payments to have already been deposited in the Government Treasury, and the entire question is a pure question of law only, we did not find any justification for adjournment.

3. The question of adjustment of amounts paid erroneously as tax with the lax levied under the statute have been subject-matter of decisions of this Court in a series of cases. All these cases were considered by a Division Bench of this Court recently in P. Rama Rao & Sons v. State of Orissa [1990] 77 STC 303 : (1989) 31 OJD 600. In that case it has been held that even if there is no specific provision permitting adjustment of the amount erroneously paid with the tax assessed yet since there is no prohibition in the Orissa Sales Tax Act, such adjustment of the amount paid by the dealer elsewhere to the sales tax authorities has to be allowed. In that case it was observed that where public interest dictates and the State had the benefit of the tax paid, there can be a direction for adjustment and that this can be done on the application of doctrine of unjust enrichment since the State should be permitted only to get what is legally due to it and nothing more. Reliance was also placed on the decision in Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, , wherein it was observed :

".....Where public bodies, under colour of public laws, recover people''s moneys, later discovered to be erroneous levies, the dharma of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of ''alternative remedy'' since the root principle of law married to justice, is ubi jus ibi remedium ....

* * * ....In our jurisdiction, social justice is a pervasive presence ; and so, save in special situations it is fair to be guided by the strategy of equity by asking those who claim the service of the judicial process to embrace the basic rule of distributive justice, while moulding the relief, by consenting to restore little sums, taken in little transactions, from little persons, to whom they belong."

* * * "Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order such as public interest dictates and equity projects."

4. Since it is admitted that the amounts paid by the petitioner to the Assistant Soil Conservation Officers have already been paid to the Government Treasury in favour of the department, it will be highly unjust not to permit the petitioner to have the benefit of adjustment and again demand the tax from him even though he has paid the amount erroneously. It is contended by the learned Standing Counsel that such amount which has been paid by the petitioner is included only in the turnover of the Assistant Soil Conservation Officers payable by the Forest Department to the State and that further as against the second appellate order of the Tribunal, a reference lies for which the petitioner should not be permitted to agitate the question before this Court without availing of the remedy available under the Act. We are not impressed by either of the submissions. Once an adjustment of the amount paid by the petitioner to the Assistant Soil Conservation Officers is directed, and since the tax either it is sales tax or purchase tax is payable only to the State whose Principal Officer to collect the same is the Commissioner of Commercial Taxes whose authority is exercised by the different officers of the department, there should not be any difficulty in making the adjustment as desired by the petitioner and rather a negation of it would be negation of the rule of law. As regards the question of alternate remedy, the answer is found in the very decision of the Supreme Court quoted supra (Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, , wherein the plea was termed as a negative one and to be one which is not very palatably urged by the State.

5. In the result, we would allow this writ petition, quash the order of the opposite party 3 and issue a direction to the opposite party 2 to adjust the amount paid by the petitioner as sales tax to the Assistant Soil Conservation Officers towards the tax assessed upon him as per annexure 2. An apprehension has been expressed by the learned Standing Counsel that since the tax paid by the petitioner to the Assistant Soil Conservation Officers were paid mistakenly, it is permissible for those officers to claim refund of the amount. It must be said that as a necessary consequence of the adjustment in pursuance of our decision, no such refund is permissible, if at all a claim for the same is made. There shall be no order as to costs.

