(1960) 05 OHC CK 0009

In the Orissa High Court

Case No : S.J.C. No. 48 of 1958

Commissioner of Sales Tax APPELLANT

Vs

Abdul Ghaffar and Co. RESPONDENT

Date of Decision : 02-05-1960

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 5(2)(a)(ii)
Orissa Sales Tax Rules, 1947 — Rule 27(2)

Citation : (1960) 26 CLT 337 : (1960) 11 STC 462

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

Bench : Division Bench

Advocate : G.K. Misra, for the Appellant; R.B. Ray and P. Kar, for the Respondent

Judgement

R.L. Narasimham, C.J.—The following question has been referred to this Court for opinion by the Member, Sales Tax Tribunal, u/s 24(1) of the Orissa Sales Tax Act:-

Whether on the facts and circumstances of the case a registration certificate of a purchasing dealer registered under the Orissa Sales Tax Act, 1947, when renewed on any date of a financial year subsequent to the date of completion of a particular transaction of sale to him, can have retrospective effect for the whole of that financial year and can apply to that transaction for the purpose of Section 5(2)(a)(ii) of the said Act, read with Rule 27(2) of the Orissa Sales Tax Rules, 1947.

2. The opposite party is a grocer having a registration certificate under the Orissa Sales Tax Act, bearing certificate of registration No. 243-CUIII and doing business at Jaipur Road. During the quarter ending 30th June, 1954, he sold tamarind to another dealer known as Sanyasi and Sons having registration certificate No. 616-CU, 347. The following statement shows the dates on which the opposite party sold tamarind to Sanyasi and Sons during the quarter in question :-

2-4-1954 ... Rs. 4,691-6-3 I7-5-I954 ... Rs. 3,842-6-6 22-5-1954 ... Rs.

4,146-11-0 7-4-1954 ... Rs. 1,370-0-0

Sanyasi and Sons had applied for renewal of their registration certificate for the financial year 1954-55, but the order of renewal was passed by the competent authority only on the 15th September, 1954, for the financial years 1953-54 and 1954 55. The actual assessment proceedings against the opposite party were completed on the 25th January, 1955. The opposite party claimed exemption in respect of the aforesaid transactions on the ground that they represented sales to a registered dealer for re-sale in Orissa. An argument seems to have been advanced in the lower Courts to the effect that though prior to the actual date of assessment (25th January, 1955), the certificate of registration of Sanyasi and Sons had been renewed for the year in question, nevertheless, on the dates of the transactions of sale the order for renewal of the certificate had admittedly not been passed and that consequently the opposite party was not entitled to claim exemption u/s 5(2)(a)(ii) of the Sales Tax Act read with the Sales Tax Rules. The Tribunal rejected this contention but thought that there was a point of law for which a reference should be made to this Court.

3. I should point out here, by way of a preliminary observation, that where the point of law is quite clear and unarguable and the Tribunal feels no doubt about it there is no need for it to make a reference u/s 24(1) of the Act. If the parties want to pursue the matter further they may approach the High Court direct u/s 24(2) of the Act. Every simple or unarguable question of law should not be the subject of a reference to this Court by the Tribunal.

4. Coming to the merits of the reference in this case, the question depends on whether the renewal of a certificate of registration for a particular year takes effect from the commencement of that year notwithstanding the fact that the actual order of renewal may have been passed on a subsequent date. The expression "year" has been defined in Section 2(j) of the Orissa Sales Tax Act as meaning financial year, i.e., from 1st April to 31st March. Every dealer applying for renewal of registration certificate is required by Rule 7(2) of the Sales Tax Rules to submit his application within a period of not less than one month before the expiry of the year preceding that for which such renewal is required. The renewal application should be in Form II-A, which also says that the renewal is for a period of one year. Clause (b) of Sub-rule (2) of Rule 7 of the Orissa Sales Tax Rules says :

(b) When the Assistant Sales Tax Officer or the Sales Tax Officer as the case may be after making such enquiries as he may think necessary, is satisfied that the application is in order and that the fee prescribed for renewal of registration certificate has been duly credited, he shall renew such certificate of registration and endorse the same accordingly.

Thus though the application for renewal is required to be submitted within one month prior to the expiry of the previous year, nevertheless as some enquiry is required to be made by the Sales Tax Authority concerned there may be delay of some months before the authority passes his order of renewal. But ultimately when he passes such an order, the certificate of registration is required to be in Form No. Ill item 7 of which is as follows : "This certificate of registration shall be valid, till the end of the financial year during which it is granted and may be renewed from year to year ". It may be noticed that there are no express provisions either in the Act or in the Rules or in the forms to the effect that the renewal of a certificate takes effect only from the date on which the order of renewal is passed. On the contrary the relevant words used in the rules and the form are : "Renewed for..."and the certificate is valid till the end of that financial year. Hence the reasonable view would be that whatever may be the date on which the order of renewal may be passed the renewal takes effect from the commencement of the financial year for which that order is made. To that extent limited retrospective effect must be given to the certificate of registration.

5. There is nothing in the language of the Act or the Rules to justify taking a contrary view. The right of a dealer to claim exemption in respect of sales to another registered dealer in Orissa is described in Section 5(2) (a) (ii) of the Sales Tax Act as follows :

Sales to a registered dealer of goods specified in the purchasing dealer''s certificate of registration as being intended for re-sale by him in Orissa,..and on sales to a registered dealer of containers or other materials for the packing of such goods;

This provision, however, does not say anything about the point at issue. Section 9 deals with registration of dealers and it only says that applications for registration as well as for renewal, by a dealer, shall be made in the manner prescribed in the rules. The relevant rules have already been quoted. Section 9(3) again says that renewal of a certificate by the competent authority will be made only if he is satisfied that the application is in order. If an application is made for registration beyond the time fixed in the rules it is open to the registering authority to reject that application on the ground that it is not in order. But it is not the case of the opposite party that the application for renewal of the registration of Sanyasi and Sons was not made within the prescribed time.

6. The learned lower court has referred to Rule 27(2) of the Orissa Sales Tax Rales, especially to the proviso. In my opinion, that rule has no application here. Rule 27(1) deals with the claim for deduction on the turnover of tax-free goods which are required to be investigated and allowed by the sales tax authorities concerned when the dealer produces the necessary evidence in support of such a claim. Sub-rule (2) of Rule 27 deals with claims for deductions in respect of sales to other registered dealers for re-sale in Orissa as provided in Section 5(2)(a) (ii) of the Act. I may quote the Sub-rule along with the proviso :-

27(2) A dealer who wishes to deduct from his gross turnover on sales which have taken place in Orissa the amount of a sale on the ground that he is entitled to make such a deduction under sub-Clause (ii) of Clause (a) of Sub-section (2) of

Section 5 of the Act shall produce a copy of the relevant cash receipt or bill according to as the sale is a cash sale or a sale on credit in respect of such sale and a true declaration in writing by the purchasing dealer or by such a responsible person as may be authorised in writing in this behalf by such dealer that the goods in question are specified in the purchasing dealer''s certificate of registration as being required for re-sale in Orissa by him :

Provided that no dealer whose certificate of registration has not been renewed for the year during which the purchase is made, shall make such a declaration and that the selling dealer shall not be entitled to claim any deduction of sales to such a dealer

From the context it is clear that the declaration required by the rule should be filed before the sales tax authorities at the time of the assessment. There is no question of any such declaration being in existence on the date of the actual transaction between the selling dealer and the purchasing dealer. Moreover it may be noted that the words used in the proviso are, "has not been renewed for the year during which purchase is made". So long as the renewal takes place for the year in question the proviso has no application irrespective of the actual date of renewal.

7. There is thus no provision either in the Sales Tax Act or in the Sales Tax Rules to compel this Court to take the view that the actual date on which the order of renewal of registration was passed by the sales tax authorities would be the relevant date for the purpose of claiming exemption u/s 5(2)(a)(ii). The reference must therefore be answered in the affirmative. There will be no order for costs.

G.C. Das, J.

8. I agree.