

(1961) 06 OHC CK 0001
In the Orissa High Court
Case No : S.J.C. No. 44 of 1959

Commissioner of Sales Tax

APPELLANT

Vs

H.K. Sahebranka

RESPONDENT

Date of Decision : 21-06-1961

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1962) 13 STC 990

Hon'ble Judges : G.C. Das, Acting C.J.; R.K. Das, J

Bench : Division Bench

Advocate : G.K. Misra, for the Appellant;

Judgement

G.C. Das, Ag. C.J.

1. The sole question referred to this Court by the Member, Orissa Sales Tax Tribunal, u/s 24 (1) of the Orissa Sales Tax Act is :

Whether in the facts and circumstances of this case it was legal for the assessing officer and for the matter of that the Assistant Collector of Sales Tax while dealing with assessment proceeding u/s 12 to assess the amounts falling u/s 9-B(3) of the Act and to direct recovery of such amount in a demand notice issued u/s 13 (4) of the Act ?

2. The facts giving rise to this reference are these : The dealer-assessee H. K. Sahebranka, is a registered: dealer under the Orissa Sales Tax Act bearing Registration No. CU 13768. He was assessed u/s 12(2) (b) of the Orissa Sales Tax Act for the quarter ending on 30th June, 1954. The commodity concerned was certain mill-made cloth. The question arose whether the sales of such mill-made cloth were effected by the dealer-assessee as the first dealer. The sale was to the tune of Rs. 1,51,242-7-4. During the assessment proceedings, the dealer-assessee claimed that he was not liable to pay sales tax on the ground that Explanation to Article 286(1)(a) of the Constitution of India applies to him and he relied upon a decision of the Supreme Court in the case of the United Motors

(India) Ltd. [1953] 4 S.T.C. 133. According to him, the sales transacted inside Orissa were to be construed as first-point-sales within the meaning of Rule 64 of the Orissa Sales Tax Rules. This rule was deleted with effect from 2nd February, 1955. So there is no doubt that the old Rule 64 applies to the present assessment. The assessing officer by his order dated 30th April, 1955, held the sales by the dealer-assessee in Orissa to be first-point-sales, because he realised sales tax from his customers. On appeal, the Assistant Collector construed the sales effected by the assessee to be first-point-sales. He further came to the conclusion that even if it was otherwise, the assessee having collected sales tax from his customers was liable to deposit such taxes in the Government Treasury u/s 9-B(3) of the Orissa Sales Tax Act. The Tribunal in second appeal, however, held that in the light of the amendments to the Act in 1958, a further enquiry was necessary to find out if the sales effected by the dealer-assessee in Orissa were the 1st point sales or the second-point-sales. Accordingly, he allowed the appeal, set aside the assessment and directed fresh assessment. It would be pertinent to mention here that the Tribunal also discussed with regard to the propriety or otherwise of the direction made by the Assistant Collector and observed that the amounts that can reasonably be brought u/s 9-B(3) cannot form the subject-matter in an assessment proceeding u/s 12 of the Orissa Sales Tax Act and such amounts are not recoverable by the demand notice u/s 13 of the Act. It is on these findings that he referred the question mentioned above to this Court.

3. Before answering the question it would be necessary to refer to certain sections of the Orissa Sales Tax Act. Section 9-B relates to collection of tax by dealers. Sub-section (3) of Section 9-B is relevant. It states:

The amount realised by any person by way of tax shall, notwithstanding anything contained in any other provision of this Act, be deposited by him in a Government Treasury within such period as may be prescribed, if the amount so realised exceeds the amount, if any, payable by him as tax.

Section 13 deals with the manner of payment and the recovery of tax and penalty. Sub-section (4) is necessary to be stated; it states that "the amount of tax (a) due where the returns are furnished without receipt showing full payment thereof, or (b) assessed under Sub-sections (1), (2), (3) and (4) of Section 12 less the sum, if any, already paid by the dealer in respect of the said period or assessed under Sub-section (5) of Section 12 together with the penalty directed to be paid under that sub-section and the penalty, if any imposed under Sub-section (3) of Section 11, shall be paid by the dealer into a Government Treasury by such date as may be specified in a notice issued by the Collector for this purpose and the date to be so specified shall be not less than thirty days from the date of service of such notice ; provided that the Collector may in respect of any particular dealer and for reasons to be recorded in writing, extend the date of such payment or allow such dealer to pay the tax due and the penalty, if any, by instalments.

In this connection, it would also be necessary to refer to Rule 26-B of the Orissa Sales Tax Rules, 1947, which lays down the period within which the amount realised by any person by way of tax shall be deposited by him in a Government Treasury under Sub-section (3) of Section 9-B shall be one month from the end of the quarter in which realisation was made. Rule 33 deals with recovery of tax from defaulting dealers and it lays down that if on the date fixed under Rule 26-B or 32 or on the date fixed in the notice issued under Sub-section (1) of Section 13-A or under Clause (d) of Sub-section (2) of Section 9 or on the date extended under the proviso to Sub-section (4) of Section 13, the defaulting dealer has not paid the amount due or such instalment thereof as may be due, the Commissioner shall subject to the proviso to Sub-section (5) of Section 13 apply to the District Collector of the area in which the dealer's place or places of business are located for the recovery of the amount as an arrear of land revenue.

4. The question can be divided into two parts. First of all whether it was legal for the assessing officer or for the Assistant Collector while dealing with an assessment proceeding u/s 12 to estimate the amounts falling u/s 9-B(3) of the Act. The second part is whether the Revenue authorities can direct recovery of such amount in a demand notice issued u/s 13(4) of the Act. As far as the first question is concerned, it is only when the assessing authorities examine the records and the account books of the assessee, they can find out whether the dealer-assessee has realised certain tax from the buyers and that tax has not been paid to the State. Thus, in view of the provisions of the Orissa Sales Tax Act, there is nothing to prevent the Revenue authorities to find out if any amount is due u/s 9-B(3) of the Act. I would accordingly answer the first part of the question in the affirmative. Thereby I would not be understood to mean that the Revenue authorities would assess the dealer-assessee in respect of the amount found out u/s 9-B(3). The Revenue authorities would only find out what amount is due from the dealer-assessee which is to be deposited in the Government Treasury.

5. Coming to the second part of the question whether the Revenue authorities can direct recovery of such amount in a demand notice issued u/s 13(4) of the Act, the relevant forms as far as Sections 12 and 13 are concerned, are form Nos. 9 and 10. In form No. 9, the 10th column requires to state the amount of tax assessed. But this is not a tax. The Revenue authorities only found that the dealer-assessee has collected sales tax from certain dealers and has not paid to the State. The question therefore is whether that amount is to be deposited into the Government Treasury by the dealer-assessee. Form No. 10 also does not apply, because there has been no determination of the tax u/s 9-B(3). Accordingly, the Revenue authorities cannot direct recovery of such amounts in a demand notice issued u/s 13(4) of the Act. Consequently, I would answer the latter part of the question in the negative.

There would be no order for costs.

R.K. Das, J.

I agree.