(1961) 07 OHC CK 0005

In the Orissa High Court

Case No : S.J.C. No. 95 of 1960

Commissioner of Sales Tax APPELLANT

Vs

Ramakaran Agarwalla RESPONDENT

Date of Decision : 31-07-1961

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 23(2), 24(1)

Citation : (1962) 13 STC 407

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

Bench : Division Bench

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

Judgement

Narasimham, C.J.—The question of law referred to this Court by the Member, Sales Tax Tribunal, u/s 24(1) of the Orissa Sales Tax Act is as follows :-

Whether the Tribunal has been right in holding that a second appeal lies to the Tribunal against the orders of summary rejection passed by the first appellate authority for the reasons that the first appeals were not entertainable.

2. The opposite party was assessed to sales tax by the Sales Tax Officer by his order dated 24th September, 1957. The assessee preferred a first appeal in the prescribed form, but some defects were noticed by the office of the appellate authority and he was given seven days time to remedy the defects. The assessee received notice on the 2nd September, 1958, but did not rectify the defects within the prescribed time. Thereupon the appellate authority, namely, the Assistant Commissioner, by his order dated 30th September, 1959, summarily rejected his appeal under Rule 49 of the Orissa Sales Tax Rules. The assessee then came up in second appeal before the Sales Tax Tribunal. One of the contentions raised before the Tribunal was that a mere summary rejection of an appeal for non-compliance with statutory rules was not a disposal of the appeal under Sub-section (2) of Section 23 of the Orissa Sales Tax Act, as recently amended and that consequently no second appeal against that order lay. The

Tribunal however rejected this contention holding that even a summary rejection of the first appeal would amount to a disposal of the appeal within the meaning of Sub-section (2) of Section 23 of the Act and that consequently a second appeal would lie.

3. I think the Tribunal was right in his view, especially in view of the recent pronouncement of the Supreme Court in Mela Ram and Sons Vs. The Commissioner of Income Tax Punjab, where they explained their previous decision in Commissioner of Income Tax, Madras Vs. Mtt. Ar. S. Ar. Arunachalam Chettiar, . In the former decision their Lordships of the Supreme Court pointed out that even a summary disposal of an appeal either on the ground that it was time-barred and the appellate authority did not exercise its discretion to condone the delay, or on the ground that the appeal was irregular and incompetent, or on account of some other reason, would still be an order passed on appeal. They further held that on such a summary rejection of the appeal, the original authority''s order is confirmed and consequently the statutory power of appeal should be liberally construed so as to include not only orders passed on appeal, after going into the merits of the assessment, but also orders disposing of the matter on preliminary issues such as limitation and the like. In view of this later pronouncement of the Supreme Court, the observations contained in an earlier Division Bench decision of this Court in Bansidhar Mohanti Vs. Commr. of Income Tax, which were based on Commissioner of Income Tax, Madras Vs. Mtt. Ar. S. Ar. Arunachalam Chettiar, can no longer be taken as authority for the contrary proposition.

4. We therefore uphold the order of the Tribunal and answer the question in the affirmative. There will be no order for costs.

R.K. Das, J.

5. I agree.