

(1961) 03 OHC CK 0003

In the Orissa High Court

Case No : Special Jurisdiction Case No. 25 of 1959

Commissioner of Sales Tax

APPELLANT

Vs

S.C. Roy

RESPONDENT

Date of Decision : 23-03-1961

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 23(3), 4(1), 4(2), 4(5)

Citation : (1961) 12 STC 821

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

Bench : Division Bench

Advocate : G.K. Misra, for the Appellant; None, for the Respondent

Judgement

G.C. Das, J.—The following question of law was referred to this Court by the Member, Sales Tax Tribunal, Orissa, under Sub-section (1) of Section 24 of the Orissa Sales Tax Act (Orissa Act XIV of 1947) :

Whether in the facts and circumstances of the case, assessment for the quarter ending on 31st March, 1950, in respect of sales in an additional place of business of a dealer liable u/s 4(1) and registered under the Orissa Sales Tax Act, 1947, can be declared illegal for the reason that the provisions of Sub-section (5) of Section 4 of the said Act came into force subsequent to that period?

The above question arises under the following circumstances. The dealer-assessee (hereinafter referred to as "the assessee") is a resident of Mangalpur in the district of Cuttack within the jurisdiction of the Sales Tax Officer, Cuttack, Circle No. III. He was registered as a dealer under the Orissa Sales Tax Act bearing certificate No. CU. III-466. Subsequent to this, sometime in October, 1949, the assessee opened another place of business at Chandbali in the district of Balasore within the jurisdiction of the Sales Tax Officer, Balasore Circle. He applied for another certificate of registration on 15th October, 1949, in respect of his new business at Chandbali. Since there was defect in the first application, he filed another application on 12th April, 1950, and was granted a certificate

bearing No. BA. 1589 on 18th April, 1950. He was assessed under Sub-section (5) of Section 12 for the quarter ending on 31st March, 1950, in respect of his business at Chandbali, though by then he had not got that business registered. He was also assessed for the quarter ending on 30th June, 1950, under Sub-section (4) of Section 12 of the Act for the new business. He submitted returns for the quarter ending on 30th June, 1950, beyond the prescribed period and after a delay of about nine months. So u/s 11(3) of the Act he was imposed a penalty of Rs. 50. Since no return was filed, best judgment assessments were completed for both the quarters by the Sales Tax Officer on the materials collected by him during the enquiry. On appeal, the Assistant Collector of Sales Tax confirmed the assessments as made by the Sales Tax Officer. Thereafter the assessee filed an appeal before the Tribunal. The Tribunal by his order dated 14th November, 1958, reduced the assessments and penalty in respect of the quarter ending on 30th June, 1950. In respect of the assessment u/s 12(5) relating to the quarter ending on 31st March, 1950, the assessing officer as also the Collector held that the assessee was liable to pay tax from the very start of his business at Chandbali. The Tribunal was of opinion that the taxing authority had misapplied Section 4(5) of the Act, inasmuch as this provision was added to the main Act by the Amending Act of 1951 and came into force on 26th November, 1951, which has no retrospective effect. Thus, the Tribunal disagreed with the Sales Tax Officer and the Assistant Collector and held that there was no evidence that the assessee exceeded the prescribed limit in his gross turnover in respect of his new business at Chandbali. Hence he was not liable to be taxed. Eventually, the Tribunal set aside the assessment for this quarter. Thus, the question referred to this Court does arise from out of the appellate order of the Tribunal.

2. Section 4 of the Act is the charging section. Sub-section (1) makes every dealer whose gross turnover on sales which have taken place in Orissa during the year immediately preceding the commencement of the Act exceeds Rs. 10,000, liable to pay tax under the Act. Sub-section (2) lays down that every dealer to whom Sub-section (1) does not apply shall be liable to pay tax under the Act on sales which have taken place in Orissa with effect from the quarter immediately following the period not exceeding twelve months during which his gross turnover on sales which have taken place in Orissa first exceeded Rs. 10,000. Sub-section (3) says that once the liability to pay tax is there, it shall continue until the expiry of three consecutive years, during each of which his gross turnover on sales which have taken place in Orissa has failed to exceed Rs. 10,000. The liability may also continue for such further period after the date of the said expiry as may be prescribed and his liability to pay tax under this Act shall cease on the expiry of the prescribed period. It appears from the appellate order of the Tribunal that the Tribunal has overlooked the provisions as contained in Sub-section (3) of Section 4. He appears to have confused it with Sub-section (5) since it deals with new business. Apart from Sub-section (5) of Section 4, under Sub-section (3) once the liability to pay sales tax arises, it continues for

three years, until it is cancelled or has ceased by operation of the first proviso to Sub-section (3) of Section 4. Admittedly in this case the assessee is a registered dealer since the commencement of the Orissa Sales Tax Act, 1947. Since his liability to pay sales tax in Orissa was continuing when he opened a new place of business at Chandbali, he was liable to pay tax on his gross turnover at Chandbali from the start of his business even if it failed to exceed Rs. 10,000. Thus, the liability of the assessee having arisen under Sub-section (1) of Section 4 of the Act, it was continuing until after the new business was started at Chandbali. Thus, by operation either of Sub-section (1) or Sub-section (2) of Section 4 of the Act, the liability to pay sales tax arises if the gross turnover on all sales held in Orissa exceeded the prescribed limit under Sub-section (3) and that liability continues whether the gross turnover does or does not exceed the prescribed limit. The opening of an additional or a new business inside the State of Orissa makes no difference in liability that arises either under Sub-section (1) or Sub-section (2) of Section 4 of the Act. In this connection, reference may be made to the Orissa Sales Tax Rules, 1947. The relevant rules are Rules 6, 7 and 10. These rules enjoin on a dealer liable to pay tax either under Sub-section (1) or Sub-section (2) of Section 4 of the Act to take out separate registration certificate for each additional place of business. But that does not mean that for each additional place of business a different and separate liability to pay sales tax should arise. In other words, it is not necessary that for each additional place of business the gross turnover should exceed the prescribed limit either under Sub-section (1) or Sub-section (2) of Section 4 of the Act. Sub-section (5) was introduced by the Amending Act of 1951 and came into force on 26th November, 1951. This sub-section was introduced for more than one purpose, including the liability to pay tax for any additional place of business. But even in the absence of Sub-section (5) a dealer who has become liable to pay tax by virtue of Sub-section (1) or Sub-section (2) of Section 4, continues to be so under Sub-section (3). This, it appears, has been overlooked by the Tribunal, and accordingly the order of the Tribunal under sub-section (3) of Section 23 has proceeded on a wrong basis.

In the result, we accept the reference and answer the question in the negative. Since there is no appearance on behalf of the assessee, there would be no order for costs in this Court.

R.K. Das, J.

3. I agree.