(1964) 04 OHC CK 0012

In the Orissa High Court

Case No : Original Jurisdiction Case No. 228 of 1963

Dwarika Prasad Sharma APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 27-04-1964

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1965) 16 STC 144

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

Bench : Division Bench

Advocate : L. Rath, for the Appellant; R.K. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Narasimham, C.J.—This is an application under Articles 226 and 227 of the Constitution against the order of the Member, Board of Revenue, dismissing the revision filed by the petitioner against the appellate order of the Collector of Puri, maintaining the order of the Certificate Officer in a certificate proceeding pending against the petitioner at Puri. The penalty was levied on the petitioner by the Sales Tax Authorities u/s 13 (5) of the Orissa Sales Tax Act and a certificate case was filed against him for recovery of the penalty as arrear of land revenue. The certificate-debtor (petitioner) objected to the continuance of the proceeding urging that the original assessment order of the Sales Tax Authority was set aside on appeal by the Sales Tax Tribunal and the proceedings were remanded for reassessment. Hence, it was urged on behalf of the certificate debtor that once the original assessment order was set aside by the Tribunal the levy of penalty which, again, was based on failure to pay the amount originally assessed within the time prescribed by law should also be deemed to have been rendered void, and as such the certificate should not issue against the petitioner. The Certificate Officer rejected this contention, saying that the certificate authorities had no jurisdiction to go into this question, and that the certificate-debtor ought to have raised this point before the Sales Tax Authorities in appeal or revision as the case may be. This view of the Certificate Officer was upheld both by the Collector in appeal and by the Member, Board of Revenue in revision.

2. The main contention of Mr. Rath, appearing for the petitioner, is that once the original order of assessment was set aside, it must be deemed, in the eye of law, that there was no assessment at all and that consequently the levy of penalty for non-payment of dues would also be void. But he fairly conceded that at the time of the levy of penalty there was an order of assessment against the petitioner and consequently levy of penalty by the Sales Tax Authorities was not wholly without jurisdiction at the time when the order was passed. u/s 13(5) of the Sales Tax Act as it stood then, the petitioner could have asked the Commissioner to stay the operation of the levy of penalty until the disposal of the appeal by the Tribunal. But it does not appear that this was done. He could have filed a revision petition against the order levying penalty. This also was not done. As the law stood at that time there was no provision in the Orissa Sales Tax Act to the effect that if the original order of assessment was subsequently annulled on appeal, revision, or reference, by the superior authorities, the penalty imposed shall be cancelled and the sum paid as penalty shall be refunded. This new right has been given to the assessee by amending Section 13 of the Sales Tax Act, by Orissa Ordinance No. 1 of 1964 which came into force on 18th January, 1964. Hence Mr. Rath could not satisfy us as to how on general principles, the levy of penalty which was valid at the time the order of penalty was passed could have subsequently become void merely because the order of assessment was set aside.

3. Mr. Ghosh invited our attention to the decision of the Kerala High Court in M. O. Paily Vs. Addl. Income Tax Officer, I Circle, Trichur, And Another, , where, while construing similar provisions occurring in Section 45 of the Indian Income Tax Act, 1922, the learned Judges held that penalty may be imposed even though the original order of assessment was set aside on appeal and that the correctness of the levy of penalty should be judged as on the date on which the order was passed and not in the light of subsequent events. This decision is directly against the contention of Mr. Rath.

4. For these reasons, we are of opinion that the Certificate Authority was right in holding that the levy of penalty was not void. The application is dismissed with costs. Hearing fee is assessed at Rs. 100 (Rupees one hundred only).

Misra, J.

5. I agree