
(1976) 03 OHC CK 0002
In the Orissa High Court
Case No : S.J.C. No's. 265 and 266 of 1974

Eastern Traders

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 31-03-1976

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(8), 24(1)

Citation : (1976) 42 CLT 430 : (1978) 41 STC 162

Hon'ble Judges : R.N. Misra, J; N.K. Das, J

Bench : Division Bench

Advocate : B.M. Patnaik, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.N. Misra, J.—These are two references made u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the "Act") by the Member, Additional Sales Tax Tribunal, at the instance of the assessee and the following questions have been referred for opinion of the court :

(1) Whether, in the facts and circumstances of the case, the assessing officer of Puri I Circle under whose jurisdiction the appellant (assessee) has his place of business wherein he keeps his accounts, has jurisdiction to assess the transactions which were admittedly transacted beyond the territorial jurisdiction of the said officer, i.e., at Bhubaneswar and at Cuttack, when the dealer has neither applied for registration at Cuttack or Bhubaneswar or has not taken the required permission to file consolidated return as required under Rule 26(2) of the O. S. T. Rules.

(2) Whether, in the facts and circumstances of the case, the assessing officer of Puri I Circle has jurisdiction to assess the sales turnover of the assessee arising at Bhubaneswar and Cuttack outside the territorial jurisdiction of Puri.

(3) Whether, in the facts and circumstances of the case, the assessment u/s 12(8) of the O. S. T. Act in respect of the quarter ending 31st March, 1964, is

bad in law for non-service of the initial notice issued u/s 12(8) of the O. S. T. Act.

2. The assessee is a partnership firm. The periods of assessment are 1964-65 and 1965-66. The Tribunal found that even though the initial notice issued in respect of the proceedings u/s 12(8) appears to be somewhat dubious, it cannot be said that the assessee was not afforded real opportunity to contest the assessment. As the assessee subsequently appeared and filed time petition, it was held that it had due opportunity to contest the assessment and the dubious nature of service of the first notice does not affect the assessment. As the admitted facts are that the assessee has its principal place of business at Puri from where it gave tenders and received payment in respect of supplies made at Cuttack, it was held that the assessing officer of Puri I Circle has jurisdiction to assess the assessee keeping in view of the definition of "place of business" given in Rule 2(i) of the Orissa Sales Tax Rules. In coming to this conclusion, the Tribunal placed reliance on the decision in *State of Orissa v. Damodar Sahu* [1972] 30 S.T.C. 262.

3. The first two questions have got to be decided against the assessee in view of the decision of the Full Bench of this Court in *State of Orissa v. Sundarlal Mandholiwal* [1976] 37 S.T.C. 409 (F.B.) (S.J.C. No. 100 of 1973 disposed of on 6th February, 1976). In fact, Mr. Patnaik for the assessee has conceded that the questions no more arise as propositions of law in view of the decision of the Full Bench. We would accordingly answer the first two questions against the assessee by saying :

(1) In the facts and circumstances of the case, the assessing officer, Puri I Circle had jurisdiction to assess transactions which were admittedly transacted beyond his territorial jurisdiction, and

(2) In the facts and circumstances of the case, the assessing officer of Puri I Circle had jurisdiction to assess the sales turnover of the assessee arising at Bhubaneswar and Cuttack outside the territorial jurisdiction of Puri.

4. The third question is in relation to the proceeding for reassessment for the quarter ending 31st March, 1964. Original assessment for this quarter was completed on 20th September, 1965 and as the assessing officer was of the view that a part of the turnover had escaped assessment, the proceeding u/s 12(8) of the Act was initiated.

Section 12(8) of the Act provides :

If for any reason the turnover of a dealer for any period to which this Act applies has escaped assessment or has been under-assessed, or where tax has been compounded when composition is not permissible under this Act and the Rules made thereunder, the Commissioner may at any time within thirty-six months from the expiry of the year to which that period relates call for a return under Sub-section (1) of Section 11 and may proceed to assess the amount of tax due from the dealer in the manner laid down in Sub-section (5) of this Section and

may also direct, in cases where such escapement or under-assessment or composition is due to the dealer having concealed particulars of his turnover or having without sufficient cause has furnished incorrect particulars thereof, that the dealer shall pay, by way of penalty, in addition to the tax assessed under this Sub-section, a sum not exceeding one and a half times of the said tax so assessed.

The proceeding for reassessment is in relation to the quarter ending with 31st March, 1964. Section 2(k) defines "year" to mean "financial year". In that view of the matter, the proceeding u/s 12(8) of the Act had to be initiated by notice served on the assessee on or before 31st March, 1967. According to the assessing officer, this notice was issued on 12th February, 1967. If that fact is correct, certainly the notice to reopen the matter would be in time. The Tribunal, however, seems not to have accepted the plea of service of notice. He found that the order sheet maintained by the Sales Tax Officer was not true and further indicated :

...In view of the petition filed by Gouri Sankar Agarwalla, the signature appearing on the slip appears to be somewhat dubious and it cannot be said that really the notice has been duly served on the assessee...

Having found thus, the Tribunal erroneously examined the position with reference to the assessee's subsequent conduct of participation. A proceeding not initiated within the period of limitation is vitiated and the assessing officer would lack jurisdiction to entertain a proceeding initiated thereafter. Consent, acquiescence, participation etc. would not confer jurisdiction when the proceeding initiated belatedly would be a nullity. The assessee's conduct of participation, therefore, was irrelevant. What was necessary to be found as a concluded fact was if the notice for reopening the assessment u/s 12(8) of the Act had been served on the assessee in accordance with law on any date prior to 31st March, 1967. That finding has not been given because the Tribunal has lost sight of the material feature.

5. We think, after the records go back, the Tribunal should re-examine the matter regarding service of notice in the proceeding u/s 12(8) of the Act. As things stand, he seems to have doubted the Sales Tax Officer's proceedings and if what has been said is correct, it is indeed reprehensible that a public officer chose to manipulate his record. The matter should be re-examined to ascertain whether within thirty-six months from 31st March, 1964, the assessee had actually been called upon to file a return in terms of Section 11(1) of the Act. If it is found that such notice had not been issued within the statutory period, the assessee has to succeed on the footing that the proceeding is a nullity and in case notice is found to have been served as required under the law, there would be nothing more to be contended. In the circumstances, we decline to answer the third question and leave the matter to be redispensed of by the Tribunal. We make no direction for costs.

N.K. Das, J.

I agree.