
(1970) 03 OHC CK 0028
In the Orissa High Court
Case No : S.J.C. No's. 86 to 95 of 1967

Gopabandhu Type Foundry

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 01-03-1970

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 15, 9B, 9B(2)

Citation : (1970) 36 CLT 1156

Hon'ble Judges : G.K. Misra, C.J.; S. Acharya, J

Bench : Division Bench

Advocate : D. Bhuyan, for the Appellant; Standing Counsel, for the Respondent

Judgement

G.K. Misra, C.J.—The Petitioner is Gopabandhu Type Foundry which has been registered as a dealer under the Orissa Sales Tax Act. It carries on business in manufacture and sale of types and lead spaces. It was established in the year 1917 by the Lok Sevak Mandal known as the Servants of the People Society (hereinafter referred to as the Society) which was registered under the Societies Registration Act, 186 a Initially it was established with a view to cater to the needs of the Satyabadi Press which publishes the Oriya daily publication ? Samaj?. Satyabadi Press was the property of late Pandit Gopabandhu Das. He executed his last Will and testament on 17.6.1928. Paragraph 6 of the Will runs thus:

For future management of the Satyabadi Press I had an elaborate scheme in my mind but cannot draw it out at the present moment. I had a mind to take Babu Radhanath Rath as my assistant under the Servants of the People Society shortly. The short out that appears to me at the present moment is that I shall make over the whole press to the Servants of the people Society so that a permanent Institution of the Society may continue in Orissa. I hope the Society will see to its strict management and will spend all its proceeds on the social, educational, moral and political uplift of Orissa. Somebody on behalf of the Society will take its accounts, its receipts and disbursements in order to know its

financial position.

This Will was probated in the year (sic). The Society took over management of the Satyabadi Press and in the year 1947 established the Gopabandhu Type Foundry. In 1950 the Society took over the founded on payment of Rs. 12,000/- towards the value of its assets to the Orissa Branch of the Society with a view to getting over the restriction of the utilisation of the income of the properties of the Society in Orissa in accordance with the desire and last wishes of the testator.

2. The present assessments are in relation to two matters: (i) on the footing that the Petitioner constitutes an independent juristic personality different from the Satyabadi Press, the supply made by the Petitioner to the Press was construed to be a sale; and (ii) in effecting sales in favour of outsiders the Petitioner did not show the collection of sales tax separately from the price. In other words, a consolidated amount was charged both for the price and the sales tax. Though the Petitioner maintained separate accounts of the tax realised, as in the cash or credit memos the same was not separately shown, the taxing authorities did not allow the Petitioner to deduct the tax realised from the gross turnover of sales to determine the taxable turnover. The Petitioner having lost on both the points asked for a reference. The Tribunal referred the following questions:

(a) Whether on the facts and circumstances of the case the conclusion of the Tribunal that the Servants of People Society is merely the Manager and not owner of the Satyabadi Press is correct and valid in law.

(b) Whether on the facts and circumstances of the case the supplies of types and lead spaces to the Satyabadi Press from Gopabandhu Type Foundry are sales and liable to the sales tax under the O.S.T. Act.

(c) Whether on the facts and circumstances of the case the Tribunal was justified in holding that the sales tax collected by the dealer is not admissible to him for deduction in determining the taxable turnover for non-compliance with the provision of Section 9-B(2) of the Act.

3. The first question for consideration is whether the finding of the taxing authorities that the Society was a trustee in respect of the Satyabadi Press well founded. The main basis for such an argument is paragraph 6 of the Will wherein the testator expressed his last wishes by saying that the income of the Satyabadi Press would be devoted to the cause of the welfare of the people in Orissa. The authorities below misconstrued paragraph 6 of the Will whereby clearly, title to the Satyabadi Press vested in the Society. The operative portion of this paragraph is the sentence saying "I shall make over the whole press to the Servants of the People Society so that a permanent Institution of the Society may continue in Orissa." The devise was in absolute terms and on probate being granted, title to the Press vested absolutely in the Society. The subsequent sentence where by the testator hoped that the Press would be strictly managed and its income would be spent for the uplift of the people of Orissa was merely a pious wish and is not a condition precedent to the passing of title. We are clearly

of opinion that the taxing authorities misconstrued the document and wrongly came to the conclusion that in respect of the Satyabadi Press the Society was mere trustee.

4. On the aforesaid analysis, the legal position is that both the Satyabadi Press find the Petitioner belong to the Society. Unless there are two separate juristic persons there cannot be inter se transfers and accordingly any supply of materials by the Petitioner to the Satyabadi Press cannot constitute "sale" within the meaning of that word under the Orissa Sales Tax Act or the Sale of Goods Act. The answer must therefore be in favour of the dealer that the supply of types and lead spaces by the Petitioner to the Satyabadi Press is not assessable to Sales Tax.

5. The second question for consideration is whether the Petitioner is not entitled to deduct the sales tax realised from outsiders from the gross turnover to determine the taxable turnover. Reliance was placed by the assessing authorities on Section 9-B, Sub-section (2), the relevant portion of which runs thus:

"Notwithstanding anything contained in Section 15, any registered dealer who realises or stipulates to realise any amount by way of tax on the sale of any goods from the purchases shall issue a cash or credit memo, as the case may be, signed by the dealer or his servant, manager or agent to the purchaser showing separately the price of the goods sold and the amount realised or stipulated for realisation by way of tax and shall keep a countervail duly signed and shall further maintain a true and correct account of all moneys realised or stipulated for realisation by him by way of tax in the prescribed manner.

The substance of this provision is that the dealer shall keep separate accounts of the tax realised and the price charged. Similarly, the cash or credit memos issued by him must also show the realisation of tax separately. The position is settled that the tax realised is to be deducted from the gross turnover to determine the taxable turnover. The question is whether such tax is not to be deducted from the gross turnover if the same is not separately shown in the cash or credit memos. Mr. Mohapatra, the learned Standing Counsel, was called upon to show us any provision either in the statute or in the rules whereby the dealer loses his right to such deduction unless he shows the tax separately in the cash or credit memos. In this particular case the tax realised has been indicated separately in the accounts and the amounts can be easily determined for the purpose of deduction. In the absence of any provision either in the statute or in the rules restricting the right of the dealer to make such deduction unless the realisation of tax is separately shown in the cash or credit memos, the dealer's right cannot be affected. It is somewhat remarkable that the taxing authorities jumped to a rash conclusion that deduction is not permissible unless the realisation of tax is shown separately in the cash or credit memos. The provision is merely for easy collection of the tax realised. Nonadherence to the prescription in respect of the cash or credit memos does not entail any penal or other

consequence. In the absence of such provision a taxing statute must be construed in favour of the subject, that is, the dealer or the Assessee. We are therefore clearly of opinion that the assessing authorities and the Tribunal acted contrary to the law in saying that the tax realised from outsiders by the Petitioner of which he has kept separate accounts in the account books cannot be permitted to be deducted from the gross turnover to determine the taxable turnover.

6. On the aforesaid analysis our answers to the questions would be in favour of the dealer and in the negative. The references are accepted, but in the circumstances without costs. The Petitioner is however entitled to the refund of reference fees.

S. Acharya, J.

7. I agree.