
(1973) 11 OHC CK 0022
In the Orissa High Court
Case No : O.J.C. No. 309 of 1971

Hirji Nagji and Co.

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 14-11-1973

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 9

Citation : (1975) 35 STC 461

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

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; The Standing Counsel (S.T.), for the Respondent

Judgement

R.N. Misra, J.—The petitioner is a firm registered as a dealer under the Central Sales Tax Act and has been assigned Registration No. B. P. C. 71. For the period from 1962-63 till 1967-68 it was assessed to Central sales tax. A part of its turnover was exigible to purchase tax under the Orissa Sales Tax Act. It made an application on 16th December, 1970, for refund of tax amounting to Rs. 27,971.59 relying upon the provisions of the Central Sales Tax (Amendment) Act, 1969, and that application came to be rejected on 25th February, 1971 (annexure 3), by the Sales Tax Officer. This writ application was filed on 29th March, 1971, to quash the said order of rejection and for a direction to the Sales Tax Officer to refund the amount. In the original application there was also a prayer for quashing the various assessments in regard to the years 1962-63 to 1967-68 (annexure 1 series). In the counter-affidavit it was contended that until the assessments were quashed no refund was admissible and since no prayer had been made for quashing of the assessments the writ application was not maintainable. Various other contentions were also raised with a view to disputing the claim for refund. Thereupon the petitioner made an application for amendment asking for quashing of the assessments. Such an application was unnecessary in view of the fact that there was already a prayer for quashing of the assessments in the original petition. By order dated 17th April, 1972, the

amendment was allowed and a further counter-affidavit was received from the opposite parties.

2. It is not disputed that sale of jute and broomstick is liable to purchase tax under the Orissa Sales Tax Act. The petitioner contends that in view of the provisions contained in Section 9(3) of the Central Sales Tax Act,

The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected,

there was no occasion for levying Central sales tax on the turnover in regard to these goods because tax at the purchase point had already been paid. Under the State Act in Orissa a single point taxation is in vogue and in view of the provisions in Section 9(3) of the Central Act a multiple point could not be provided. The petitioner places reliance on two decisions of the Supreme Court being *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, and *State of Madras Vs. N.K. Nataraja Mudaliar*, By Central Act 28 of 1969 the Central Sales Tax Act was amended. Sections 9 and 10 of this amended Act are material for our purpose.

9. Validation of assessments, etc.-(1) Notwithstanding anything contained in any judgment, decree or order of any court or other authority to the contrary, any assessment, reassessment, levy or collection of any tax made or purporting to have been made, any action or thing taken or done in relation to such assessment, reassessment, levy or collection under the provisions of the principal Act before the 9th day of June, 1969, shall be deemed to be as valid and effective as if such assessment, reassessment, levy or collection or action or thing had been made, taken or done under the principal Act, as amended by this Act and accordingly-

(a) all acts, proceedings or things done or taken by the Government or by any officer of the Government or by any other authority in connection with the assessment, reassessment, levy or collection of such tax shall, for all purposes, be deemed to be, and to have always been, done or taken in accordance with law ;

(b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax ; and

(c) no court shall enforce any decree or order directing the refund of any such tax.

(2) For the removal of doubts, it is hereby declared that nothing in Sub-section (1) shall be construed as preventing any person-

(a) from questioning in accordance with the provisions of the principal Act, as amended by this Act, any assessment, reassessment, levy or collection of tax referred to in Sub-section (1), or

(b) from claiming refund of any tax paid by him in excess of the amount due from him by way of tax under the principal Act as amended by this Act.

10. Exemption from liability to pay tax in certain cases.-(1) Where any sale of goods in the course of inter-State trade or commerce has been effected during the period between the 10th day of November, 1964, and the 9th day of June, 1969, and the dealer effecting such sale has not collected any tax under the principal Act on the ground that no such tax could have been levied or collected in respect of such sale or any portion of the turnover relating to such sale and no such tax could have been levied or collected if the amendments made in the principal Act by this Act had not been made, then, notwithstanding anything contained in Section 9 or the said amendments, the dealer shall not be liable to pay any tax under the principal Act, as amended by this Act, in respect of such sale or such part of the turnover relating to such sale.

(2) For the purposes of Sub-section (1), the burden of proving that no tax was collected under the principal Act in respect of any sale referred to in Sub-section (1) or in respect of any portion of the turnover relating to such sale shall be on the dealer effecting such sale.

3. The assessments are not open to challenge in view of the validation granted u/s 9 of the Act particularly when Mr. Mohanty for the petitioner does not impugn the validity of Section 9 of the amending Act. Thus the prayer for quashing of the assessments cannot be allowed.

4. Even if the assessments are sustained, the claim of the petitioner is open to examination, according to Mr. Mohanty. If the case of the petitioner is covered by Sub-section (1) of Section 10 of the amending Act, Section 9 thereof would not stand as a bar and notwithstanding the fact that the assessments which were otherwise invalid have been validated, the claim for refund is admissible provided the other conditions are satisfied,

5. The learned standing counsel contends that in this case Rs. 18,375.26 had been paid by way of admitted tax and only Rs. 4,540.63 was paid as per demand upon assessments being completed. According to the learned standing counsel Sub-section (1) of Section 10 provides that there would be no liability to pay the tax and, therefore, where the liability has already been wiped out there is no room for claiming refund because Sub-section (1) of Section 10 of the amending Act would not apply to such an eventuality. We do not accept such a contention. Section 10(1) of the amending Act intends to nullify the liability by providing for exemption under certain contingencies. If the requisites are satisfied the resultant would be annulment of liability and where there is no liability after payments have been made by mistake of law, a situation emerges where a claim for refund would be maintainable. If some money has been paid by way of tax

though it is not the due of the State certainly the State would not keep that amount. This principle has been more or less settled as law by now.

6. There is, however, a big hurdle for the petitioner before any relief could be admissible to it. While the petitioner has contended that it has not collected the tax because such tax could not be levied or collected in respect of the sales constituting the turnover in question but for the amending Act, the revenue has taken the stand that as a fact such tax has been collected and that is why without raising any protest the assessee had paid Rs. 18,375.26 by way of admitted tax. Whether tax had been collected or not is certainly a question of fact and there is considerable dispute raised on such an aspect which cannot be decided in this proceeding.

7. The reason given by the assessing officer in rejecting the application for refund seems to be without least justification. It has, therefore, to be quashed. The learned standing counsel even conceded that the claim for refund could not be thrown out merely on the ground stated in annexure 3. The learned standing counsel further concedes that when such a fact is in dispute the assessing officer is entitled to enquire into it and would be required to give an opportunity to the assessee to substantiate his stand. In our view, the stand of the learned standing counsel is absolutely fair. We would, accordingly, while sustaining the assessments and rejecting the prayer of the petitioner for their annulment, quash the order of the assessing officer refusing the application for refund (annexure 3) and call upon him to redispense of the application for refund on the basis of the law contained in the amending Act of 1969. He will certainly give reasonable opportunity to the assessee to establish its contentions on questions of fact before a decision on the refund application is finally taken.

8. This writ application is allowed to the extent indicated above by quashing annexure 3 and requiring the assessing officer to redispense of the application for refund. We make no order as to costs.

K.B. Panda, J.

9. I agree.