(1994) 12 OHC CK 0023

In the Orissa High Court

Case No : O. J. C. No''s. 1441 to 1444 of 1991

Ion Exchange India Ltd. APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 02-12-1994

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 24(1), 24(7)

Citation : (1995) 1 OLR 20

Hon'ble Judges : V.A. Mohta, C.J;R.K. Patra, J;D.P. Mohapatra, J

Bench : Full Bench

Advocate : B. Agarwala, for the Appellant; Ashok Mohanty, Standing Counsel (C.T.), for the Respondent

Judgement

V.A. Mohta, C.J.—The question referred to this Full Bench in this batch of cases is whether any authority constituted under the Orissa Sales Tax Act, 1947 (the Act) has in view of Section 24(7), power to grant stay of payment of the amount of tax due in accordance with the order of the Tribunal, in respect of which an application made u/s 24(1) or a reference: made inconsequence there of is pending disposal.

2. Having herd parties at length, we see a neat and clear answer to the question and that is in the negative. Section 24 reads thus:

"24. Statement of case to High Court.

(1) Within sixty days from the date of receipt of the copy of an order of the Tribunal under Sub-section (3) of Section 23 affecting any liability of any dealer to pay tax under this Act, such deafer or, as the case may be, the State Government, may by application in writing accompanied, when the application is made by any person other than the State Government, with a fee of one hundred rupees require the Tribunal to refer to the High Court any question of law arising out Of such order and except in cases covered under Sub-section (2) the Tribunal may, within ninety days of the receipt of such application, draw up a statement

of the case and refer it to the High Court.

(2) If for reason to be recorded in writing, the Tribunal refuses to make such reference, the application may, within sixty days from the date of receipt of the copy of the order of refusal.

(a) withdraw his application (and if he does so, the fee paid shall be refunded), or

(b) apply to the High Court against such refusal.

(3) if upon the receipt of an application under Clause (b) of Sub-section (2) the High Court is not satisfied that such refusal was justified, it may require the Tribunal to state a case and refer it to the High Court and on receipt of such requisition the Tribunal shall state end refer the case accordingly.

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable into determine the question raised thereby it may refer the case back to the Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the. hearing of any such case. shall decide the question of law raised thereby and shall delivery its judgment thereon containing the grounds on which such; decision is founded and shall send to the Tribunal a copy of such judgment under the seal of the Court and the signature of the Registrar and the Tribunal shall dispose of the case accordingly.

(6) Where reference is made to to the High Court under this section, the costs including the disposal of the fee referred to in Sub-section (1) snail be in the discretion of the Court.

(7) The payment of the amount if any of tax due in accordance with the order of the Tribunal in respect of which) an application has been made under Sub-section (1) shall not be stayed pending the disposal of such application or any reference in consequence thereof but if such amount is reduced as the result of such reference the excess tax paid shall be refunded in accordance with the provisions of Section 14".

3. It would be seen that Section 24 is a complete Code with relation to statement of cases to the High Court. There can only be three varieties of cases pertaining to stay : (1) where there is an express provision for stay, (2) where the provision is silent and (3) where there is a specific prohibition No difficulty would arise where there is an express provision for stay Where the statute is silent, the power of stay will depend upon several factors including the nature of the case and the incidental and ancillary jurisdiction that can be exercised by the authority. There can be no jurisdiction to grant stay under the Act where there is an express bar. The present case belongs to the last category and hence there is no jurisdiction to grant stay In matters covered by Section 24(7).

4. Shri Agarwala, learned counsel for the petitioner, contended that u/s 24(7), the restriction does not operate against the Tribunal but operates only against

the other authorities. There is no scope for drawing such distinction. The words are clear and they refer to the payment of the amount of tax due in accordance with the order of the Tribunal. The prohibition is total and operates against all authorities under the Act.

5. The next submission that the order passed by the Tribunal pending application or reference u/s 21 to the High Court is not final Section 24(7) applies only to final orders and hence also there is no bar, has to be stated merely to be rejected. There is no warrant for drawing such distinction. It is pertinent to note that reference-jurisdiction stands on altogether different footing. Even the High Court, which under the constitutional jurisdiction may have power to grant stay, has no jurisdiction to grant stay in matters which come before it in advisory jurisdiction of reference, as held in Commissioner of Income Tax Vs. Bansi Dhar and Sons, . The Tribunal cannot stand on a higher footing.

6. Submission is that the provision is oppressive and if read as creating a total bar may be rendered as unconstitutional and hence should be read down in a manner which makes it constitutional. The question of validity of the provision is not before us. The petitioner is free to raise the challenge in appropriate manner in separate proceedings. But the grievance about the petitioner being totally remedyless may not be altruistic. In appropriate and gross cases, constitutional jurisdiction under Article 226/227 can be exercised. There is nothing so unusual about such express bar. It exists in many enactments.

7. Principle of stare decisis was also invoked on the basis that High Courts have been granting stay in such matters in appropriate cases as a long standing practice. We have perused the decisions brought to our notice. They are all under constitutional jurisdiction. High Court in no case has decided that the Tribunal has jurisdiction to grant stay in the matter in the face of an express bar u/s 24(7). Doctrine of state decisis means nothing but a policy of Courts to stand by precedent and not to disturb the settled point, theory being that security and certainly require that unless there are very compelling reasons and public policy, accepted and legal principle under which rights may accrue, be recognised and followed, though later found to be not legally sound. We fail 10 see how that principle can be attracted in these cases. Question of constitutional jurisdiction of High Court is not before us.

8. A Full Bench of Delhi High Court in Narula Trading Agency Vs. Commissioner of Sales Tax Delhi, , hid occasion to deal with Section 45 (7) of the Delhi Sales Tax Act, which contains pari materia provisions It is laid down that though power to stay is ancillary to the appellate authority the sama cannot be the case with the reference proceedings. We endorse that view.

9. Under the circumstances, we hold that no authority under the Act including the Tribunal has jurisdiction to stay recovery of the amount due under the order of the Tribunal pending application or reference before the High Court u/s 24 All these petitions be sent back to the appropriate Division Bench for disposal in

accordance with law.

D.P. Mohapatra, J.

10. I agree.

R.K. Patra, J.

11. I agree.

