

(1982) 03 OHC CK 0016

In the Orissa High Court

Case No : Special Jurisdiction Cases No's. 18 to 23 of 1978

Jagabandhu Roul and Brothers

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 23-03-1982

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 11(3), 24(2)(b)

Citation : (1983) 52 STC 407

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

Bench : Division Bench

Advocate : A. Pasayat, D.P. Misra, C. Behera, K.C. Samantray and D.K. Sen, for the Appellant; Standing Counsel (S.T.), for the Respondent

Judgement

R.N. Misra, C. J.

1. On the assessee's application u/s 24(2)(b) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the "Act"), this Court directed the Sales Tax Tribunal to state a case and refer the following common question for opinion of the court:

Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal, was legally right to uphold the penalty when the quarterly return showing taxable turnover as "nil" had been filed within the due date?

2. The assessee is a registered dealer. We are concerned with quarters ending 30th June, 1971, 30th September, 1971, 31st December, 1971, 31st March, 1972, 30th June, 1972, 30th September, 1972, 31st December, 1972, and 31st March, 1973. Returns for most of the quarters had been filed in time excepting the quarters ending 30th June, 1972, and 31st March, 1973, where there was a delay of one day each. The annual returns for 1972 and 1973 had, however, not been furnished. In these returns, though sale of gundi was exigible to tax at the relevant period, the assessee did not include the taxable turnover therefor, nor did he pay the admitted tax. In the absence of payment of admitted tax on the turnover, the returns were of no avail and the assessee was ; penalised u/s 11(3)

of the Act and for each quarter there was a penalty of Rs. 150. First appeals failed to bring any benefit to the assessee. The assessee's second appeals were also dismissed.

3. Though in the assessee's own case for an earlier period this Court in *Jagabandhu Roul v. State of Orissa* [1970] 26 STC 234 had held that sale of gundi being tobacco was not exigible to sales tax, with effect from 5th February, 1968, entry No. 5-A prescribed tax for sale of gundi. At the relevant time, admittedly sale of gundi was liable to tax. The counsel for the assessee does not dispute that under the law if admitted tax on the turnover is not paid, the return becomes non est and the assessee becomes liable to be visited with penalty. On the admitted position, the assessee, therefore, was liable to be penalised. It was open to the Tribunal to take into consideration the explanation of the assessee that there was no contumacy in his conduct in omitting to include in his gross turnover of sales the sales turnover of gundi, and exercising the powers of the Sales Tax Officer the Tribunal could have exempted the assessee from penal liability. But as a proposition of law, the assessee's liability to be penalised cannot be disputed. Since the condition precedent to imposition of penalty is satisfied, this Court cannot in the advisory jurisdiction hold that no penalty is exigible. Our answer to the question referred to the court is, therefore, in the affirmative, that is, against the assessee.

There would be no order for costs.

B.K. Behera, J.

I agree with my Lord the Chief Justice.