
(1980) 07 OHC CK 0023

In the Orissa High Court

Case No : Original Jurisdiction Cases No's. 880, 889 and 890 of 1976

Kamal Kumar Agarwal and Another

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 08-07-1980

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 6, 8
Constitution of India, 1950 — Article 226

Citation : (1980) 50 CLT 210 : (1980) 46 STC 384

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

Bench : Full Bench

Advocate : Agarwalla, for the Appellant; The Standing Counsel (C.T.) and the Additional Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—In each of these applications under Article 226 of the Constitution, the petitioner is a registered dealer both under the Orissa Sales Tax Act of 1947 as also the Central Sales Tax Act of 1956. The State Government in purported exercise of powers u/s 8(5) of the Central Sales Tax Act made the following notification :

Finance Department Notification No. 43637-CTA-200/66-F. dated the 8th December, 1966.

In exercise of the powers conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (74 of 1956), the State Government having been satisfied that it is necessary to do so in the public interest hereby direct that in respect of all declared goods sold in the course of inter-State trade or commerce, no tax under the said Act shall be payable by any dealer, having his place of business in the State in respect of the sale by him of such goods where tax has been levied and collected in respect of the sale or purchase of such declared goods u/s 5(1) of the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947), subject to the following conditions, namely :-

(i) the burden of proving that the tax u/s 5(1) of the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947), has been levied and collected in respect of any such declared goods shall lie on the dealer, and

(ii) the dealer shall not claim refund under Clause (b) of Section 15 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), read with Section 14-B of the Orissa Sales Tax Act, of the tax levied and collected u/s 5(1) of the Orissa Sales Tax Act, 1947, from the dealer or such tax has not been refunded to him.

A Bench of this Court in the case of Orissa Hides Trading Co. v. Sales Tax Officer, Sambalpur III Circle [1975] 35 S.T.C. 232 decided:

The net effect of the notification, however, is that in respect of a dealer's transactions in the course of inter-State trade or commerce there would be no tax under the Central Act provided the two contingencies indicated in the notification are satisfied. The fact which requires proof is that tax has already been imposed and collected u/s 5(1) of the State Act and the same has not been refunded to him or claim in that behalf is not to be made under the provisions of Section 15(b) of the Central Act. This fact has to be established by the assessee. The mandate in Section 15(b) of the Central Act is that the tax under the State Act is to be refunded once the same goods are sold in the course of inter-State trade or commerce and are assessed to tax under the Central Act: *Khader & Co. v. State of Madras* [1966] 17 S.T.C. 396. Judged from that angle, the notification embodies a converse scheme, i.e., where the State tax is collected and the dealer shall not claim refund of that tax u/s 15(b) of the Central Act, the Central sales tax shall not be payable.

A statutory notification [in exercise of the power u/s 8(5) of the Central Act] cannot be permitted to run counter to Section 15(b) of the Central Act. That view has been taken in *Rafeeq Ahmed & Co. v. State of Andhra Pradesh* [1969] 24 S.T.C. 430 and we respectfully agree with the same. The tax to be refunded u/s 15(b) of the Central Act is the tax levied under the State Act. The notification, in our view, is a misconceived one, though it was intended to avoid the hardship of the claim of refund. We hold that it is not enforceable.

The ratio in the *Orissa Hides Trading Co.*'s case [1975] 35 S.T.C. 232 was adopted in two other cases of this Court being *K. Narayana Kwmandan Sons & Co. v. Sales Tax Officer, Koraput II Circle* [1975] 36 S.T.C. 374 and *Subudhi Krishna Murty & Sons v. Sales Tax Officer, Koraput II Circle* [1975] 36 S.T.C. 419

The petitioners in these three cases are dealers in jute which is admittedly a declared goods under the provisions of the Central Act. Under the State Act, jute is liable to purchase tax u/s 3-B. Purchase tax had been paid in respect of the transactions in jute under the State Act. The petitioner in each of these cases, therefore, claimed exemption from Central sales tax in terms of the notification of 1966, referred to above. The taxing officer overruled the stand of the petitioner relying on the decisions of this Court and assessed the sale under the Central Act. The petitioner in each of the cases assails the assessment relying

upon the notification in question.

2. When these applications were placed for hearing before a Division Bench, the counsel for the petitioners contended that the view taken by this Court in the Orissa Hides Trading Co.'s case [1975] 36 S.T.C. 374 is incorrect and the notification of 1966 is not open to attack on the ground indicated by this Court. These applications were, therefore, directed to be placed before a larger Bench for examining the correctness of the earlier Division Bench decisions.

3. Mr. Agarwalla for the petitioners has contended that Section 6 of the Central Act is the charging provision and it has been made subject to other provisions of the Act. Section 8 makes provision for rates of tax on sales in the course of inter-State trade or commerce. As already pointed out, the notification was made in 1966. By then, Section 8(5) contained the following provision:

Notwithstanding anything contained in this section the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the official Gazette, direct that in respect of such goods or classes of goods as may be mentioned in the notification and subject to such conditions as it may think fit to impose, no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sale by him from any such place of business of any such goods in the course of inter-State trade or commerce or that the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification.

Sub-section (5) has been amended by Central Act 61 of 1972 and as far as relevant now provides:

Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the official Gazette, and subject to such conditions as may be specified therein, direct,-

(a) ...

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification, to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification.

The counsel contends that when a notification in exercise of Section 8(5) of the Central Act is made, it could avoid an assessment under the Central Act. There is no dispute that sale of declared goods would be exigible to one set of tax whether it be under the State Act or under the Central Act. According to Mr.

Agarwalla, Section 15(b) of the Central Act envisages the statutory mandate that where two sets of tax have been levied in respect of the same goods once under the State Act and over again under the Central Act, the tax under the State Act becomes refundable. The notification operates in a different field, namely, where there has been an assessment under the State Act, a second set of tax under the Central Act is not to be levied. The notification, therefore, could not be challenged by referring to or relying upon Section 15(b) of the Central Act.

4. The Supreme Court pointed out in the case of *State of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons* [1965] 16 S.T.C. 231

Section 6 of the Central Act is the charging section. Subject to the other provisions contained in the Act, every dealer is liable to pay tax under the Act on all sales effected by him. It will be noticed that the liability is not absolute but subject to the other provisions of the Act. If the effect of another provision is to take away the liability, effect will have to be given to it. Section 8 prescribes the rates of tax to be levied. It is common ground that Section 8(1) does not apply to the facts of the case, but the proviso is important as it indicates that in some cases falling within the proviso the rate may be nil. In other words, notwithstanding Section 6, the dealer may not be liable to pay any tax if he comes within the proviso to Section 8(1). It follows that the scheme of the Act is not that every transaction in inter-State trade must bear some tax.

What has been said above by the Supreme Court clearly supports the submission now made. If Section 8(5) would authorise the State Government to notify exempting an assessment under the Central Act, the provision of Section 6 would not be violated, because Section 6 has been made subject to Section 8(5) of the Act. Sub-section (5) clearly provides that it would be open to Government to notify upon satisfaction that it was necessary in the public interest that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, no tax would be payable. Under the Government notification, once identity of the goods is established and tax under the State Act has been levied, assessment under the Central Act is not to be made notwithstanding the fact that u/s 6, the transaction incurred liability under the Central Act to be taxed. In view of the conceded position and, in our opinion rightly, that under the scheme only one set of tax is exigible in respect of declared goods, where the goods had already been taxed under the State Act, no useful purpose would indeed be served in making an assessment under the Central Act in respect of such goods when it enters the stream of inter-State trade or commerce. Completing assessment, collecting tax and allowing the refund thereof would be futile exercise on the part of the administration and would indeed involve undue hardship for the dealer. That is why on being satisfied that it was in the public interest to exempt the same goods being taxed over again under the Central Act, the impugned notification of 1966 had been made.

5. As we have already pointed out, the impugned notification intends to cover a field different from the one intended to be covered by Section 15(b) of the

Central Act. The notification intends to avoid assessment under the Central Act while Section 15(b) deals with a situation where the same goods have been assessed twice-once under the State Act and over again under the Central Act. It is true that Section 15(b) stipulates refund of the tax under the State Act while the notification exempts assessment under the Central Act subject to satisfaction of the prescribed conditions. Since different situations are intended to be dealt with by the notification and the statutory provision, there could be no scope for holding that the scheme in the notification runs counter to the statutory provision. This Court certainly fell into an error in not maintaining this distinction when relying upon the statutory provision in Section 15(b) of the Central Act, it came to hold that the notification envisaged a process counter to the statutory mandate and was therefore not enforceable.

Mr. Agarwalla for the petitioners and the learned standing counsel for the taxing department referred us to certain decisions. On the analysis indicated above, we are inclined to take the view that reference to the aforesaid decisions is not necessary. In fact, none of them has directly dealt with a situation as here.

6. Accordingly we would hold that the impugned notification is intra vires and enforceable and the three Bench decisions of this Court being *Orissa Hides Trading Co. v. Sales Tax Officer, Sambalpur III Circle* [1975] 35 S.T.C. 232 K. *Narayana Rumanian Sons & Co. v. Sales Tax Officer, Koraput II Circle* [1975] 36 S.T.C. 374 and *Subudhi Krishna Murty & Sons v. Sales Tax Officer, Koraput II Circle* [1975] 36 S.T.C. 419 so far as they hold the notification to be bad are not correct decisions. They are, therefore, overruled.

7. The impugned assessments are quashed ; the assessing officer would be entitled to call upon the petitioner in each of the cases, in case he considers necessary, to satisfy him that the conditions indicated in the impugned notification are satisfied.

8. Each of the writ applications is allowed and the impugned assessment is quashed. Parties are directed to bear their own costs.

K.B. Panda, J.

9. I agree.

P.K. Mohanti, J.

10. I agree.