(2004) 08 OHC CK 0007

In the Orissa High Court

Case No : Original Jurisdiction Case No. 813 of 1996.

Kedarsons APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Sales Tax Act, 1947 — Section 12(4), 12(5)
Orissa Sales Tax Rules, 1947 — Rule 2, 20

Citation : (2004) 2 OLR 656 : (2006) 146 STC 49

Hon'ble Judges : A.K. Patnaik, J;A.K. Parichha, J

Bench : Division Bench

Advocate : S. Dey, S. Ray, A. Mohanty and S.P. Das, for the Appellant; Ashok Mohanty, Senior Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The petitioner is a partnership firm and was initially carrying on business of selling ready made garments, sarees, etc,, at Nayasarak, Cuttack, in the name "Jayanarayan Kedarnath" and was issued with a registration certificate under the Orissa Sales Tax Act, 1947 (for short, "the Act") bearing No. CU-IW-472. With effect from June 1, 1979 the name of the firm was changed to "JAYKAY". Thereafter with effect from June 22, 1982 the place of business of the petitioner-firm changed from Nayasarak to Dolamundai. On July 12, 1984 the petitioner applied for amendment of the registration certificate so as to change the name of the business to Kedarson and the said amendment was allowed. In the meanwhile, during 1983-84 the petitioner continued to carry on business in the name JAYKAY and not in the name of Kedarson at Dolamundai, Cuttack.

2. The petitioner filed returns under the Act and the Orissa Sales Tax Rules, 1947 (for short, "the Rules") before the Sales Tax Officer, Cuttack-I, West Circle, Cuttack, who has jurisdiction in respect of business done at Nayasarak, Cuttack. The Sales Tax Officer, Cuttack-I, West Circle, Cuttack made the assessment for

the period 1983-84 u/s 12(4) of the Act raising no demand on c the petitioner. Thereafter, the Sales Tax Officer, Cuttack-I Central Circle, Cuttack, issued notice to the petitioner as an unregistered dealer and proposed to make an assessment u/s 12(5) of the Act. A partner of the petitioner-firm appeared before the Sales Tax Officer, Cuttack-I Central Circle, Cuttack and contended that the petitioner was registered with the Sales Tax Officer, Cuttack-I West Circle, Cuttack, and had already been assessed for the period 1983-84. The Sales Tax Officer, Cuttack-I Central Circle, Cuttack, however, held that since the petitioner was carrying on business at Dolamundai, Cuttack, within his jurisdiction, the petitioner was required to get itself registered under his circle and pay tax in his circle but it has failed to do so and by order dated November 27, 1987 completed the assessment of the petitioner u/s 12(5) of the Act raising a demand of Rs. 5,95,000.

3. Aggrieved by the said order of assessment, the petitioner filed a writ petition O.J.C. No. 102 of 1988 before this Court but this Court was not inclined to interfere in the matter and instead took a view that the petitioner may file an appeal before the appellate authority. The petitioner then filed appeal before the Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack, and raised the contention that the petitioner having been registered with and assessed for the period 1983-84 by the Sales Tax Officer, Cuttack-I, West Circle, Cuttack, the assessment made u/s 12(5) of the Act by the Sales Tax Officer, Cuttack-I Central Circle, Cuttack was not valid in law. The Assistant Commissioner of Sales Tax, however, held in his order dated February 19, 1988 that since the petitioner had ceased to do any business under Cuttack-I West Circle for the period 1983-84 it should have filed return before the Sales Tax Officer, Cuttack-I Central Circle and should have also got itself registered with the Sales Tax Officer, Cuttack-I Central Circle, but as the petitioner failed to do so the Sales Tax Officer, Cuttack-I Central Circle, had no other way than to complete the assessment u/s 12(5) of the Act. The Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack, by the said order dated February 19, 1988 disposed of the appeal and directed the Sales Tax Officer, Cuttack-I, Central Circle to allow an opportunity to the petitioner for production of its books of accounts for examination, and to find the total tax that is payable and give credit in respect of tax already paid at Cuttack-I, West Circle, Cuttack and to demand the balance, if any, payable by the petitioner. With the aforesaid directions, the Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack, set aside the assessment for fresh assessment and allowed the appeals in full.

4. Aggrieved the petitioner filed second appeal before the Orissa Sales Tax Tribunal, Cuttack, and a Full Bench of the Orissa Sales Tax Tribunal took the view that there is no infirmity or illegality in the impugned order passed by the Assistant Commis- sioner of Sales Tax and dismissed the appeals. Aggrieved the petitioner has filed this writ petition Under Article 226 of the Constitution for quashing the order of assessment passed by the Sales Tax Officer, Cuttack-I, Central Circle, Cuttack for the year 1983-84 u/s 12(5) of the Act, the order

passed by the Assistant Commissioner of Sales Tax in the appeal and the order passed by the Orissa Sales Tax Tribunal in the Second Appeal.

5. Mr. S. Ray, learned Counsel for the petitioner submitted that the dealer is required to file its returns before the Sales Tax Officer in whose jurisdiction its place of business is located as would be clear from Rule 20 of the Rules. He further submitted that the definition of "place of business" in Rule 2(i) of the Rules would show that it includes not only the place where the dealer carries on business but also the place where dealer keeps its books of accounts. He submitted that the books of accounts of the petitioner relating to the business at Dolamundai were kept at Nayasarak and, therefore, even though the petitioner has been carrying on business at Dolamundai its place of business was at Nayasarak and for this reason the petitioner has filed its return before the Sales Tax Officer, Cuttack-I, West Circle, Cuttack, who had the jurisdiction in respect of place of business at Nayasarak, Cuttack. He further submitted that in State of Orissa v. Sundarlal Mandholiwal [1976] 37 STC 409 (Ori) the Full Bench has held that under the Act, no double assessment is permissible. He vehemently argued that since the petitioner has already been assessed in respect of the very same turnover for its business at Dolamundai, Cuttack, by the Sales Tax Officer, Cuttack-I, West Circle, Cuttack, in the assessment order dated December 4, 1984 made u/s 12(4) of the Act, the petitioner cannot be subjected to double assessment by the impugned assessment order passed by the Sales Tax Officer, Cuttack-I, Central Circle, Cuttack. He relied on the decision of the Full Bench of this Court in State of Orissa v. Sundarlal Mandholiwal [1976] 37 STC 409 (ori), in support of his submission.

6. Mr. A. Mohanty, learned Senior Standing Counsel, on the other hand, submitted that the view taken by the Assistant Commissioner of Sales Tax in the first appellate order and by the Orissa Sales Tax Tribunal in the second appellate order is correct in as much as the petitioner was required to file its return Under Rule 20 c of the Rules in respect of its business at Dolamundai before the Sales Tax Officer, Cuttack-I, Central Circle, Cuttack, and not before the Sales Tax Officer, Cuttack-I, West Circle, Cuttack. He further submitted that the assessment made by the Sales Tax Officer, Cuttack-I, Central Circle, Cuttack was valid in law and should not be interfered with by this Court Under Article 226 of the Constitution.

7. Under the scheme of the Act and Rules, sales tax is leviable on the turnover of goods of a dealer and, therefore, the same turnover of goods cannot be subjected to tax twice. This would be clear from the judgment of the Full Bench of this Court in the case of State of Orissa v. Sundarlal Mandholiwal [1976] 37 STC 409 (ORI), the relevant portion of which is quoted herein below:

...The short answer to meet such an argument is that the scheme under the Act comprehends a course which if followed there would be no occasion for double assessment and in case the assessee faces an assessment where all the turnover is taken into account, it would be open to him when he is called upon in different circles for the purposes of assessment to show that he has already been assessed for the entire turnover and there is no question of assessing the said turnover twice....

(Emphasis supplied)

8. The case of the petitioner is that the turnover which has been assessed u/s 12(4) of the Act for the period 1983-84 by the Sales Tax Officer, Cuttack-I, West Circle, Cuttack, has now been assessed for the second time by the Sales Tax Officer, Cuttack-I, Central Circle, Cuttack, by the impugned assessment order dated November 27, 1987 u/s 12(5) of the Act for the period 1983-84. Obviously under the scheme of the Act and the Rules, the same turnover cannot be taxed for the second time by the Sales Tax Officer, Cuttack-I, Central Circle, Cuttack. So far as the assessment made by the Sales Tax Officer, Cuttack-I, West Circle, Cuttack, for the period 1983-84 is concerned, the same has become final and cannot be reopened at this stage, nor can the said assessment made u/s 12(4) of the Act for the period 1983-84 by the Sales Tax Officer, Cuttack-I, West Circle, Cuttack, be cancelled or allowed by any authority at this stage. If that be so, then the only remedy for ensuring that the same turnover is not taxed twice would be to quash the impugned assessment order dated November 27, 1987 passed u/s 12(5) of the Act by the Sales Tax Officer, Cuttack-I, Central Circle, Cuttack, and direct him to look into the assessment records of the Sales Tax Officer, Cuttack-I, West Circle, Cuttack, for the period 1983-84 and thereafter pass a fresh assessment in respect of the turnover which has not been assessed in the assessment order dated December 4, 1984 of the Sales Tax Officer, Cuttack I, West Circle, Cuttack and raise a demand accordingly.

9. In the result, the writ petition is allowed, the impugned order of assessment passed by the Sales Tax Officer, Cuttack-I, Central Circle, Cuttack, the impugned order passed by the Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack, and the impugned order passed by the Orissa Sales Tax Tribunal for the period 1983-84 are quashed and the Sales Tax Officer, Cuttack-I, Central Circle, Cuttack, is directed to make fresh assessment in accordance with law in the manner indicated above. For the aforesaid purpose, the petitioner will appear with books of accounts before the Sales Tax Officer, Cuttack-I, Central Circle, Cuttack on September 1, 2004 when the Sales Tax Officer will either take up the assessment or fix up another date of assessment and thereafter make a fresh assessment in accordance with law.

A.K. Parichha, J.

10. I agree.