(1960) 04 OHC CK 0023

In the Orissa High Court

Case No : S.J.C. No. 46 of 1958

Khubram Asram — APPELLANT

Vs

Commissioner of Sales Tax — RESPONDENT

Date of Decision : 27-04-1960

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(3)

Citation : (1960) 26 CLT 599 : (1961) 12 STC 582

Hon'ble Judges : R.L. Narasimham, C.J;G.C. Das, J

Bench : Division Bench

Advocate : R.N. Misra, for the Appellant; G.K. Misra, for the Respondent

Judgement

R.L. Narasimham, C.J.—The following two questions of law have been referred to this Court by the Member, Sales Tax Tribunal, u/s 24(1) of the Orissa Sales Tax Act.

(1) Whether on the facts and circumstances of this case the assessing officer was not justified in making best of judgment assessments for the quarters ending on 31st December, 1952, 31st March, 1953, and 30th September, 1953.

(2) Whether on the facts and circumstances of this case the assessing officer was not competent to add anything more to the gross turnover or taxable turnover, as returned by the applicant than the amount of sale actually detected to have been suppressed.

2. So far as question no. (2) is concerned Mr. R. N. Misra for the petitioner stated that he would not press this question. In view of this concession, it is unnecessary to answer this question, and the order of the Tribunal will stand.

3. Question no. (1) arises in the following manner. The. petitioner was keeping the mercantile system of accounting from Dewali to Dewali. For the quarters in question he submitted returns, but the Sales Tax Officer found that an item of Rs. 10 which had been paid as advance was not entered in the accounts on that

day. On the other hand, that sum plus a sum of Rs. 114-3-0 was shown in the accounts on 23rd March, 1953, when the goods were actually received from the seller. The Sales Tax Officer considered this to be irregular and asked him to explain the irregularity. But on 19th February, 1954, the petitioner expressed his inability to account for the irregularity and then the Sales Tax Officer came to the following conclusion :-"From these factors it is clear that the dealer does not maintain correct accounts of his sale and purchase and the accounts produced by the dealer cannot therefore be relied upon." Then he proceeded to assess him to the best of his judgment u/s 12(3) of the Act. On appeal also the learned Assistant Collector while noticing the irregularity observed as follows :-

How could he adjust this mistake ? Wherefrom could he get the money to make a double payment ? It is also not known how many such instances have not come to light. Therefore, his accounts cannot be accepted as reliable and there was every justification for the learned assessing officer to disbelieve them and to make an estimate of the gross turnover.

In second appeal the Tribunal also held that the omission to enter the advance raised a suspicion about the correctness of the accounts.

4. The power of the Sales Tax Authorities to assess to the best of their judgment u/s 12(3) of the Orissa Sales Tax Act arises if the requirements of Sub-section (3) of Section 12 are not satisfied, that is to say, if the Sales Tax Officer finds that the returns furnished by the assessee are not correct and complete, he is required to give notice to the assessee to produce evidence in support, of the returns. If he fails to produce such evidence, then the Sales Tax Officer may proceed to assess him to the best of his judgment.

5. On the facts stated above, there is no doubt that the requirements of Section 12(3) have been complied with. A discrepancy of Rs. 10 was found in the accounts furnished by the assessee. He was called upon to explain but he told the Sales Tax Officer that he was unable to explain the irregularity. Under these circumstances it was open to the Sales Tax Officer to assess him to the best of his judgment. The question whether the omission to enter the payment of Rs. 10 as advance is a minor irregularity which might possibly have been condoned by the assessing authority is not a matter which we are called upon to decide. That is a matter which was entirely within the discretion of that authority. But if it was not prepared to condone the irregularity and chose to call upon the assessee to explain the same or to furnish better returns and if he expressed his inability to do so, its jurisdiction to assess him to the best of its judgment u/s 12(3) comes into operation. We would accordingly answer question no. (1) in the negative and hold that the assessing officer was justified in making best of judgment assessment.

The reference is accordingly disposed of with costs. Hearing fee Rs. 50 (rupees fifty only).

G.C. Das, J.

6. I agree.

