

(1955) 03 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 253 of 1954

K.S.E. Ahamed Mohinuddin

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 29-03-1955

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1956) 7 STC 639

Hon'ble Judges : Panigrahi, C.J.;Narasimham, J

Bench : Division Bench

Advocate : H. Mohapatra and R.N. Misra, for the Appellant; B. Mohapatra and G. Dhal, for the Respondent

Final Decision : Dismissed

Judgement

Panigrahi, C.J.—This is a writ application filed by a trader in hides and skins questioning the validity of an assessment under the Orissa Sales Tax Act. The facts are not in dispute. The petitioner is a registered dealer, under the provisions of the Act, and got exemption from payment of tax when he purchased certain quantities of hides and skins from another registered dealer. He exported large quantities of hides and skins outside Orissa, but in respect of the quantities purchased from the registered dealer, he has been assessed to sales tax under the Act.

2. The main contention put forward on behalf of the petitioner is that the goods were sold ultimately outside Orissa, and having regard to the provisions of Clause (1) of Article 286 of the Constitution, the Orissa State cannot levy a tax on these sales. In reply, it is pointed out that, as a fact, what has been taxed is not the sale outside Orissa but the sale which took place inside Orissa when the applicant purchased the goods from another registered dealer. The decision of this question depends upon the true construction of the proviso to Section 5(2) of the Orissa Sales Tax Act.

3. Section 5 sets out the rate at which a tax is to be levied on the turnover of a dealer. Sub-section (2) of that section explains rather than defines what taxable turnover means under the Act. Clause (a) of Sub-section (2) mentions the deductions that may be claimed by a registered dealer in his taxable turnover. Clause (b) of Sub-section (2) says that the tax, if any, paid by the purchaser to the dealer shall also be deducted from the turnover. Clause (a) of Sub-section (2) enumerates two items in respect of which deductions may be claimed. Sub-clause (i) of Clause (a) deals with the sale of goods that may be declared tax-free from time to time. Sub-clause (ii) of Clause (a) of Sub-section (2) reads as follows :-

Sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for re-sale by him in Orissa or for use by him in the execution, of any contract in Orissa...Provided that when such goods are used by the registered dealer for purposes other than those specified in the certificate of registration, the price of goods so utilised should be included in his taxable turnover.

The proviso is in the nature of an exception to the rule enabling the registered dealer to claim deductions under certain heads, and comes into play when a condition mentioned in the certificate of registration is violated by the purchasing dealer.

4. It was contended by Mr. Mohapatra, learned counsel appearing for the petitioner, that the words "should be included in his taxable turnover" meant that the selling dealer was bound to pay the tax to the Government, and include the amount of price for which he sold the goods to the petitioner, in his taxable turnover. As we read the section, this contention is untenable. The words "his taxable turnover" appearing in the proviso, quoted above, refer to the registered dealer who purchases the goods and utilises them in a way contrary to any directions mentioned in his certificate of registration. Form III prescribed by Government sets out the conditions which a registered dealer has to satisfy before obtaining the certificate ; and it gives him certain rights in regard to payment of tax also. Condition 3 of the certificate enables him to purchase goods of specified description free of tax if the purchase is made for re-sale in Orissa. In this case the certificate granted to the petitioner shows that he was entitled to purchase hides and skins free of tax if they were intended for re-sale in Orissa. Rule 27(2) in Chapter VI of the Rules framed by Government shows that the purchasing dealer has to make a declaration in writing that the goods purchased by him are intended for re-sale in Orissa. It is not denied that the petitioner purchased the hides and skins, free of tax, but ultimately sold them outside Orissa. Mr. Mohapatra's contention is that since the goods have left Orissa and were actually sold outside that State, the levy of tax on the sale transaction outside Orissa is contrary to the provisions of the Constitution. The facts however do not warrant this contention. The Sales Tax Officer has not levied any tax on the sale transaction which took place between the petitioner and his customer

outside Orissa. What he has done is to include in the petitioner's turnover the amount of tax that he was liable, in the first instance, to pay to his seller in Orissa. The object of the proviso to Section 5(2)(a) is to postpone the collection of the tax from the purchasing dealer till he has collected the same from the consumers by re-selling the goods in Orissa. It is on the strength of the declaration given by him, that the goods are intended for re-sale within Orissa, that the selling dealer was exempted from collecting the tax from the petitioner. When the goods were not re-sold in Orissa, the tax which became collectable from the consumers, but was postponed, became collectable from the purchasing dealer. It is incorrect to say in such circumstances, as the learned counsel contends, that the levy amounts to a tax on purchases. Section 5 is only a machinery section providing for the recovery of the tax from some person or other. It enables the purchasing dealer to make the purchase, free of tax, from the selling dealer, on the strength of his declaration that the goods would be re-sold in Orissa so that he may pay the tax after such re-sale and realise the same from the consumers to whom they are re-sold. The very definition of the word "turnover" would appear to support this conclusion. "Turnover" has been defined in Section 2(i) of the Act as meaning "the aggregates of the amounts of sale prices and tax, if any, received and receivable by a dealer in respect of sale or supply of goods...

The petitioner would have been able to receive back the amount paid by him as tax, if he had sold the goods inside Orissa. He, however, chose to sell them outside Orissa. Once the amount of tax becomes "receivable" by the dealer from the consumers by virtue of the declaration given by him, the Sales Tax Authorities were right in including it in its taxable turnover, under the proviso to Section 5(2)(a). Merely because he allowed the goods to be re-sold outside Orissa he is not entitled to exemption on the ground that it is not recoverable from the consumer.

5. We have therefore arrived at the conclusion that the petitioner has been rightly assessed to tax on the purchase made in Orissa, free of tax, on the strength of his certificate of registration. The petition is accordingly dismissed, but we make no order as to costs.

Narasimham, J.—I agree but wish to add a few words about some interesting questions of law raised by Mr. Mohapatra.

2. The petitioner is a registered dealer in Orissa and in his certificate of registration it was noted by the Sales Tax Authorities that the sale of goods to the petitioner would be free of tax if those goods were intended for re-sale in Orissa. Obviously, such sales would be exempted by virtue of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 of the Act. The finding of the Sales Tax Authorities is to the effect that the petitioner purchased goods to the extent of Rs. 832-4-6 during the relevant period from other dealers in Orissa, free of sales tax, on the strength of the aforesaid certificate but that, instead of re-selling the goods in Orissa he sold them to merchants in Madras. The Sales Tax Authorities

therefore thought that the proviso to the said sub-clause would apply and that the said sum should be added to the petitioner's turnover for the purpose of assessing sales tax.

3. Mr. Mohapatra urged that the entire scheme of the Orissa Sales Tax Act was to levy the tax on the seller, but that the proviso to Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 had the effect of levying a tax on the purchaser and as such, would be invalid. The proviso has already been quoted in the main judgment and it would be noticed that the effect of the proviso is that where a dealer purchases goods from another dealer, after informing him that the purchase was intended for re-sale in Orissa and showing the seller his registration certificate in support of that statement but subsequently utilises the goods for some other purpose, the tax is realizable from him by being added to his turnover. The effect of this is to levy the tax from the purchaser. But the question is whether it would be invalid as being opposed to the whole scheme of the Act. Doubtless, the Act says in the preamble that it is a tax on sale of goods, but it is not an Act for collection of tax only from the seller. In other words, it is not a Sellers Tax Act. Ordinarily the tax is collected from the seller for the purpose of easy realization, and that is provided in Section 5 by calling upon him to furnish returns of his taxable turnover. In the present case, if the petitioner had truly disclosed to the seller that the goods were not intended for re-sale in Orissa, the seller would have included the sale price of the goods in his taxable turnover and paid the tax to Government though doubtless realizing the same from the petitioner at the time of the sale. He was, however, prevented from doing so by virtue of the declaration made by the petitioner which resulted in the application of the exemption clause in Section 5(2)(a)(ii). It is within the competence of the Legislature, while enacting that sales tax should ordinarily be levied from the seller, to insert a special provision by which the tax may, in special circumstances, be collected from the purchaser also. Mr. Mohapatra could not urge any constitutional bar to such a provision in the Act of the Legislature. Whether, by virtue of the rule-making power conferred by the Act, Government can by rules, in the absence of any special provision in the Act, provide for realization of the tax from a buyer is a different question on which it is not necessary for us to say anything at present. But so far as the competence of the Legislature is concerned, in view of the entry in Item 54 of List II of the Seventh Schedule it is competent for the Legislature to tax not only sales but also purchases of goods and also to provide a special mode of recovery either from the seller or the buyer as the Legislature may think fit.

4. Mr. Mohapatra then urged another interesting argument based on Clause (2) of Article 286 of the Constitution, He fairly conceded that, on the facts found, the first sale to the petitioner by the Orissa dealers and his subsequent sale of the same goods to merchants in Madras were two distinct sales and that even notionally they cannot be deemed to be one sale involving inter-State element so as to come within the scope of the Explanation to Clause (1) of Article 286 of the Constitution as construed in the recent decision of the Supreme Court reported in

The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, But he urged that the two sales-were so inter-connected as to attract the provisions of Clause (2) of that Article inasmuch as the sale by the Orissa dealers to the petitioner in Orissa was for the purpose of subsequent re-sale by the petitioner in Madras and was consequently a sale "in the course of inter-State trade or commerce". Under Clause (2) of Article 286 only the Parliament can enact law for imposition of sales tax on such inter-State sales and as the transactions in question took place in 1952 and 1953 the Order of the President referred to in the proviso to Clause (2) of that Article would not apply. This argument is doubtless attractive; but it is somewhat academic in view of the findings of fact of the Sales Tax Authorities. There is no finding to the effect that the first sale to the petitioner was for the purpose of re-sale by him in Madras. On the other hand, the clear finding is that at the time of the first sale the petitioner falsely represented to the Orissa dealers that he was purchasing the goods for re-sale in Orissa. It is true that subsequently the petitioner changed his mind and sold the goods in Madras. But from the mere fact that he subsequently changed his mind it could not be reasonably inferred that the first, sale to him was also "in the course of inter-State trade or commerce". Further materials are necessary for supporting such a view and they are totally wanting in the present case. Hence, I would hold that Clause (2) of Article 286 of the Constitution would not help the petitioner.