

(1960) 11 OHC CK 0019

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 38 and 39 of 1958

M.A. Tullock and Co. Ltd.

APPELLANT

Vs

The State of Orissa

RESPONDENT

Date of Decision : 04-11-1960

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 23(3)(a)(b), 5(2)(a)(ii)

Citation : (1961) 12 STC 278

Hon'ble Judges : G.K. Misra, J;G.C. Das, J;Barman, J

Bench : Full Bench

Advocate : S. Acharya and S.K. Tripathy, for the Appellant; G.K. Misra, for the Respondent

Judgement

G.C. Das, J.—These two references under Sub-section (1) of Section 24 of the Orissa Sales Tax Act (Orissa Act XIV of 1947) were made by the Member, Sales Tax Tribunal, Orissa, at the instance of a dealer, Messrs M. A. Tullock & Company. They were heard together and are governed by this common judgment.

2. The facts are: Messrs M. A. Tullock and Co., Ltd. (hereinafter referred to as "the assessee") is a registered dealer under the Orissa Sales Tax Act bearing registration certificate No. BA 1714. They had their place of business in Keonjhar within the State of Orissa. The assessee deals in mineral ores. The period of assessment relates to the second and third quarters of the year 1951, that is, quarters ending on 30th June, 1951, and 30th September, 1951. As required by the taxing authorities, the assessee submitted his returns on 25th July, 1951, and 15th November, 1951, for the aforesaid two quarters. In the return the assessee returned his gross turnover at Rs. 2,69,045-8-9 and Rs. 1,36,418-1-3. He, however, claimed deductions u/s 5(2)(a)(ii) at Rs. 2,40,000 and Rs. 15,677-1-3 respectively on the ground that he sold the minerals to S. Lal and Company Ltd., another registered dealer in Orissa having registration certificate No. BA 1335. I may mention here that the assessee had also sold minerals to two other companies, namely, Hind Shippers Ltd., and Indian Trade Corporation

during the period in question. These two companies are not registered dealers in Orissa and accordingly the tax has been paid in respect of the sales transacted with them. Thus, the assessee only claimed deduction in respect of the sales made to Messrs S. Lal and Company. The assessing officer allowed the claim of the assessee u/s 5(2)(a)(ii) for both the quarters. On appeal, it was confirmed by the Assistant Collector of Sales Tax, but in second appeal the Tribunal held that the assessee is not entitled to the deductions u/s 5(2)(a)(ii). At the time when the second appeal was pending before the Tribunal, a cross-objection was filed on behalf of the State represented by the Commissioner of Sales Tax, Orissa. The assessee questioned the maintainability of this cross-objection which was negatived by the Tribunal. Accordingly the assessee filed an application under Sub-section (1) of Section 24 of the Orissa Sales Tax Act for a reference of a number of questions which arose out of the order passed by the Tribunal on 18th March, 1958, while disposing of the Appeals Nos. 144 and 145 of 1957. Eventually the Tribunal referred the following two questions for decision of this Court:

(i) Whether the assessing officer was not wrong in allowing deductions of Rs. 2,40,000 for the quarter ending on 30th June, 1951, and Rs. 15,677-1-3 for the quarter ending on 30th September, 1951, from the respective gross turnovers of the, applicant; and

(ii) Whether in the facts and circumstances of the case the Tribunal was right in entertaining the cross-objection and giving relief under it?

3. The account books showing the gross turnover as have been filed by the assessee, Messrs M. A. Tullock and Co. Ltd., were accepted by the Sales Tax Authorities. It is also admitted that (sic) Mr. Acharya, learned counsel on behalf of the petitioner contended that the" first question referred to this Court is covered by an earlier decision of this Court. In fact, both the questions referred to this Court for decision are concluded by two Division Bench decisions of this Court. To both these decisions I was a party.

4. In the case of Member, Sales Tax Tribunal v. S. Lal and Company, Since reported at [1961] 12 S.T.C. 25, S.J.C. No. 4 of 1958 disposed of on 13th July, 1960, the very purchasing dealer in the present case was the opposite party in the case. The question that was referred to in that case was: "Whether on the fact and circumstances of this case the proviso to Section 5(2)(a)(ii) of the Orissa Sales Tax Act will not operate unless the purchasing dealer gives a declaration as contemplated under Rule 27(2) of the Orissa Sales Tax Rules, 1947". The facts in that case were that Messrs S. Lal & Co. purchased chromium ore from Messrs Tullock & Co. free of sales tax both being registered dealers in the State of Orissa. It was admitted in that case that the chromium ore so purchased was not resold in Orissa, but was sold outside. The Sales Tax Officer assessed S. Lal & Co. relying on Section 5(2)(a)(ii) of the Orissa Sales Tax Act. It is under these circumstances that the above question came up for decision by this Court. After a detailed discussion of the various provisions of the Act, this

Court came to the conclusion that when some goods are sold by the registered seller to the registered buyer and are specified in the latter's certificate as being intended for resale by him in Orissa, the selling dealer is entitled by virtue of Section 5(2)(a)(ii) of the Act to deduct that transaction from the total taxable turnover. Messrs Tullock and Company, the assessee now before us, was the selling dealers in that case and Messrs S. Lal and Company were the purchasing dealers. Thus, the answer was that the proviso to Section 5(2)(a)(ii) of the Orissa Sales Tax Act will operate if the facts as mentioned in the said proviso are found to exist irrespective of whether the purchasing dealer gave a declaration under Rule 27(2) of the Orissa Sales Tax Rules. In the instant case the assessee is the selling dealer and sold the goods to another registered dealer whose certificate showed that he intended to resell the goods in Orissa. Thus, he clearly comes u/s 5(2)(a)(ii) and our earlier decision applies on all fours. Accordingly, the 1st question must be answered in the affirmative, that is, the assessing officer was not wrong in allowing deductions of Rs. 2,40,000 for the quarter ending on 30th June, 1951, and Rs. 15,677-1-3 for the quarter ending on 30th September, 1951, from the respective gross turnover of the applicant, Messrs M. A. Tullock and Company.

5. Coming to the second question, whether the cross-objection filed by the Commissioner of Sales Tax on behalf of the State is maintainable or not, I find that this Court has answered that question in *Ramachandra Balaram v. Commissioner of Sales Tax, Orissa* [1960] 11 S.T.C. 480, S.C.J. No. 45 of 1958 disposed of on 27th April, 1960. That decision is clearly against the present contention of the assessee. The facts in that behalf are that by virtue of the Amending Act of 1957 (Orissa Sales Tax Act 27 of 1957), the Tribunal for the first time was constituted and the right of appeal and cross-appeal was conferred on the State. The State even by the amendment has not been given the right to file an appeal before the Assistant Collector, but only has been given the right to file a second appeal before the Tribunal. Thus, prior to 2nd December, 1957, the date on which the amendment came into force, the Collector of Sales Tax had no right either to prefer an appeal or to prefer a cross-objection if he is arrayed as a party-respondent. The law as it then stood was that the assessee only had the right of revision to the Collector of Sales Tax, and after the amendment, as I have stated earlier, the right of appeal and the right of cross-objection were conferred on both the assessee as well as the State by Section 23(3)(a)(b). Accordingly, by virtue of the Transitory provisions as contained in Section 11 of Act XX of 1957, all pending appeals and revisions came to be heard as second appeals by the Tribunal. The Tribunal gave notice of the appeal to the State and eventually the cross-objection in question was filed by the State. The identical point came up for consideration in *Ramachandra Balaram v. Commissioner of Sales Tax* [1960] 11 S.T.C. 480 referred to above. The question referred to this Court in that case was :

Whether the cross-objection filed by the State in the present case is maintainable in law?

After discussing the entire position in law, the answer of this Court was given in the affirmative. Accordingly, this question is also concluded by the aforesaid decision of this Court and must also be answered in the affirmative, that is, the Tribunal was right in entertaining the cross-objection.

Thus, both the questions referred to this Court for our decision are answered in the affirmative as stated above and the references are disposed of accordingly.

Both parties will, however, bear their respective costs.

In the result, both the questions are answered in the affirmative.

Barman, J.

6. I agree.