
(2008) 02 OHC CK 0011

In the Orissa High Court

Mangalam Timber Products Ltd.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 7

Citation : (2008) 18 VST 1

Hon'ble Judges : A.K. Ganguly, C.J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the parties.

2. This writ petition has been admitted by a Division Bench of this Court on July 5, 1993 and since then it has been kept pending. Today when the matter came up for hearing, learned Counsel for the petitioner wants an adjournment of the matter, which we are not inclined to grant since the matter is an old one.

3. After hearing learned Counsel for the parties and going through the materials on record, it appears that the crux of the matter centres round proper interpretation of two finance department notifications; one is dated August 16, 1990 (annexure 1) and the other is dated April 28, 1992 (annexure 3). Both the notifications are purported to have been issued in exercise of power u/s 7 of the Orissa Sales Tax Act, 1947 (hereinafter called as "the Act"). The said Section is extracted hereinbelow:

Section 7. Powers of the State Government to exempt dealers from tax and to defer payment of tax.-Notwithstanding anything to the contrary, in this Act, the State Government may subject to such restrictions and conditions including conditions as to registration and registration fees, by notification, exempt in whole or in part, any class of dealers from the payment of tax or allow any class of dealers to defer payment of tax.

It is clear on a plain reading that the said Section 7 that it is prospective in operation.

4. It is rather settled that laws are normally made prospectively but it can be made retrospectively also. If a law is to be made retrospectively, the Legislature must give clear indication to that effect in the law itself. In the absence of such a clear indication, law is to operate prospectively see *Keshavan Madhava Menon Vs. The State of Bombay*, This is particularly so in the field of statutes dealing with fiscal matter involving revenue, as Section 7. See *Collector of Central Excise, Ahmedabad v. Ashoka Mills Ltd.* reported in AIR 1990 SC 33 at page 39 [paragraphs 9, 10 and 11].

5. Since Section 7 of the Act is prospective, it is obvious that the notification issued in exercise of power u/s 7 of the Act cannot become retrospective. Both the notifications at annexures 1 and 3 suffer from the aforesaid vice, i.e., they purport to operate retrospectively even though issued in exercise of power u/s 7 of the Act which is prospective.

6. In view of the aforesaid settled principle, it is not possible for this Court to uphold both the notifications under annexures 1 and 3 which purport to operate retrospectively even though they were issued in exercise of power u/s 7 of the Act, quoted above.

7. We, therefore hold both the aforesaid notifications dated August 16, 1990 and April 28, 1992 must be read to operate from the date of the notification and not before that. Any attempt to read them before the date of notification is not sustainable in law. Both the notifications are upheld but only prospectively, but not retrospectively.

8. Learned Counsel for the Revenue suggested that in view of such reading of the notifications some adjustment is required to be made with regard to the benefit the petitioner is receiving as a result of the notification dated August 16, 1990 (annexure 1). It is not possible for this Court to make such calculation. This Court makes it clear that if any adjustment is required to be made, the same should be made at the level of the Revenue authority keeping in view the observation made hereinabove.

9. With the above declaration, the writ petition is disposed of.

In view of disposal of the writ petition, Misc. Case No. 571 of 1993 stands disposed of.