
(1960) 07 OHC CK 0013

In the Orissa High Court

Case No : Special Jurisdiction Case No. 4 of 1958

Member, Sales Tax Tribunal

APPELLANT

Vs

S. Lal and Co.

RESPONDENT

Date of Decision : 13-07-1960

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1)

Citation : (1961) 12 STC 25

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

Bench : Division Bench

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

Judgement

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

"Whether on the facts 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.

2. The facts which are unchallenged are these. Messrs Tullock & Co., of Barbil are a firm of registered dealers selling chromium ore in Orissa. Messrs S. Lal & Co., are also another firm of registered dealers in Orissa holding registration certificate No. 1335-BA. In their certificate it was specified that "minerals" were one of the goods which the said firm was entitled to buy in Orissa, free of sales tax, "for the purpose of resale in Orissa (see Form III). It is admitted that in the certificate no maximum limit was mentioned for the purchase of minerals by this firm. For the period in question Messrs S. Lal & Co. purchased chromium ore from Messrs Tullock & Co., without paying any sales tax on it, in view of the exemption provided in Section 5(2)(a)(ii) of the Act. It was further admitted that the chromium ore so purchased was not resold in Orissa, but was sold in Calcutta

by Messrs S. Lal & Co. Thereupon, the Sales Tax Officer assessed Messrs S. Lal & Co., to sales tax in respect of those purchases relying on the aforesaid proviso to sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5. On second appeal, the learned Member, Sales Tax Tribunal, gave an ingenious construction to the provisions of Section 5(2)(a)(ii) and held that where the purchases were made by Messrs S. Lal & Co., from Messrs Tullock & Co. for the purpose of resale outside Orissa, the said proviso to sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 was not attracted even though such purchases were made tax-free.

3. To appreciate the reasonings of the learned Member, Sales Tax Tribunal, it is necessary to refer to the relevant provisions of the Orissa Sales Tax Act, and the rules made thereunder. Sub-section (2) of Section 5 of the Act (omitting immaterial portions) is as follows :-

5(2). In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom,

(a) his turnover during that period on

(i)...

(ii) sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for resale by him in Orissa or for use by him in the execution of any contract in Orissa, and on sales to a registered dealer of containers, or other materials for the packing of such goods :

Provided that when such goods are used by the registered dealer for purposes other than those specified in his certificate of registration, the price of goods so utilised shall be included in his taxable turnover.

(iii)...

Sub-clauses (i) and (iii) are not material for our purpose. If a natural meaning is given to the words used in sub-clause (ii) the obvious conclusion is that if a registered dealer in Orissa sells goods to another registered dealer in Orissa and in the certificate of registration of the purchasing dealer it is specified that the said goods are intended for resale by him in Orissa, the selling dealer need not include such transactions in his taxable turnover. But the proviso to sub-clause (ii) says that if the purchasing dealer uses such goods "for purposes other than those specified in the certificate of registration" the price of goods so used shall be included in his taxable turnover. This proviso was construed in two decisions of this Court reported in Ahmed Mohinuddin v. Sales Tax Officer [1956] 7 S.T.C. 639 and Shew Bhagwan Shewratna v. Sales Tax Officer [1956] 7 S.T.C. 645 to mean that the purchasing dealer was himself liable to pay sales tax if the goods were used for purposes other than those specified in the certificate of registration.

4. On the fact admitted and in view of the aforesaid decisions, the liability of Messrs S. Lal & Co. to pay sales tax in respect of those transactions of purchase is beyond doubt. "Minerals" were specified in the certificate of registration of

Messrs S. Lal & Co. as being intended for resale in Orissa, but without any maximum limit being fixed in that certificate. That firm purchased chromium ore from another registered dealer, namely, Messrs Tullock & Co. who did not collect any sales tax from them on the strength of the entry in the aforesaid certificate. The ore so purchased was, however, admittedly sold outside Orissa. Hence, it is clear that the goods were used by Messrs S. Lal & Co., "for purposes other than those specified in the certificate of registration" and they are accordingly bound to pay sales tax by virtue of the aforesaid proviso to sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5.

5. Instead of disposing of the appeal by giving a natural meaning to the words used in the aforesaid sub-clause, the learned Member, Sales Tax Tribunal, has drawn on his imagination and given an artificial construction to the same, mainly on the basis of his own interpretation of Rule 27(2) of the Orissa Sales Tax Rules which is as follows :

27. Evidence in support of deductions claimed.-(1)...

(2) Claims for deduction of turnover under sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5-A dealer who wishes to deduct from his gross turnover on sales which might have taken place in Orissa the amount of a sale on the ground that he is entitled to make such deduction under sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 of the Act, shall produce a copy of the relevant cash receipt or bill according as the sale is a cash sale or a sale on credit in respect of such sale and a true declaration in writing by the purchasing dealer or by such responsible person as may be authorised in writing in this behalf by such dealer, that the goods in question are specified in the purchasing dealer's certificate of registration as having been required for resale by him or in the execution of any contract.

This rule only prescribes the mode of giving evidence for the purpose of claiming exemption u/s 5 (2) (a) (ii) of the Act. It says that any dealer (here Messrs Tullock & Co.) who claims deduction by virtue of Section 5 (2) (a) (ii) must produce, along with the cash receipt or bill, as the case may be, a true declaration by the purchasing dealer that the goods in question were specified in the purchasing dealer's certificate as "being required for resale by him". This rule only means that if Messrs Tullock & Co. wanted to claim exemption from sales tax in respect of sales to Messrs S. Lal & Co. of chromium ore they should produce a true declaration from the latter firm to the effect that chromium ore was specified in Messrs S. Lal & Co.'s registration certificate as being required for resale in Orissa. It was found, as a fact, by the Tribunal that such a declaration in respect of these transactions was not given by Messrs Lal & Co. to Messrs Tullock & Co. On the basis of that finding the Tribunal held that Messrs Lal & Co. never gave any assurance to Messrs Tullock & Co. that the chromium ore covered by these transactions was intended for resale in Orissa and that consequently it was "not used for purposes other than those specified in the certificate of registration" and that the proviso to sub-clause (ii) of Clause (a) of

Sub-section (2) of Section 5 of the Act was not attracted.

6. With great respect, I must point out that the reasoning adopted by the learned Member, Sales Tax Tribunal, is fallacious. Firstly, Rule 27 (2) of the Orissa Sales Tax Rules, on which he has relied, is only a rule of evidence and it does not purport to be exhaustive. The substantive right of the parties to claim deduction and the liability of a party to pay sales tax arise from Section 5 (2) (a) (ii) and the proviso under that sub-clause. A statutory rule dealing with the mode of proof should not be relied on to modify the plain meaning of the provisions of the Act. Moreover neither the aforesaid provision of the Act nor the aforesaid rule refers to the intention with which a particular transaction of sale is entered into between the buyer and the seller. They both refer only to the intention as specified in the purchasing dealer's certificate. Thus, when some goods are sold by a registered seller to the registered buyer and are specified in the latter's certificate as having been intended for resale 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. Similarly, in the declaration which he may demand from the buying dealer under Rule 27 (2), all that he can insist on is that the goods are specified in the latter's certificate of registration as being required for resale in Orissa. The learned Member, Sales Tax Tribunal, seems to have gone further and observed that for the purpose of claiming exemption u/s 5 (2) (a) (ii) not only must there be such a specification in the buying dealer's certificate, but it must also be further established that that dealer made the purchase with the intention of reselling the goods in Orissa. Neither the language of the Act nor the language of the rule justifies such an interpretation. It is not the intention in respect of each transaction that matters but the intention as specified in the purchasing dealer's certificate. That intention is declared by the purchasing dealer when he makes an application for registration in Form II and it is incorporated in the certificate granted to him in Form III. These documents are prepared long before any particular transaction of sale is entered into and consequently they have no bearing on the intention with which any particular transaction is entered into between the seller and the buyer.

7. It was then urged by Mr. Acharya for Messrs S. Lal & Co., that a business firm might purchase some quantity of goods for resale in Orissa and a large quantity of the same goods for resale elsewhere and that an undue fetter should not be imposed on inter-State trade by restricting its right to purchase the goods in Orissa and sell them outside that State. The aforesaid interpretation of Section 5 (2) (a) (ii) of the Orissa Sales Tax Act does not in any way impose any undue restriction on the purchase of goods by a dealer in Orissa for resale outside Orissa. All that the statute requires is that in respect of such transactions the purchasing dealer cannot claim exemption from payment of sales tax, and that he must pay the tax to the selling dealer from whom it may be recovered by the Sales Tax Department. If, however, on the basis of the entry in the purchasing dealer's certificate the selling dealer does not collect sales tax and the purchasing dealer sells the goods outside Orissa all that the proviso to sub-clause

(ii) of Clause (a) of Section 5 states is he has to pay sales tax in respect of that transaction. The mere payment of sales tax in respect of a completed transaction of sale in Orissa, from where the goods are subsequently resold outside Orissa, need not be construed as placing any undue restriction on inter-State trade. In any case that will not be a ground for giving an artificial construction to the statutory provisions.

8. The learned Member, Sales Tax Tribunal, should not also have attached too much importance, to the declaration under Rule 27 (2) of the Orissa Sales Tax Rules. Such a declaration will undoubtedly be the best proof available to the selling dealer for the purpose of claiming exemption. But even in the absence of such a declaration the substantive right of a party to claim exemption or his liability to pay sales tax will be governed by the provisions of Section 5(2)(a)(ii) of the Act. If the conditions mentioned in those provisions are fulfilled a party is either entitled to claim exemption or is liable to pay sales tax. For instance, even though no declaration under Rule 27(2) is made by the purchasing dealer, nevertheless if the Sales Tax Department is satisfied from its own papers that the goods sold by the selling dealer to the purchasing dealer were specified in the latter's certificate as being intended for resale by him in Orissa, it may grant exemption from sales tax u/s 5(2)(a)(ii) of the Act. Similarly, where the purchasing dealer uses the goods for purposes other than those specified in his certificate, the Department may assess him to sales tax under the proviso to sub-clause (ii) of Clause (a) of Sub-section (2) of the aforesaid section. The mode of proof provided for in Rule 27(2) of the Orissa Sales Tax Rules is a facility conferred on the selling dealer which does not purport to be exhaustive and it is open to him to establish, by other evidence also, his right to claim exemption u/s 5(2)(a)(ii). Similarly, the right of the Sales Tax Department to assess the purchasing dealer by virtue of the aforesaid proviso cannot be restricted by the provisions of Rule 27(2).

9. On the facts as admitted, therefore, it must be held that the purchasing dealer, viz., Messrs S. Lal & Co., used the goods "for purposes other than those specified in the certificate of registration", i.e., for the purpose of resale outside Orissa and as such that firm is liable to pay sales tax by virtue of Section 5(2)(a)(ii) of the Act. The answer to the question referred to this Court is therefore as follows:-

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.

Both parties will bear their own costs of this reference.

G.C. Das, J.

10. I agree.