

(1960) 07 OHC CK 0011
In the Orissa High Court
Case No : Special Jurisdiction Case No. 2 of 1958

Netrananda

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 13-07-1960

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 5(2)(a)(ii)

Citation : (1961) 12 STC 169

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

Bench : Division Bench

Advocate : R. Mohanty and J.K. Mohanty, for the Appellant; G.K. Misra, for the Respondent

Judgement

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

(a) Whether a registered dealer who has admittedly sold jute to another registered dealer in Orissa is liable to pay sales tax, simply because the former has not obtained a declaration in writing, even though the purchase and resale is admitted by the purchasing dealer.

(b) Whether Rule 27(2) made under the Orissa Sales Tax Act is ultra vires of the rule-making authority conferred u/s 29 of the Orissa Sales Tax Act.

(c) Whether in the circumstances of this case the Sales Tax Department having sent a letter, in No. 7(b) of 2nd January, 1950, directing non-realisation of sales tax from Sinclair Murray & Co. from 12th December, 1949, the petitioner is liable to pay tax.

(d) Whether in view of the provisions of law as laid down in Section 5(2)(a)(ii) of the Orissa Sales Tax Act as it stood at the relevant time when the purchase and resale "by the purchasing dealer are admitted, it is obligatory to produce any declaration in writing.

2. The facts found and admitted are as follows: The petitioner was a registered dealer in jute for the period in question (1949-50). He sold jute to two firms, namely Messrs Sinclair Murray & Co. and Messrs Banamali Sahu and Dibakar Sahu (who were also registered dealers) during the said period, but omitted to obtain from them the declaration mentioned in Rule 27(2) of the Orissa Sales Tax Rules. Notwithstanding the absence of such declaration he claimed exemption from sales tax in respect of these sales. His claim for exemption was disallowed both by the Sales Tax Officer and the Assistant Collector of Sales Tax. The Member, Sales Tax Tribunal, also disallowed his claim for exemption. It was admitted before him that the aforesaid two purchasing dealers bought jute from the petitioner for resale outside Orissa. It was further admitted that on 2nd January, 1950, the Assistant Sales Tax Officer wrote a letter to the petitioner [No. 7(b)] directing him not to collect sales tax in respect of jute sold to Sinclair Murray & Co. because the latter had become a registered dealer in Orissa since the 12th December, 1949. The petitioner alleged that it was on the strength of this letter of the Assistant Sales Tax Officer that he did not collect sales tax from the purchasing dealer (Messrs Sinclair Murray & Co.) and that having directed the petitioner not to realise sales tax from the purchasing dealer, it was not open to the department now to ask him to pay sales tax in respect of those transactions.

3. The main points of law involved in questions (a), (b) and (d) have already been answered by me in S.J.C. No. 4 of 1958, Since reported as Member, Sales Tax Tribunal, Orissa v. S. Lal & Co. [1961] 12 S.T.C. 25 where the implications of Section 5(2)(a)(ii) of the Orissa Sales Tax Act and of Rule 27(2) of the Orissa Sales Tax Rules have been fully discussed. There I have pointed that the substantive right to claim exemption and the liability to pay sales tax on the part of the purchasing dealer arise out of the provisions of Section 5(2)(a)(ii) of the Act and the proviso to that sub-clause, and that Rule 27(2) of the Orissa Sales Tax Rules is only a rule of evidence which is not meant to be exhaustive, and which is intended for the benefit of the selling dealer; and it is open to all parties to adduce other evidence with a view to bring the transactions within the scope of Section 5(2)(a)(ii) of the Act, even though the declaration mentioned in Rule 27(2) may not be forthcoming. For the reasons given in the judgment in S. J. C. No. 4 of 1958 Since reported as Member, Sales Tax Tribunal, Orissa v. S. Lal & Co. [1961] 12 S.T.C. 25, there will be no difficulty in answering these questions.

4. Question (b) refers to the ultra vires nature of Rule 27(2) but I see nothing ultra vires in the said rule. When the Act has made a provision conferring right of exemption in respect of a particular transaction of sale it is always open to the rule-making authority to make provision for the mode of proof for the purpose of claiming exemption.

5. Question (c) however requires some discussion. It is admitted that on the strength of the letter of the Assistant Sales Tax Officer the petitioner did not realise tax from Messrs Sinclair Murray & Co. But if the petitioner had correctly

construed Section 5(2)(a)(ii) of the Act or Rule 27(2) he should have collected sales tax from Messrs Sinclair Murray & Co. unless the goods sold to them were specified in their certificate of registration as having been intended for resale in Orissa. It is now admitted that there was no such specification in the certificate, nor did they give any declaration under Rule 27(2) or any assurance that the goods were intended for resale in Orissa. The petitioner therefore by his own conduct and negligence allowed the goods to be sold without collecting sales tax.

6. It is true that he was misled by the aforesaid letter of the Assistant Sales Tax Officer but it is well-known that there can be no estoppel against statute, nor can the Assistant Sales Tax Officer's erroneous view about non-liability to pay sales tax be said to be binding on the Sales Tax Department. The petitioner ought to have satisfied himself about the correct interpretation of the statutory provisions before allowing the goods to be sold without collecting sales tax thereon.

7. Mr. J. K. Mohanty, for the petitioner, contended that during the relevant period, neither in Section 5(2)(a)(ii) of the Act nor in Rule 27(2) of the rules were the words "in Orissa" found and that those words were subsequently inserted by appropriate amendments. Hence he urged that if the goods were sold to the purchasing dealer for resale wherever it may be, the selling dealer was entitled to claim exemption u/s 5(2)(a)(ii) of the Act as it stood then. This point is covered by a Division Bench decision of this Court in *Hindusthan Cellulose & Paper Mills Ltd. v. The State of Orissa* O.J.C. No. 194 of 1951 disposed of on the 25th March, 1955. There it was pointed out that even though the words "in Orissa" were not included in the Sales Tax Act as it stood then, resale in Orissa alone was covered by the exemption provided for in Section 5(2)(a)(ii) and that the subsequent insertion of the words "in Orissa" was made by way of abundant caution.

8. Mr. Mohanty then cited *Registrar v. Sundar* AIR 1956 Mad. 309 and *Robertson v. Minister of Pensions* [1949] 1 K.B. 227 in support of his contention that under certain circumstances the rule of estoppel may apply against a public authority. In respect of an assurance given by one of its subordinate officers. These two cases are distinguishable. There estoppel arose out of a wrong statement of fact on the basis of which a person took action or omitted to take action. In *Registrar v. Sundar* AIR 1956 Mad. 309 a wrong endorsement was made by the Secretary, Board of Secondary Education, acting on behalf of the University to the effect that a particular candidate was eligible for admission to the University. On the basis of that endorsement that candidate joined a college and completed nearly two years of his term. Here the rule of estoppel was held to apply because the endorsement that the candidate was eligible for the college course was a representation of fact. It had nothing to do with the construction of a statutory provision. Again, in the English case also there was no wrong representation regarding a statutory provision. An officer of the Army was informed by the War Office that his disability "has been accepted as attributable to military service". This was a mixed question of law and fact. On the basis of this assurance the

officer concerned did not take further steps to establish that his disability was due to military service. Subsequently when the Crown repudiated the assurance of the War Office and held that the disability was not due to military service, the King's Bench Division held that the Crown was bound by the assurance of the War Office on the principle that "if a man gives a promise or assurance which he intends to be binding upon him and to be acted upon by the person to whom it is given, then, once it is acted upon he is bound by it". As the assurance was given by an agent of the Crown, the Crown was also bound by the same. In the instant case also if the Assistant Sales Tax Officer had misled the petitioner on a pure question of fact by saying that in the purchasing dealer's certificate of registration jute was shown as having been intended for resale in Orissa, the rule of estoppel may well apply in his favour, and there may be some justification for the argument that it was not open to the sales tax department to contend that in that certificate there was no such specification. But the letter of the Assistant Sales Tax Officer merely gave his opinion as to whether the purchasing dealer was liable to pay sales tax or not. That opinion, being based on his own interpretation of a statutory provision, is a pure question of law. On the construction of a statutory provision, the opinion given by an officer of Government cannot obviously bind Government even though a party may have been misled by such opinion. It is the look out of the party affected to satisfy himself about the correctness of the interpretation of law given by an officer: if he mechanically accepts the opinion given by that officer, he does so at his own risk. In taxation matters this rule is of (1) AIR 1956 Mad. 309. wider application because even a decision on a question of law given by a sales tax authority will not operate as a bar to an assessment being reopened and revised by the competent authority if it considers that that view of the law was wrong. As pointed out in a Full Bench decision of the Andhra High Court reported in *State of Andhra v. Arisetti Sriramulu* [1957] 8 S.T.C. 153 an order of assessment fixing liability to tax does not operate as *res judicata* or estoppel so as to prevent that order from being reopened in assessments for subsequent years. Even in respect of the same year's assessment there are express provisions in the statute conferring power on the assessing authority to revise the same, so that any tax that might have escaped assessment may be levied. Hence, even a considered decision by the Sales Tax Officer has not the effect of a "judgment" of the civil court as ordinarily understood. An *ex-parte* opinion given on a question of law by the Assistant Sales Tax Officer, as in this case, stands on an even weaker footing. When the question for assessment arose subsequently the Sales Tax Officer was not bound by the opinion given by the Assistant Sales Tax Officer.

9. The questions are therefore answered as follows:-

(a) The liability of the registered dealer to sales tax will arise if the facts necessary to establish exemption u/s 5(2)(a)(ii) are not found-irrespective of whether a declaration was obtained under Rule 27(2) of the Orissa Sales Tax Rules.

(b) Rule 27(2) of the Orissa Sales Tax Rules is not ultra vires of the Orissa Sales Tax Act.

(c) The letter of the Assistant Sales Tax Officer dated 2nd January, 1950, will not absolve the petitioner from liability to pay sales tax if he is otherwise liable, under the law, to pay the same.

(d) A declaration under Rule 27(2) of the Orissa Sales Tax Rules is not always obligatory on the part of the selling dealer. It is open to him to claim exemption by adducing other evidence so as to bring the transaction within the scope of Section 5(2)(a)(ii) of the Orissa Sales Tax Act.

10. As the petitioner was misled by the letter of the Assistant Sales Tax Officer the only concession we can show him is to exempt him from payment of costs. Both parties will therefore bear their own costs of this reference.

G.C. Das, J.

11. I agree.