

(1964) 05 OHC CK 0003
In the Orissa High Court
Case No : S.J.C. No's. 11 to 18 of 1963

Nowranglal Agarwala

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 05-05-1964

Acts Referred:

Evidence Act, 1872 — Section 115
Income Tax Act, 1961 — Section 25(A), 26(A)
Orissa Sales Tax Act, 1947 — Section 2, 21(2), 24(1), 5(2), 5(2A)
Orissa Sales Tax Rules, 1947 — Rule 19, 27(2), 7(1)

Citation : (1965) 31 CLT 193

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

Bench : Division Bench

Advocate : R.N. Misra and R.C. Patnaik, for the Appellant; R.K. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—These eight references were made by the Member, Sales Tax, Tribunal, Orissa, u/s 24(1) of the Orissa Sales Tax Act, 1947.

2. The Petitioner Assessee is a registered cloth dealer of Cuttack town. While submitting his taxable turnover for eight quarters ending 30-6-1955, 30-9-1955, 31-12-1955, 31-3-1956, 30-6-1956, 30-9-1956, 31-12-1956 and 31-3-1957, the Assessee claimed certain sums as permissible deductions being sales to registered dealers of goods intended for resale in Orissa see Section 5(2)(A)(a) (ii) of the Orissa Sales Tax Act. The Sales Tax Officer refused to allow such deductions holding that he entertained serious doubts about the "truth" of the declaration made by the purchasing dealer as required by Rule 27(2) of the Orissa Sales Tax Rules. Eight appeals were filed before the Appellate Assistant Commissioner of Sales Tax. Four of them were heard by one Shri L.C. Sahu who confirmed the order of the Sales Tax Officer and dismissed the appeals in respect of the assessments for four quarters, ending 30-6-1955, 31-12-1955, 31-3-1956 and 30-6-1957. As regards the assessment for the remaining four quarters, the

appeals against the orders of the Sales Tax Officer were heard by one Shri S.K. Das, Appellate Assistant Commissioner who took the view that so long as the purchasing dealer held a valid certificate of registration which was seen by the Assessee the latter was entitled to the deductions, and it was not his look out further to examine and find out if the purchasing dealer was really a genuine person or a bogus person or else whether he was a "dealer" at all. The State of Orissa filed four appeals against these appellate orders of the Appellate Assistant Commissioner Shri Das and the Assessee also filed four appeals against the orders of Shri L.C. Sahu. All the eight appeals were heard by the Member, Sales Tax Tribunal, before whom there was no challenge against the finding of the lower Court that the certificates of registration were obtained fraudulently either in the names of fictitious persons or of persons who had no business at all. On these undisputed facts the Tribunal held that there could possibly be no "true declaration" as required by Rule 27(2) of the Orissa Sales Tax Rules from those registered dealers and that consequently the Assessee was not entitled to claim deduction for sales to such dealers, but, as requested by the Assessee he formulated the following questions for the opinion of this Court:

(a) Whether for claiming a deduction as provided in Section 5(2)(A)(a)(ii) of the Act read with Rule 27(2) of the Orissa Sales Tax Rules any responsibility is cast on the dealer to be satisfied about the correctness of the certificate of registration.

(b) Whether in the facts and circumstances of the case production of the declarations which state the correct fact, namely that the dealer is a registered dealer under the Act, and the goods purchased by such dealer is covered by his certificate of registration, entitled the Petitioner to claim deductions in question.

3. It is now necessary to refer to certain provisions of the Orissa Sales Tax Act and the rules framed there under. The expression "dealer" as defined in Clause (c) of Section 2 of the Act obviously refers to a person who carries on the business of buying and selling or supplying goods in Orissa. If there is no "person" at all there could obviously be no dealer. Similarly, even if there be a person, if that person is found not to carry on any business he cannot be dealer. The expression "registered dealer" is defined in Clause (f) of Section 2 and means a dealer registered under this Act. This would ordinarily mean a dealer validly registered under the Orissa Sales Tax Act. The definition does not say that anyone who holds a Certificate of Registration is a Registered dealer. Section 9 deals with registration of a dealer and rules have been framed for supplementing the provisions of that section. It is true that when an application for registration is made by a person as a dealer Chapter IV of the Sales Tax Rules requires some sort of enquiry to be made by the Sales Tax Officer concerned. Rule 7(1) says that after such enquiry as may be necessary the Sales Tax Officer, if satisfied that the Applicant has correctly given all the particulars and paid the necessary fees may register him as a dealer. Rule 19 further enjoins on the Commissioner of Sales Tax the duty of publishing a list of registered dealers in the gazette in

August of every year.

4. Selection 5 of the Act is the charging section and Sub-section (2)(A) of Section 5 says that "taxable turnover" for the purpose of assessment of sales tax shall be the gross turnover of a dealer after making deductions permissible under the various clauses of that section. Sub-clause (ii) of Clause (a) of Sub-section (2) (A) of that section says that 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 may be deducted from the gross turnover. Here also it will be noticed that the statute uses the expression "sale to a registered dealer" and does not say "sale to a dealer holding a certificate of registration". Sub-section (2)(B) of that section confers rule making power for the purpose of prescribing the mode of a proof of the deductions. Rule 27(2) of the Orissa Sales Tax Rules made in pursuance of this sub-section, says that:

a dealer who wishes to deduct from his gross turnover the amount of sale on the ground that he is entitled to make such deduction shall produce 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 being required for resale by him.

Thus, the "truth" of declaration is limited strictly to what is actually entered in the purchasing dealer's certificate of registration, viz., the goods which he purchased have been specified in his certificate as being required for resale by him. What is required is the identity between the goods purchased and the goods specified in his certificate. The declaration need not say that the purchasing dealer really intends to resell the goods. All that he is required to do is merely to reproduce the contents of the certificate. He need not even say that he "carries on" business as a dealer.

5. The learned Tribunal, however thought that the word "true" in the declaration required by Rule 27(2) must be construed as meaning that the purchasing dealer must exist as a legal person, and that he must carry on business as a dealer. But on the unchallenged findings, these facts did not exist and hence he held that the declaration was not true and the Assessee was not entitled to the deductions asked for. But this reasoning may not be correct in view of the statutory requirement in Sub-rule (2) of Rule 27 as to the contents of the declaration.

6. But this does not conclude the matter. The finding of the Tribunal is that some of the so called registered dealers were fictitious persons. In other words, the person shown as a registered dealer in the certificate of registration did not exist. If such person does not exist there can be no sale to him. Hence in respect of those fictitious persons there could possibly be no sale by the Assessee to a registered dealer, and consequently he is not entitled to claim any deduction u/s 5(2)(A)(a)(ii) of the Act.

7. Some difficulty however arises as regards deductions claimed in respect of

sales to holders of registration certificates who are eventually found to have no business at all. On behalf of the Assessee Mr. Misra contended that once a person produces before the Assessee the certificate of registration issued by the competent authority it was not the look out of the Assessee to make a further investigation to find out whether that person was validly registered or not or to find out whether that person carried on the business and so long as the Assessee in good faith sells goods to that person he is entitled to ask for the permissible deduction. It was also urged by Mr. Misra that by holding out that the purchaser is a registered dealer by showing his name in the certificate of registration and by publishing his name periodically in the Gazette, as required by Rule 19, Government themselves represented to the other dealers that these persons were registered dealers and consequently the principle of stopple by conduct must apply and Government should not be permitted to say in a subsequent assessment proceeding against a bona fide seller to that person that the person represented as a registered dealer was not a registered dealer.

8. This leads to a consideration of the most important question of law arising in this case, namely, whether, on the facts found, the rule of estoppel would apply against the State. Though there are no decisions under the Sales Tax Act there are several decisions under the Indian Income Tax Act which afford guidance. But the general principle that the rule of estoppel by record does not apply to taxation matters is well known-see the Supreme Court Judgments in *Dwarkadas Kesardeo Morarka Vs. Commissioner of Income Tax, Central Bombay*, . In *Firm of Bhagat Ram Mohanlal Vs. The Commissioner of Excess Profits Tax, Madhya Pradesh, Nagpur and Another*, , one of the questions for consideration was whether the particulars recited in the registration certificate issued by the Income Tax Department u/s 26(A) of the Income Tax Act would operate as estoppel. Their Lordships of the Supreme Court observed at page 379 as follows:

It is undoubted law that the Income Tax authorities are not prevented by the fact of registration from going behind the certificate and deciding who the real partners of the firm are.

It is true that this decision deals with principle of estoppel as between the very parties to the registration certificate, and not as against a third party, but as is well known, the provisions of the Indian Evidence Act do not, in terms apply, to proceedings before the Sales Tax authorities, because they are "judicial proceedings" only for the limited purpose mentioned in Sub-section (2) of Section 21 of that Act. Section 115 of the Evidence Act cannot in terms apply. It is true that the principles of estoppel are wider than the terms of Section 115 of the Evidence Act, but I am not inclined to extend the principle of estoppel against Government especially in a taxation matter, in the absence of clear authority.

9. Even as regards proprietary interest it was held as early as 1899 in ILR Cal 792, that any conduct of a Government servant in violation of his duty, will not operate as estoppel against Government. This principle has been followed in The

Secretary of State For India Vs. Faredoon Jijibhai Divecha, , where it was held that the mistaken interpretation of a giant by officers of Government and the consequent mistaken acts would not operate as estoppel as against the Crown. Here, it has been found as a fact that person who had no business at all succeeded in obtaining a certificate of registration from the Sales Tax authorities either due to the negligence or with the connivance, of the Sales Tax authorities and hence the grant of certificates of registration to them should be held to have been made by mistake. The Sales Tax authorities had no jurisdiction to grant such certificates to fictitious persons or to persons who had no business. Hence though these persons may technically be said to be holders of registration certificates, nevertheless, in the eye of law, they cannot be held to be registered dealers because they have not been "validly" registered under the provisions of the Act and any mistake committed by the subordinate officers of the Sales Tax Department either due to negligence or due to collusion. cannot, on general principles, operate as estoppel against Government.

10. It was urged however that much a view would put an onerous burden on the Assessee and compel him to make elaborate enquiries about the validity of the certificates of registration granted to dealers who may purchase goods from him. This argument is not convincing. If the Assessee wants a certain amount to be deducted from the turnover, on the ground that it is a permissible deduction under the provisions of the statute, burden of proving the deduction initially lies on him. It is true that the production of certificate of registration would, in many instances suffice as presumptive evidence in his favour. But Government cannot be estopped from rebutting that presumption and proving by other evidence that the registration was not effected in accordance with law. This seems to be the principle laid down in a recent decision of the Madras High Court reported in Madura Knitting Co. Vs. Commissioner of Income Tax and Excess Profits Tax, Madras, . The facts of that case (necessary for the decision of the question before us) may be summarised as follows:

In a dispute as to whether a firm known as Madura Knitting Company should be assessed to income tax the further question arose as to whether another firm known as Ambal Stores with whom Madura Knitting Company was said to have had business dealings, was an independent firm or whether it was a bogus creation of the Madura Knitting Company. The income tax authorities took the latter view though they had themselves registered Ambal Stores as a firm u/s 25(A) of the Income Tax Act and had also taxed that firm in that capacity. The learned Judges were not prepared to accept the contention that in view of the conduct of the Income Tax Department in registering Ambal Stores as a firm and assessing it to income tax, they were estopped from proving in the assessment proceedings against Madura Knitting Company that Ambal Stores was a bogus firm. But the learned Judges rightly pointed out that the burden would lie heavily on the Department to show that Ambal Stores was a bogus firm and that the apparent state of things as shown in the Certificate of Registration (ext. A) was not real.

The aforesaid principles will apply here also. Though the initial burden of proving deduction is on the Assessee he may be said to have discharged that burden by saying that he sold the goods to a person holding a certificate of registration. It would then be for the Department to lead evidence to show that the holders of these certificates of registration were not registered dealers in the eye of law as defined in the Act. But one cannot go beyond this limit and say that the taxing authorities are completely estopped from challenging the correctness of the entries made in the registration certificate. If the intention of the Legislature was that every entry in the certificate of registration granted to a person shall be conclusive of the facts stated therein, the Legislature would surely have inserted a provision to that effect in the Act.

11. Mr. Misra relied on some observations of a Bench of this Court in *Netrananda Vs. Commissioner of Sales Tax*, , where it was held that a rule of estoppel may arise on a statement of fact on the basis of which a person took some action or omitted to take action. Here also the State may not be permitted to say that the purchasing dealer in fact did not get himself registered. But the question as to whether such registration is valid or not, is a pure question of law, and the rule of estoppel will not apply. Mr. Misra also relied on the observations of the Bombay High Court in *Varjivandas Hirji and Co. Vs. Commissioner of Income Tax, Bombay City-II*, , where it was held that once the income tax authorities after due enquiry granted a certificate of registration u/s 26(A) they cannot for the year for which the certificate of registration was given ignore the entries made in that certificate and make an independent enquiry to find out who, in fact, or in law, were the partners of the registered firm in the "previous year" for the purpose of assessment for that year. That decision will not be of much help here because that was a case of dispute between persons who were parties to the registration certificate and not as against third parties. Moreover, there the learned Judges recognised that the Department will not be precluded from enquiring whether the income shown against an individual partner's name as disclosed in the certificate of registration, is the true income of that partner, or stands in his name as a nominee of another partner or another person. The observations of the Supreme Court in *Firm of Bhagat Ram Mohanlal Vs. The Commissioner of Excess Profits Tax, Madhya Pradesh, Nagpur and Another*, are clear on this point.

12. Mr. Misra then relied on a Division Bench decision of the Bombay High Court (Nagpur Bench) reported in *Santumal Vs. Assistant Commissioner of Sales Tax (Appeals)*, Eastern Division, Ranges I and II, Nagpur and Another, , which, on facts, is almost identical with the present case (the provisions of the Central Provinces and Berar Sales Tax Act and the Rules made there under being very similar to the Orissa Sales Tax Act and Rules). There also, the Assessee claimed deductions from the turnover in respect of sales made to other registered dealers. It was found, as a fact, that the declarations furnished by the purchaser-dealers were spurious in character or were furnished with ulterior or fraudulent motive. Eventually their certificates of registration were cancelled, but as regards sales made to them in good faith by the Assessee who was not a party to the

made the learned Judges held that the Assessee was entitled to claim deductions asked for. In that judgment however the question as to how far the principle of estoppel by conduct can be applied especially in taxation matters against the State was not considered at all. The learned Judges were influenced by the fact that statutory provisions have been made for careful enquiry by the Department before the Certificate of Registration was given to a dealer, and hence they thought that if another dealer in good faith sold the goods to the holders of such registration certificates, they should not suffer merely because it was subsequently found that those holders of certificates had no regular place of business and ought not to have been registered "dealers". But as the principle of estoppel by conduct has not been considered in this decision, with great respect we are unable to accept that decision as completely laying down the law on the subject.

13. In England also there can be no estoppel against the Crown in taxing matter -see Halsbury, Vol. 20 (Third Edition) page 735 (paragraph 1481)

An inspector of taxes cannot bind the Crown by entering into an agreement purporting to conclude tax etc. questions for future years, nor would such an agreement or expression of opinion offered, or course of action adopted by an inspector of taxes create an estoppel against the Crown.

Doubtless as regards proprietary interest, there may be estoppel by conduct known as estoppel by pais see (1916) 2 K.B.D. 193 and also (1949) 1 K.B.D. 227.

14. The same principle seems to be applicable in America also. In Corpus Juris Secundum, (Vol. 31) at pages 434, 435, the law on the subject was summed up as follows:

Taxation being a governmental rather than a proprietary function, ordinarily there can be no estoppel against a Government or Governmental agency, with reference to enforcement of taxes. Government is not estopped by previous acts or conduct of its agents with reference to determination of its tax liabilities, and the mistakes or misinformation of its officers will not estop it from collecting the taxes due. There may be no estoppel in pais against Government with reference to tax matters where the essential elements of an estoppel are absent.

When the rule of estoppel may be against the State as the "exceptional circumstances" referred to in "American Jurisprudence" Vol. 51 (published by the Lawyers Co-operative Publishing Department) at pages 839 and 845:

Thus if a person in good faith is prevented from paying taxes on the assertion by the person authorised to levy taxes to the effect that no tax was payable there may be an estoppel so far as realisation of penalty or interest from him for the tax that is ultimately found to be payable is concerned. But it does not affect his liability to pay the tax. The question of levying penalty or charging of interest for non-payment of taxes is a matter of discretion with the taxing authorities but the levy of taxation is not a matter of discretion but it is clearly a statutory duty.

15. Thus, neither on general principles, nor on the basis of the law prevailing either in England or America could Mr. Misra urge that the rule of estoppel would apply against the State and prevent it from proving that the so called purchaser from the Assessee was, in law, not registered dealer.

16. The questions are accordingly answered as follows:

Question (a) - The law does not cast on the Assessee any responsibility to be satisfied about the correctness of the certificate or registration because it would prima facie be a strong piece of evidence in his favour. But if he does not make any further enquiries and remains content with mere production of the certificate, he runs the risk of losing his claim for deduction if the Department succeeds in showing that the purchasing dealers were not in law, registered dealers.

Question (b) - This question also is partly answered by the aforesaid answer to question (a). There is also an erroneous assumption in this question. The declaration which states that the purchasing dealer is a registered dealer may be correct so far as the statement of fact is concerned, but it may not be correct so far as the question of law as to whether the purchasing dealer was validly registered is concerned. Hence the mere production of a declaration though strong presumptive evidence in support of the claim for deduction, will not be conclusive and it will be open to the Department to rebut that presumption.

There will be one consolidated cost in respect of all these references. Hearing fee in these references is fixed at Rs. 100/.

Misra. J.

17. I agree.