
(1974) 01 OHC CK 0027
In the Orissa High Court
Case No : O.J.C. No. 280 of 1972

Orissa Hides Trading Co.

APPELLANT

Vs

Sales Tax Officer and Others

RESPONDENT

Date of Decision : 03-01-1974

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 2, 3, 8

Citation : (1975) 35 STC 232

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : A.B. Misra, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—The petitioner is a dealer in hides and skins registered both under the Orissa Sales Tax Act (hereinafter referred to as the State Act) as also the Central Sales Tax Act (hereinafter referred to as the Central Act) and carries on business at Jharsuguda in the district of Sambalpur. He was assessed to Orissa sales tax for the year 1967-68 in March, 1971, and was required to pay a further amount of Rs. 3,013.14 over and above the admitted tax of Rs. 15,024.30. Hides and skins are exigible to purchase tax under the State Act. The petitioner claimed that the hides and skins which had been subjected to Orissa sales tax were sold outside the State of Orissa in the course of inter-State trade or commerce. The State Government had issued a notification u/s 8 of the Central Act (annexure 1) to the effect that in respect of sale of declared goods no tax under the Central Act would be levied if the two conditions indicated therein (to which reference would be made later) are satisfied. The petitioner relying on the said notification claimed exemption from tax under the Central Act. The assessing officer, however, did not agree with the petitioner's contention and levied Central sales tax. While doing so, the assessing officer had disbelieved the books of account of the assessee and had enhanced the gross turnover by 20 per

cent. In appeal, the Assistant Commissioner of Sales Tax vacated the finding of the assessing officer that the accounts were open to rejection and annulled the enhancement. The appellate authority did not accept the notification as binding upon him so as to nullify the assessment. The petitioner claimed that not only the assessment under the Central Act was bad but also that he was entitled to refund of the tax paid under the State Act. When demand under the Central Act was asked to be paid, the petitioner unsuccessfully moved the Commissioner of Sales Tax. On the stand taken by the petitioner the only question which arises for consideration is as to whether the petitioner is entitled to the benefit of the Government notification (annexure 1) and to what extent is the petitioner's liability to tax affected in view of that notification and the provisions contained in Section 15(b) of the Central Act.

2. Section 3 of the Central Act lays down the tests for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce. It is not disputed that hides and skins are declared goods within the meaning of Section 2(c) of the Central Act and in view of the provisions of Section 15 of that Act, the rate of tax in respect of hides and skins is not to exceed 3 per cent and such tax is not to be levied at more than one stage. Under Clause (b) of Section 15, . when a tax has been levied under the State law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce and tax has been paid under the Central Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied "under the State Act shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

3. Annexure 1 is the notification of the State Government issued in 1966 in exercise of the powers u/s 8(5) of the parent Act. That notification is to the following effect:

In exercise of the powers conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (74 of 1956), the State Government having been satisfied that it is necessary to do so in the public interest hereby direct that in respect of all declared goods sold in the course of inter-State trade or commerce, no tax under the said Act shall be payable by any dealer, having his place of business in the State in respect of the sale by him of such goods where tax has been levied and collected- in respect of the sale or purchase of such declared goods u/s 5(1) of the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947), subject to the following conditions, namely:

(i) The burden of proving that the tax u/s 5(1) of the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947), has been levied and collected in respect of any such declared goods shall lie on the dealer, and

(ii) the dealer shall not claim refund under Clause (b) of Section 15 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), read with Section 14-B of the

Orissa Sales Tax Act of the tax levied and collected u/s 5(1) of the Orissa Sales Tax Act, 1947, from the dealer or such tax has not been refunded to him.

The Sales Tax Officer relying upon a decision of the Andhra Pradesh High Court in *Rafeeq Ahmed & Co. v. State of Andhra Pradesh* [1960] 24 S.T.C. 430 did not attach full importance to the notification.

4. The scheme under the Central Act envisages levy of only one set of tax in respect of declared goods. Section 15(a) of the Central Act regulates the rate of tax under the State Act in respect of declared goods and the fourth proviso to Section 5(1) of the State Act incorporates the same provision in order that the rate of tax under the State Act may conform to the requirement of Section 15(a) of the Central Act. The Central Act is intended to deal with transactions taking place in the course of inter-State trade or commerce and takes into its field such transactions which come into the net applying the tests of Section 3 of that Act. It is clear, therefore, that the Central Act does not ban levy of tax under the State Act, but the essential feature in the scheme is that two sets of taxes would not be levied under the two Acts in respect of the same goods. Where the same declared goods have been taxed under the State Act as inside sales and have also been subjected to tax on their inter-State sales, the tax under the Central Act is to be prevailed and the tax under the State Act is to be refunded.

Section 8(5) of the Central Act authorises the State Government to notify in the public interest that in respect of such goods as may be specified in the notification no tax under the Central Act would be payable by any dealer having his place of business within the State in respect of the sale by him from any such place of business of such notified goods in the course of inter-State trade or commerce. The notification in annexure 1 has been made in purported exercise of this statutory power and, therefore, is binding upon the authorities created to enforce and administer the Act. The legislative purpose behind Section 8(5) of the Central Act has been indicated by the Supreme Court in *State of Madras v. Nataraja Mudaliar* AIR 1969 S.C. 147. Shah, J. (as he then was), spoke for the majority thus :

Attention must also be directed to Sub-section (5) of Section 8 which authorises the State Government, notwithstanding anything contained in Section 8, in the public interest to waive tax or impose tax on sales at a lower rate on inter-State trade or commerce. It is clear that the legislature has contemplated that elasticity of rates consistent with economic forces may be maintained.

Hegde, J., who agreed with the majority, said :

Sub-section (5) of Section 8 provides for giving individual exemptions in public interest. Such a power is there in all taxation measures. It is to provide for unforeseen contingencies. Take for example, when there was famine in Bihar, if a dealer in Punjab had undertaken to sell goods to a charitable society in that State at a reasonable price for distribution to those who were starving, it would have been in the public interest if the Punjab Government had exempted that

dealer from paying sales tax. Such a power cannot immediately or directly affect the free flow of trade.

It is true that the court was meeting the challenge to the vires of the Act when these observations were made. It cannot, however, be lost sight of that the scope of the legal provision has generally been indicated. Under the Central Act one set of tax in respect of the sale of declared goods is exigible subject to the limitation u/s 15(a) of the Central Act about the rate and the point of taxation. Refund u/s 15(b) of the Central Act is available in respect of the State tax if the said goods is taxed under the Central Act. We are not able to persuade ourselves that the declared goods which have been subjected to intra-State purchase or sales tax and are ultimately sold in the course of inter-State trade or commerce would not at all be exigible to tax either under the State Act or the Central Act. The real purpose seems to be that one set of tax has to be imposed on such declared goods and that again at a concessional rate to be levied at not more than one stage as provided in Section 15(a) of the Central Act and correspondingly accepted u/s 5(1) proviso of the State Act.

5. The net effect of the notification, however, is that in respect of a dealer's transactions in the course of inter-State trade or commerce there would be no tax under the Central Act provided the two contingencies indicated in the notification are satisfied. The fact which requires proof is that tax has already been imposed and collected u/s 5(1) of the State Act and the same has not been refunded to him or claim in that behalf is not to be made under the provisions of Section 15(b) of the Central Act. This fact has to be established by the assessee. The mandate in Section 15(b) of the Central Act is that the tax under the State Act is to be refunded once the same goods are sold in the course of inter-State trade or commerce and are assessed to tax under the Central Act : *Khader & Co. v. State of Madras* [1966] 17 S.T.C. 396. Judged from that angle, the notification embodies a converse scheme, i. e., where the State tax is collected and the dealer shall not claim refund of that tax u/s 15(b) of the Central Act, the Central sales tax shall not be payable.

A statutory notification [in exercise of power u/s 8(5) of the Central Act] cannot be permitted to run counter to Section 15(b) of the Central Act. That view has been taken in *Rafeeq Ahmed & Co. v. State of Andhra Pradesh* [1969] 24 S.T.C. 430, and we respectfully agree with the same. The tax to be refunded u/s 15(b) of the Central Act is the tax levied under the State Act. The notification, in our view, is a misconceived one, though it was intended to avoid the hardship of the claim of refund. We hold that it is not enforceable.

6. The legal position being what we have indicated above, the impugned order of assessment as also the appellate decision cannot be sustained. They are accordingly quashed. The assessing officer is directed to redispense of the assessment of the petitioner under the Central Act for the year 1967-68 in accordance with law. The writ application is allowed with costs. Hearing fee is assessed at Rs. 100 (one hundred).

B.K. Ray, J.

7. I agree.