(1959) 09 OHC CK 0004

In the Orissa High Court

Case No : Original Jurisdiction Case No. 82 of 1958

Orissa Mineral Development Co. APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 07-09-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 14
Orissa Sales Tax Act, 1947 — Section 10, 11, 23, 24, 9

Citation : AIR 1960 Ori 79 : (1960) 11 STC 12

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

Bench : Division Bench

Advocate : M. Mohanty and N.C. Mohanty, for the Appellant; G.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—In this application under Article 226 of the Constitution the validity of the assessment of the petitioner to Sales-tax was challenged. On behalf of the Sales-tax Department, however, Mr. G.K. Misra raised a preliminary objection on the ground that on the facts as stated by the applicant himself he had an alternative remedy by way of regular appeal before the Sales-tax Tribunal and that consequently this Court should not exercise its extraordinary jurisdiction under Article 226.

2. To appreciate this preliminary objection it is necessary to refer to certain legislative changes brought about in the sales-tax law. The Orissa Sales-tax Act 1947 (Orissa Act XIV of 1947 hereinafter referred to as the Act) underwent several amendments (including adaptation) consequent on the coming into force of the Constitution. It is unnecessary to refer to them in detail here. It is sufficient to say that prior to 1957 the Sales-tax Officer was conferred power to make assessments to sales-tax and an appeal was provided against his order, to the Assistant Collector of Sales-tax (Sub-section (1) of Section 23).

The Collector of Sales-tax Orissa was conferred revisional jurisdiction over the appellate Order of the Assistant Collector and the Revenue Commissioner, now Board of Revenue was also conferred revisional jurisdiction over the orders of the Collector (Sub-section (3) of Section 23). Sub-section (1) of Section 24 of the Act conferred a right on a party aggrieved by an order of the Revenue Commissioner to apply to him for referring any point of law arising out of his order, to the High Court. If he refuses to make a reference the party could approach the High Court direct (Sub-section (2) of Section 24).

The law of limitation for filing revision petition before the Collector and the Revenue Commissioner was laid down in Rules 52 and 53 of the Orissa Sales-tax Rules, and a period of thirty days from the date of receipt by the assessee of the order of the appellate authority was fixed for filing revision petitions before the Collector and a period of sixty days from the date of the receipt of the order of the Collector was fixed for filing revision petition before the Revenue Commissioner.

3. The petitioner was assessed to sales-tax by the Sales-tax Officer, Circle III, Jaipur, for the periods in question. His appeals filed before the Assistant Collector were also dismissed. His revision against the order of the Assistant Collector was also dismissed by the Collector of Sales-tax on the 25th September, 1957. A copy of that order of dismissal was forwarded to the petitioner by post on the 26th September, 1957. There is some controversy between the parties now about the exact date on which that order was received by the petitioner. According to the affidavit filed by the petitioner, it was received by him on the 4th October, 1957. This has been challenged by Sri G.K. Misra on the other side though there is no affidavit in support of the challenge.

4. On the 5th September, 1957, the Orissa Legislative Council passed an Act entitled the Orissa Sales-tax (Amendment) Act 1957 (Orissa Act XX of 1957). The various sections of that Act were brought into force on different dates but the sections material for our purpose, namely Sections 9, 10 and 11 were brought into force only on the 2nd December, 1957. By the amending Act an independent authority known as the Sales-tax Tribunal was constituted for Orissa and a right of appeal to that authority was given to a party aggrieved by an appellate order of the Sales-tax Officer.

The right of revision conferred on the Commissioner of Sales-tax was restricted to revisions against the orders of the subordinate Sales-tax authorities and not against the orders of the Sales-tax Tribunal. Section 24 was also amended by Orissa Act XX of 1957 and the Tribunal was conferred the power to state a case for the decision of the High Court on any question of law arising out of its order. Section 11 of that Act was a saving section by which it was expressly declared that any matter "pending in revision" before the Board of Revenue shall be heard and disposed of by it under the old Act, and similarly any matter pending in revision before the Collector of Sales-tax was transferred to the Tribunal.

5. On the 3rd December, 1957, the petitioner filed an application before the Board of Revenue for revising the order of the Collector of Sales-tax dated the 25th September, 1957. The Board refused to entertain the same in view of the aforesaid amendment to the Act which had been brought into force on the previous day. Then the petitioner filed a regular appeal before the Sales-tax Tribunal and the Tribunal, by its order dated the 1st March, 1958 dismissed it observing that it had no jurisdiction to interfere with an order passed by the Collector in revision. Thereupon, the petitioner came up to this Court with the present application under Article 226, on the 28th April, 1958.

6. During the pendency of this application the Act was further amended by the Orissa Sales-tax (Amendment) (Amendment) Act 1958 (Orissa Act XXVI of 1958) by which Orissa Act XX of 1957 was itself amended by the insertion of a new Clause (Clause III) in Sub-section (1) of Section 11 of that Act. That clause is as follows :

"(iii) Any person who had a subsisting right to go in revision to the Board of Revenue against the order, in revision, of the Collector by or on the 2nd December, 1957, shall have the right to prefer an appeal before the Tribunal against the said order within sixty days from the date of commencement of the Orissa Sales-tax (Amendment) (Amendment) Act 26 of 1958, and the provisions of Sub-section (3) of Section 23 of the said Act as amended by this Act, shall apply to such appeals".

7. Mr. Misra''s contention on behalf of the Sales-tax Department is two-fold:

Firstly he urged that the petitioner received a copy of the revisional order of the Collector of Sales-tax prior to the 1st October, 1957 and if he felt aggrieved by that order he should have filed a revision petition before the Board of Revenue within 60 days from that date. Had he filed such an application it would have been a pending proceeding and would have been saved by Clause (i) of Sub-section (1) of Section 11 of the Orissa Act XX of 1957 and if he again felt aggrieved by the Board''s order he should have asked the Member to state a case for the decision of the High Court on a point of law u/s 24 of the Act. Mr. Misra therefore urged that the petitioner, by his own negligence allowed the order of the Collector of Sales-tax to become final and this Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution, with a view to save a litigant from the consequences of the law of limitation.

Alternatively, Mr. Misra urged that if as stated by the petitioner, he received a copy of the Collector''s order only on the 4th October 1957 the period of limitation for filing a revision petition before the Board of Revenue would expire only on the 3rd December, 1957, though the relevant section of the amending Act XX of 1957 came into force on the 2nd December, 1957. Hence by virtue of Orissa Act XXVI of 1958 the applicant had a subsisting right to go to the Board of Revenue, in revision, on the 2nd December 1957 and was therefore entitled to prefer a regular appeal before the Tribunal within sixty days of the commencement of that Act, i.e. the 19th October, 1958. The petitioner should therefore have filed an appeal before the Tribunal within sixty days from that date and should not have asked this Court to exercise its extraordinary jurisdiction.

8. I am inclined to agree with Mr. Misra. It is true that the existence of an alternative remedy may not always be a sufficient ground for this Court to refuse to exercise its jurisdiction under Article 226 and cases may arise where the unconstitutionality or the illegality of the order under challenge is so apparent that notwithstanding the existence of the alternative remedy this Court may interfere under that Article. This principle has been emphasised in a recent decision of the Supreme Court reported in AIR 1958 S.C. 86, U. P. State v. Md. Nooh. But at the same time a party should not be permitted to escape the rigorous effects of the law of limitation by applying to this Court under Article 226 after the expiry of the period prescribed by law to get relief from the appropriate revisional or appellate authorities.

If, as a fact, the petitioner received the copy of the Collector''s Order prior to the 1st of October, 1957 as alleged by the Sales Tax Department he should have filed a revision petition before the Board of Revenue within sixty days from that date and thus kept the revision petition alive so as to make it pending on the date of coming into force of Sections 9, 10 & 11 of Orissa Act XX of 1957. Such a revision would then have been disposed of by the Board of Revenue and the petitioner would undoubtedly have had a right to ask for a statement of a case to this Court, as provided in Section 24 of the Act. If on the other hand the petitioner''s statement to the effect that he received a copy of the Collector''s order only on the 4th October, 1957 be taken as correct, then as soon as the Orissa Legislature passed Act XXVI ot 1958 and conferred on him the right to appeal to the Sales Tax Tribunal against the order of the Collector he should have need a regular appeal to the Tribunal.

When the Legislature stepped in, at a time when this application was pending in this Court and conferred on the aggrieved party a regular right of appeal before the independent Judicial Tribunal, the party should be directed to seek his redress before that Tribunal & should not be permitted to invoke the extra-ordinary jurisdiction of this Court under Article 226. The powers of this Court under that Article are limited whereas the powers of the Tribunal as an appellate authority are co-extensive with those pf the lower authorities. It can investigate facts and come to its own independent findings.

9. The questions involved in this petition are mixed questions of law and fact. The petitioner has been contending that the sales in question were inter-State sales and also that they were sales in the course of export and as such outside the purview of the Orissa Sales Tax Act. On the other hand, the Department has been contending that the sales were completed in Orissa and were consequently purely internal sales. This disputed question can be finally disposed pf only by a Court of appeal.

10. Mr. Mohanty, for the petitioner, contended that on the date on which this petition was filed viz. the 23rd April, 1958 the petitioner had no other remedy because the amending Act (Orissa Act XX of 1957) did not provide for such a contingency and the mere fact that during the pendency of this petition the Legislature has conferred an alternative remedy on the applicant by way of a regular appeal before the Tribunal by passing Orissa Act XXVI ot 1958, would be no ground for this Court to refuse to exercise its writ jurisdiction. He further observed that the period or sixty days for filing an appeal before the Tribunal as provided in Orissa Act XXVI of 1958 has already expired and that the petitioner''s remedy before the Tribunal is now time-barred.

11. This argument does not appeal to me. The petitioner is expected to know the change in the Sales Tax law brought about by Orissa Act XXVI of 1958. If by his own laches he would not avail himself of the right of appeal conferred by that Act and allowed it to become time barred, he cannot ask this Court to save him from the effects of the law of limitation. Moreover it is still open to him to file a regular appeal before the Sales Tax Tribunal under the provisions of the aforesaid Act and ask the authority to condone the delay, arising out of the fact that he was prosecuting this writ application before this Court.

We do not wish to fetter, in any way, the discretion of the Tribunal to examine whether in such circumstances the provisions of Section 14 of the Limitation Act would come to the help of the petitioner. Nor should it be understood that we accept as correct the petitioner''s statement that he received the copy of the order of the Collector of Sales Tax only on the 4th October, 1957, It is primarily the look-out of the petitioner to satisfy the Sales Tax Tribunal about the correctness of the facts, on which his right to appeal to the Tribunal will depend, whatever may be the ultimate order passed by the Tribunal the petitioner has always a further remedy by way of asking that authority to refer to the High Court any question of law that may arise out of its order, under Sub-section (1) of Section 24 of the Act.

12. Under these circumstances we are not inclined to exercise our extraordinary jurisdiction under Article 226 of the Constitution.

13. This application is dismissed, but there will be no order for costs.

Das, J.

14. I agree.