(1990) 07 OHC CK 0026

In the Orissa High Court

Case No : S.J.C. No''s. 25 and 26 of 1979

Orissa Stores APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 26-07-1990

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(1), 12(4), 12(7), 23

Citation : (1990) 2 OLR 372 : (1990) 79 STC 359

Hon'ble Judges : S.C. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : K.C. Samantray and A.C. Jena, for the Appellant; A.B. Misra, Standing Counsel (S.T.), for the Respondent

Judgement

S.C. Mohapatra, J.—Statement of the case was called for u/s 24(3) of the Orissa Sales Tax Act, 1947, on the following question :

"Whether, on the facts and in the circumstances of the case, the learned Tribunal was justified in remanding the matter for fresh assessment instead of annulling the entire assessment ?"

2. The dealer has been assessed u/s 12(4) of the Act in respect of the year 1972-73 and the quarter ending June, 1973. Notice was not served on the dealer personally. The Tribunal found that such notice was served on one Maheswar Dolai who is not connected with the business in any manner. The Tribunal remitted the matter back to the Sales Tax Officer for assessing the dealer in accordance with law after giving notice to him. Making grievance of the same, the dealer filed application that period of limitation for completing assessment having expired, there was no scope for remand of the case and the assessment should have been annulled.

3. Section 12(7), second proviso, fixed the period of limitation for completion of assessment. It reads as follows :

"12. Assessment of tax.--

(1) to (6).............

(7) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act :

Provided..........

Provided further that no order assessing the amount of tax due from a dealer in respect of any year or part thereof shall be passed later than thirty-six months from the expiry of the year :

Provided further that the period of limitation fixed in the proviso immediately preceding shall not apply to assessment under Sub-section (5) or Sub-section (8) of this section or to enhancement of assessment or order of fresh assessment made or passed u/s 23.

(8) ...."

4. In view of the aforesaid provision for the year 1972-73, assessment u/s 12(4) is required to be completed within thirty-six months from March 31, 1973, i.e., within March 31, 1976. In respect of the quarter ending June, 1973, such assessment is to be completed within thirty-six months from the expiry of the year, which ends on March 31, 1974. Accordingly, assessment for this quarter is to be completed on or before March 31, 1977.

5. No assessment can be completed without notice. Order without notice is liable to be vacated. Order being vacated proceeding remains pending. It is true that limitation fixed would not be attracted to fresh order of assessment made or passed u/s 23 as is provided in the third proviso to Section 12(7). But such fresh assessment means where notice had been validly served. On the assessment order being set aside it goes to the stage where the defect or deficiency is found out. Where the defect or deficiency as found affects the jurisdiction as in the case of absence of notice, protection under third proviso is not available. Merely because the Tribunal sets aside the order of assessment u/s 23 for absence of notice, the third proviso cannot give protection to Revenue. Accordingly, as on April 16, 1974, completion of assessment has become barred by limitation and there was no scope for any assessment.

6. Even though assessment cannot be completed u/s 12(4) of the Act beyond the period of limitation, there is no prohibition for accepting the return as provided u/s 12(1) of the Act. Accordingly, assessment is not to be annulled but the same is to be confined to the return figure.

7. In the result, answer to the question is made in favour of the dealer to the extent indicated above. No costs.

J.M. Mahapatra, J.

8. I agree.

