(1989) 03 OHC CK 0018

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2756 of 1988

OSCAR APPELLANT

Vs

Sales Tax Officer, Assessment Unit and Others RESPONDENT

Date of Decision : 01-03-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Sales Tax Act, 1947 — Section 12, 12(5), 12(8), 14, 14D

Citation : (1989) 68 CLT 229

Hon'ble Judges : V. Gopalaswamy, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : A.K. Ray, P. Mohanty and Ajay Mohanty, for the Appellant; A.B. Misra, Standing Counsel (Commercial Taxes), for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The Petitioner''s application for refund having been rejected by the Sales Tax Officer by order dated 4-12-1987 (Annexure-4) and the said order having been confirmed by the Additional Commissioner as per his order dated 1-7-1988 (Annexure-5) as corrected by order dated 11-8-1988 passed by him under Annexure-6. the petitioper has approached this Court under Article 226 of the Constitution.

2. The Petitioner is an Assessee under the Orissa Sales Tax Act, 1947 (hereinafter referred to as the ''Act'') and is a registered dealer. For the assessment year 1986-87. assessment u/s 12 of the Act was made by the assessing officer namely, the Sales Tax Officer, Barbil. The said assessing officer by his order of assessment rdated 10-6-1987 came to hold that excess amount of Rs. 2,194.00 paid by the dealer is refundable to him as per law. The order of assessment has been annexed as Annexure-I.. Petitioner then filed an application for refund u/s 14 of the Act which has been annexed as Annexure-2. The Sales Tax Officer issued a notice to the Petitioner under Sections 12(5) and 12(8) of the Act on a finding that he has reason to believe that the turnover of sales for

the year ending 1986-87 on which tax is payable under the Act has escaped assessment. The Petitioner was called upon to be present in his office on 6-1-1988 or to cause to produce the accounts and documents specified therein and to show cause why in addition to the amount of tax that may be assessed, a penalty pot exceeding one and a half times of the said amount should not be imposed under Sub-sections (5) and (8) of Section 12 of the Act. This notice isdate.d 4-12,-1987 and has been annexed as Annexure-3. On the very same day the Petitioner''s application for refund was also rejected by the same authority on the ground that since proceeding for re-assessment u/s 12(8) has already been started the application for refund cannot be allowed. This order has been annexed as Annexure-4. The revision petition of the Petitioner against the same to the Commissioner of Commercial Taxes was rejected by order dated 1-7-1988 (Annexure-5) arid modified by order dated 11-8-1988 (Annexure-6).

3. The Petitioner''s case in this writ application is that the order under Annexure-4 is per se bad and has been passed mala fide just to avoid the liability to refund and issuance of notice for re-assessment u/s 12(8) does not come within the purview of Section and proviso to Section 14 of the Act. Thus, it is the second proviso to Section 14 of the Act which crops up for an interpretation in the present case. Second proviso to Section 14 of the Act is extracted hereunder in extenso.

Provided further that no claim to refund of any tax, penalty or interest paid under this Act shall be allowed in cases where there is an order for re-assessment, until the re-assessment is finalised.

It is to be noted that the aforesaid second proviso was not there in the original statute and was inserted by amendment under Orissa Act 23 of 1983 which was given effect to from 12-8-1983. In fact, the necessity for the aforesaid amendment arose on account of two Bench decisions of this Court In the case of Orient Paper and Industries Ltd, and Anr. v. Sales Tax Officer, Sambalpur III Circle, Jharsuguda and Ors. (1982) 50 S.T.C. 211 decided on 27th of August, 1981 which was followed by another Bench decision of this Court in the case of Orissa Road Transport Company Ltd. v. The Sales Tax Officer, Ganjam I Circle, Berhampur (1983) 54 S.T.C. 22, decided on 25th of March, 1983. It was held in the aforesaid two cases that notwithstanding the fact that re-assessment is yet to be made, the tax paid in respect of the periods, assessment for which is set aside becomes refundable u/s 14 and it can be withheld only in exercise. of the power of the Commissioner u/s 14-0 and not otherwise. In both these cases the State''s contention that since the re-assessment proceeding was pending, an application for refund could not be entertained was negatived.

4. Mr. Ray, learned Counsel for the Petitioner contends that a notice u/s 12(8) of the Act is merely an initiation of a proceeding for re-assessment and is not an order for re-assessment within the meaning of second proviso to Section 14 of the Act and therefore, the said second prvviso has no application on mere issuance of a notice u/s 12(8). The learned Counsel further; contends that the

power of the Commissioner u/s 14-0 would become redundant if issuance of a notice by the assessing officer is construed to be an order for re-assessment and further the entitlement of an Assessee to get the refund pursuant to an order of assessment becomes nugatory on the mere ipse dixit of the assessing officer who may issue notice u/s 12(8) of the Act. According to the learned Counsel that could not have been the intention of the second proviso to Section 14 and even though the plain meaning of the second proviso may confer that meaning; the Court should at the cost oil doing violence of the language interpret the same in a manner which would subserve ends of justice.

5. Mr. A.R. Misra, learned Standing Counsel for the Department, on the other hand contends that in view of the unambiguous and plain language used in the second proviso to Section 14 of the Act, the moment an order of re-assessment is passed application for refund cannot be allowed until finalisation of the re-assessment proceeding. According to the learned Standing Counsel, an order for re-assessment starts with initiation 1 of a notice u/s 12(8) and culminates in the final order after hearing of the parties and in fact the very object for bringing,in the second proviso to Section 14 of the Act by way of amendment was not to allow any refund in cases where there has been an order for re-assessment until the same re-assessment proceeding has been finalised. The learned Standing Counsel further contends that a cardinal principle of interpretation of a taxing statute is to give a literal meaning to the words used in the statute and to adhere to the plain grammatical and ordinary sense of the words unless by such adherence some absurdity or inconsistency for rest of the statute arises. It is not the duty of the Court to find out the supposed intention of the legislature since the words themselves alone best declare the intention of the law-giver.

6. The rival contentions require careful examination of the statute itself and some of theaecisions cited at the Bar.

A bare perusal of the second proviso to Section 14 of the Act makes it abundantly clear that a claim to refund of any tax paid under the Act shall not be allowed where there is an order for re-assessment, until the re-assessment is finalised. The language of the second proviso is plain and unambiguous. It conveys the intention of the legislature in no uncertain terms that an application for refund shall not be allowed in a case where there is an order for re-assessment until the re-assessment is finalised it is well settled that the words of a statute are ordinarily to be understood in the natural, ordinary, popular and grammatical meaning unless such a construction leads to an absurdity or the context or the object of the statute suggests a different meaning. In construing the provisions of a statute it is essential for a Court, in the first instance, to give effect to the natural meaning of the words used therein, if those words are clear enough. It is only in the case of any ambiguity that a Court is entitled to ascertain the intention of the legislature by Construing the provisions of the statute as a whole and taking into consideration other matters and the circumstances which led to the enactment of the statute. This being the rule of interpretation, it is not possible for us to accept the contention at Mr. Ray, learned Counsel for the Petitioner that the legislature never intended to negate a claim of refund arising out of an order of the assessing officer by mere issuance of a notice for re-assessment by the self-same assessing officer. If the legislature did intend that which it has not expressed clearly or if the legislature intended something very different, just opposite of what is said it is certainly not for the judges to invent something which they do not mean with in the words of the text. It is not for the judges to supply a meaning by doing violence to the plain language used in a statute howsoever harsh the plain interpretation may be for an Assessee. In our considered opinion, the second proviso to Section 14 is not susceptible to any other construct. On than what we have already said notwithstanding the fact that in some cases an Assessee getting a right to refund in the order of assessment loses the said right by the very officer passing an order of re-assessment until the said reassessment proceeding is finalised.

7. We also do not find any substance in the other contention of Mr. Ray thin Section 14-D becomes redundant and nugatory if the second proviso is interpreted in a manner in which we have already interpreted Section 14-D authorises the Commissioner to withhold the refund for some time where an order giving rise to round-is the subject-matter of an appeal or other proceeding under the Act. That power the Commissioner would always possess whenever an order of refund becomes the subject-matter of an appeal or any other proceeding under the Act.. This is an enabled power of the Commissioner to with hold refund till such time as he deems proper. But second proviso to Section 14 puts a statutory bar to allow any claim of refund in a case where there is an order for re-assessment until the re-assessment is finalised. There is no conflict between second proviso to Section 14 and Section 14-0 and botb can harmoniously operate in their respective fields. Accordingly, we do not find any substance in Mr. Ray''s contention.

8. The only other contention which survives for our consideration is whether a notice u/s 12(8) of the Act can be construed to be, an order for re-assessment within the meaning of second proviso to Section 14. Relying upon a decision of the Calcutta High Court in the case of Nepall Chandra Sanerji v. Commercial Tax Officer, chdnaigurh and Ors. (1977) 40 S.T.C. 23. Mr. Ray contends that an order is always a determination and finality of the proceeding whereas an notice is the beginning of the same and in that view of the matter issuance of a notice cannot be construed to bean order for re-assessment. In our opinion, the aforesaid decision is of no assistance in construing the expression order for re-assessment used in second proviso to Section 14. The legislature has not used the words ''order of re-assessment'' and it is not clear by the expression used in the second proviso ''until the re-assessment is finalised''. It, therefore, clearly stipulates that whenever there is an order, for initiation of a re-assessment proceeding until the said proceeding is finalised claim of refund cannot be allowed. Issuance of a notice on the Assessee u/s 12(8) of the Act cannot but be an order for re-assessment and therefore, during the continuance of such proceeding until the

same is finalised the second proviso to Section 14 would apply and claim of refund cannot be allowed. In this view of the matter, there is no infirmity in the order of the,assessing officer passed in Annexure-4 as well as in the order of the Commissioner passed in Annexure-5.

9. In the result we do not find any merit in this writ application which is accordingly dismissed, but in the circumstances without any order as to costs.

V. Gopalaswamy, J.

10. I agree.

Application dismissed.

