(1960) 04 OHC CK 0001

In the Orissa High Court

Case No : S.J.C. No. 45 of 1958

Ramchandra Balaram APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 27-04-1960

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 23(3)(b), 23(3)(c), 24(1)

Citation : (1960) 11 STC 480

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

Bench : Division Bench

Advocate : P.V.B. Rao, for the Appellant; G.K. Misra, for the Respondent

Judgement

R.L. Narasimham, C.J.—In this reference u/s 24(1) of the Orissa Sales Tax Act, 1947, (as amended by Orissa Act XX of 1957) the following question has been referred to this Court for opinion :-

Whether the cross objection filed by the State in the present case is maintainable in law ?

The admitted facts are as follows :-Prior to the amendment made to the Orissa Sales Tax Act, 1947 (Orissa Act XIV of 1947) by the Amending Act of 1957 (Orissa Act XX of 1957) the Collector of Commercial Taxes had revisional jurisdiction over the appellate orders of subordinate Sales Tax Authorities. The petitioner before us had filed a revision before him on 23rd October, 1954, in Revision Case No. 1094 of 1954-55 and it remained pending in his file. In the meantime Orissa Act XX of 1957 came into force. In consequence of certain amendments made by this Amending Act to Section 23 of the parent Act a new Tribunal known as the Sales Tax Tribunal was constituted and it was conferred second appellate powers over the orders of the appellate authority. Section 23(3) as amended in 1957 may be quoted:-

23. (3)(a) Any dealer or, as the case may be, the State Government, dissatisfied with an appellate order made under Sub-section (2) may within thirty days from

the date of receipt of such order prefer an appeal in the prescribed manner to the Tribunal or Additional Tribunal, as the case may be, against such order.

(b) The dealer or the State Government, as the case may be, on receipt of notice that an appeal has been preferred under Clause (a) may, notwithstanding that the said dealer or the State Government may not have appealed against such order or any part thereof, within thirty days of the service of the notice, file a memorandum of cross objections and such memorandum shall be disposed of by the Tribunal or Additional Tribunal, as the case may be, as if it were an appeal presented within time under Clause (a).

(c) Except as otherwise provided in Section 24 any order made by the Tribunal or Additional Tribunal, as the case may be, under this Sub-section shall be final.

I may further add that in 1958 the Orissa Legislature found it necessary to make a further amendment to the Act by re-drafting the aforesaid Clause (c) of Sub-section (3) of Section 23 (vide Section 19 of Orissa Act 28 of 1958). The amended Clause (c) of Sub-section (3) of Section 23 is as follows :-

23. (3) (c) While disposing of an appeal under this Sub-section the Tribunal or Additional Tribunal, as the case may be, shall have the same powers subject to the same conditions as are enumerated in Sub-section (2) and any order passed under this Sub-section shall, except as otherwise provided in Section 24, be final.

Section 11 of Orissa Act XX of 1957 contained transitory provisions for transfer of all pending appeals and revisions under the parent Act. Clause (ii) of Sub-section (1) of Section 11 is as follows :-

(ii) Any matter pending in revision under the said Actor the rules made thereunder before the Collector of Sales Tax on the date of commencement of this Act shall stand transferred to the Tribunal or Additional Tribunal, as the case may be, of Sales Tax for disposal in accordance with the provisions of Sub-section (3) of Section 23 of the said Act as amended by this Act.

In pursuance of this clause the revision petition of the petitioner, filed before the Collector, was transferred to the file of the Tribunal, by the operation of law, on 2nd December, 1957, (the date on which Section 11 of Act XX of 1957 came into force). It is admitted that thereafter the Tribunal issued notice to the State Government and then the State Government filed a cross objection, admittedly within 30 days from the date of thai notice, claiming that they had a right to file that objection by virtue of Clause (b) of Sub-section (3) of Section 23 of the Act, as amended.

2. It will be noticed that in the parent Sales Tax Act there was no right conferred on the State Government to file a cross objection. That question did not really arise because the revisional jurisdiction was not a matter of right so far as the parties were concerned. But by virtue of the amendment made in 1957 there was a second appeal before the Tribunal and there was also an express right conferred on the State Government to file a cross objection. The question of law

for decision is whether this amendment of 1957 conferring the right of filing cross objections can be extended to those appeals before the Tribunal which were transferred to it by operation of law by virtue of Clause (ii) of Sub-section (1) of Section 11 of the Amending Act of 1957. Mr. P. V. B. Rao for the petitioner urged that to confer such a right in respect of those appeals would amount to giving retrospective effect to the amendment; and there was no provision in the Amending Act, expressly giving retrospective effect to such a right nor could it follow by necessary implication. Mr. G.K. Misra for the opposite party, however, urged that inasmuch as Clause (ii) of Sub-section (1) of Section 11 says that all pending revisions shall stand transferred to the Tribunal "for disposal in accordance with the provisions of Sub-section (3) of Section 23 of the said Act as amended by this Act" and since Clause (b) of Sub-section (3) of Section 23 expressly confers the right of filing cross objections, this right also must be taken to be included in the words "for disposal in accordance with the provisions of Sub-section (3) of Section 23" as mentioned in the transitory provision. It is true that notwithstanding the wide words used in Sub-section (2) of Section 11 of the Amending Act of 1957 every clause in Sub-section (3) of Section 23 of the parent Act as amended may not apply to those revisions which were pending and are deemed to have been transferred to the Sales Tax Tribunal as appeals. For instance, Clause (a) of Sub-section (3) of Section 23 is obviously inapplicable. Hence we may have to construe Sub-section (2) of Section 11 of the Amending Act by importing the phrase "so far as may be applicable "while applying Sub-section (3) of Section 23 as amended. But the right of filing cross objections, conferred on the State Government, is in Clause (b) of Sub-section (3) of Section 23 as amended and we find nothing in the said clause which renders this right inapplicable to those classes of appeals. By this construction we are not giving retrospective effect but are only prospectively applying that clause in respect of pending revisions which are deemed to have been transferred as appeals to the Tribunal. Hence, so long as the requirement about the limitation of 30 days from the date of service of notice is complied with, there seems no bar to the right of the State Government to file cross objections. Doubtless, the drafting of Sub-section (2) of Section 11 and of Sub-section (3) of Section 23 of the Amending Act is not satisfactory. That Act did not contain any provision for the disposal of second appeals by the Tribunals and this defect was removed by the subsequent Amending Act 28 of 1958, by Section 19 of which Clause (c) of Sub-section (3) of Section 23 was redrafted and the powers of the Tribunal while hearing appeals were expressly stated. But notwithstanding the unsatisfactory nature of the drafting of Sub-section (2) of Section 11 of the Amending Act of 1957, we think that in the absence of any express provision to the contrary, the provisions of Clause (b) of Sub-section (3) of Section 23, as amended in 1957, should be taken to be applicable in full to all pending revisions which were deemed to be appeals before the Tribunal.

The question referred to this Court by the Tribunal is therefore answered in the affirmative. There will be no order for costs. But the deposit of Rs. 100 which the petitioner made u/s 24(1) of the Orissa Sales Tax Act may be refunded to him.

G.C. Das, J.

3. I agree.