

(1969) 07 OHC CK 0032

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 24, 25, 26, 27, 28, 29, 30 and 31 of 1964

Ramprasad Tormal

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 14-07-1969

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 5(2)(A)(a)(ii)

Citation : (1970) 36 CLT 362 : (1970) 25 STC 38

Hon'ble Judges : G.K. Misra, C.J;B.K. Patra, J

Bench : Division Bench

Advocate : P.V.B. Rao, for the Appellant; Government Advocate, for the Respondent

Judgement

B.K. Patra, J.—These are eight references made by the Member, Sales Tax Tribunal, Orissa, u/s 24(1) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the Act) on the application of the assessee who is a wholesale textile dealer dealing in mill-made cloth. While submitting his taxable turnover for the purchases covered by these references, he claimed certain sums as permissible deductions u/s 5(2)(A)(a)(ii) of the Act being sales to registered dealers of goods intended for resale in Orissa. The Sales Tax Officer suspected the genuineness of the declarations furnished by the assessee and called upon him to produce the purchasing dealers from whom he is said to have obtained declarations in support of such claim. But the assessee pleaded his inability to produce them. The assessing officer therefore held that the declarations furnished by the assessee are not true and correct as required under Rule 27(2) of the Orissa Sales Tax Rules, 1947, and refused to allow the deductions claimed. On appeal by the assessee, the Assistant Commissioner, Sales Tax, was of the view that since the assessee had obtained signatures of the purchasing dealers in his presence, he was not in a position to believe that the signatures given in the declarations were fictitious. In this view of the matter, he allowed the deductions claimed. On appeal by the State before the Tribunal, the latter was of the view

that if the department finds that the assessee-dealer had obtained declarations from fictitious dealers, the assessee is to be given a chance to prove that the dealers were not fictitious or that he acted bona fide and was deceived by the fictitious-dealers and that unless the assessee proves such bona fide action on his part or in the alternative, the alleged dealers are genuine dealers, he cannot claim deductions in respect of sales to such dealers. Applying these principles to the facts of the cases before him, he held that as the assessing officer suspected that the purchasing dealers were fictitious persons, he gave a chance to the assessee to prove his bona fides and as the assessee has failed to prove his bona fides, the Sales Tax Officer was right in disallowing the deductions claimed. He, therefore, set aside the order of the Assistant Commissioner and restored that of the Sales Tax Officer disallowing the deductions. The State, thereafter, filed an application u/s 24(1) of the Act before the Tribunal praying to refer three questions of law which arise from out of the order of the Tribunal for determination by this court. The first question raised a point of law which is already covered by the decision of this court in H. E. H. Jamal Noor Mohammad & Co. v. State of Orissa ILR 1963 Cul 517 and the second one involved a question of fact. He, therefore, disallowed those two questions and referred the third one to this court. That question is in the following terms :-

The department having issued the certificate of registration and some persons holding the declarations as such, is it competent for the assessing officer to refuse to accept such a declaration merely on account of the fact that the same appeared to be fictitious ?

2. We may quote here the relevant provisions of the Act under which the deductions in question are claimed and they are Section 5(2)(A)(a)(ii) of the Act and Rule 27(2) of the Rules. Section 5(2)(A)(a)(ii) is in the following terms :

5. (2)(A) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom-

(a) his turnover during that period on-

(i)...

(ii) sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for resale by him in Orissa....

Rule 27(2)(i) is in the following terms :

27. (2)(i) Claims for deduction of turnover under item (ii) of Sub-clause (a) of Clause (A) of Sub-section (2) of Section 5.-A dealer who wishes to deduct from his gross turnover the amount of a sale on the ground that he is entitled to make such deduction under item (ii) of Sub-clause (a) of Clause (A) of Sub-section (2) of Section 5 of the Act shall, on demand, produce a copy of the relevant cash receipt or bill according as the sale is a cash sale or a sale on credit, and a declaration in Form XXXIV duly filled up and signed by the purchasing dealer or

by such responsible person as may be authorised in writing in this behalf by the purchasing dealer.

Referring to these provisions of law, a Bench of this court, to which one of us was a party, in *Nowranglal Agarwala Vs. State of Orissa*, held"-

If the assessee wants a certain amount to be deducted from the turnover on the ground that it is a permissible deduction under the provisions of the statute, the burden of proving the deduction initially lies on him....Though the initial burden of proving deduction is on the assessee he may be said to have discharged that burden by saying that he sold the goods to a person holding a certificate of registration. It would then be for the department to lead evidence to show that the holders of these certificates of registration were not registered dealers in the eye of law as defined in the Act. But one cannot go beyond this limit and say that the taxing authorities are completely estopped from challenging the correctness of the entries made in the registration certificate. If the intention of the Legislature was that every entry in the certificate of registration granted to a person shall be conclusive of the facts stated therein, the Legislature would surely have inserted a provision to that effect in the Act....The declaration which states that the purchasing dealer is a registered dealer may be correct so far as the statement of fact is concerned, but it may not be correct so far as the question of law as to whether the purchasing dealer was validly registered is concerned. Hence the mere production of a declaration though strong presumptive evidence in support of the claim for deduction, will not be conclusive and it will be open to the department to rebut that presumption.

3. It is true that in these cases, the assessee did file declarations purporting to have been given to him by persons to whom, it is not disputed, certificates of registration had been given by the department. But the finding of the Tribunal is that the alleged purchasing dealers are fictitious persons. This is what the Tribunal has said-

The assessing officer disallowed claims for deduction in respect of sales to fictitious dealers. On a consideration of the materials, he held that the dealers were fictitious. He gave proper chance to the assessee-appellant to prove his bona fides in respect of his transactions with those fictitious dealers. The assessee-appellant failed to prove his bona fides. So the learned assessing officer disallowed the claims for deduction on that score. The learned Assistant Commissioner allowed the claims on a wrong consideration. According to him as those dealers had obtained registration certificates, so the assessee-dealer could not be penalised. As shown earlier in my general observation this view is wrong. The learned Assistant Commissioner's finding in this respect cannot be upheld.

The learned Tribunal thus upheld the finding of the assessing officer that the purchasing dealers were fictitious persons. It is strenuously urged on behalf of the assessee that the Tribunal has wrongly thrown the onus on the assessee to prove that the purchasing dealers are not fictitious persons. His contention is

that it is the department which issues certificates of registration to dealers; and if a person produces such a certificate of registration, the assessee who is the selling dealer is entitled to act upon it and it is not for him to enquire at that stage whether the certificate has been validly issued by the department to the purchasing dealer, whether the latter has actually got business in the goods mentioned in the certificate etc. There is considerable force in this contention. If the books of account of the assessee show that he has sold goods to a person in whose name a certificate of registration has been issued by the department, it is *prima facie* proof that the purchasing dealer is a genuine person. If the department wants to contend that the aforesaid purchasing dealer is a fictitious person, the burden is on the department to establish it. If the department fails to establish this contention, that will not *ipso facto* entitle the assessee to claim the deductions, because he has still to prove that the declaration on which he relies is actually given by the purchasing dealer. The question will then turn on the genuineness or otherwise of the declarations. The findings recorded by the learned Tribunal in these cases are -

- (1) that the purchasing dealers are fictitious persons; and
- (2) that the declarations produced by the assessee are not genuine.

If the purchasing dealers are fictitious persons in the sense that no such persons exist, it follows that the declarations alleged to have been given by them can never be genuine. It is contended on behalf of the assessee that the finding of the Tribunal under point No. 1 that the purchasing dealers are fictitious persons is vitiated by reason of the fact that the burden to prove that they were genuine has been wrongly cast on the assessee. There is undoubtedly considerable force in this contention. But unfortunately, the assessee has allowed that finding to become final, inasmuch as the correctness of this finding has not been challenged in the present references. The relevant question suggested by the assessee to the Tribunal and which has been accepted by him assumes that the purchasing dealers are genuine persons and the question posed for reference is "whether declarations given by such purchasing dealers can be rejected merely on account of the fact that the declarations appear to be fictitious. In other words, the question referred to this court relates only to the genuineness of the declarations.

4. As stated earlier, the burden is always on the assessee to prove that a declaration on which he relies for claiming exemption u/s 5(2)(A)(a)(ii) of the Act is genuine. The person whose name appears as the purchasing dealer in the books of accounts of the assessee may be a genuine person and may be dealing in the goods mentioned in the certificate of registration; none the less, the assessee might not have sold any such goods to him, but might bring into existence a forged declaration purporting to have been signed by the purchasing dealer. If a question arises regarding the genuineness of the declaration, it is for the assessee to establish before the assessing officer that the declaration on which he relies is a genuine declaration. Apart from the fact that the assessee

has failed to prove this onus which lay on him, although an opportunity was given to him by the assessing authority, it also follows from the finding of the Tribunal that the so-called purchasing dealers are fictitious persons and the declarations in question cannot be genuine.

5. Section 24 of the Act provides for reference to the High Court of a question of law arising out of the order passed by the Tribunal. The question posed in these references appears to us not to be a question of law but one relating to the quantum of evidence necessary to prove a fact in issue. We have stated that the burden to prove the genuineness of the declaration is always on the assessee and it is for him to establish by cogent evidence that the declaration is genuine and not fictitious. If a declaration appears to be fictitious the assessing authority is entitled to reject the same unless the assessee establishes that notwithstanding such appearance, the declaration is in fact genuine.

6. The references are accordingly answered. In the peculiar circumstances of the case, there shall be no order as to costs.

G.K. Misra, C.J.

7. I agree.