
(1982) 11 OHC CK 0013
In the Orissa High Court
Case No : S.J.C. No. 29 of 1978

Sahu Trading Co.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 16-11-1982

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(5), 24(1)
Orissa Sales Tax Rules, 1947 — Rule 27(2)(i)

Citation : (1983) 54 STC 122

Hon'ble Judges : R.N. Misra, C.J; R.C. Patnaik, J

Bench : Division Bench

Advocate : A. Pasayat, for the Appellant; Standing Counsel (S.T.), for the Respondent

Judgement

R.N. Misra, C.J.—On the assessee's application this reference has been made by the Member, Additional Sales Tax Tribunal, u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the "Act") and the following question has been referred for opinion of the court :

Whether, on the facts and circumstances of the case, the learned Member, Additional Sales Tax Tribunal, was justified to hold that the Assistant Commissioner of Sales Tax had no power to accept the declarations without assigning the reason for such acceptance ?

2. The assessee is a registered dealer. The relevant periods are the quarter ending 31st March, 1973 and the year 1973-74. The assessee applied for registration on 2nd January, 1973, but the certificate of registration was actually granted on 26th April, 1973. The Sales Tax Officer made the assessment for the quarter ending 31st March, 1973, u/s 12(5) of the Act. For the year 1973-74, the claim of deduction advanced by the assessee on account of sales to registered dealers was rejected.

In first appeal, the Assistant Commissioner allowed the claim of deduction in

respect of both the periods u/s 5(2)(A)(a)(ii) of the Act by accepting the declarations furnished at the appellate stage.

The State carried second appeals to the Tribunal questioning acceptance of the declarations. The assessee preferred cross-objections. The Member, Additional Sales Tax Tribunal, disposed of the appeals by holding :

On a perusal of the orders of the forums below, it is found that the declaration forms produced before the learned Assistant Commissioner for the first time were not produced before the learned assessing officer. No cause whatsoever has been shown by the dealer-respondent for non-production of the declaration forms before the learned assessing officer. It is the settled rule of law that unless sufficient cause for non-production of declaration forms before the lower forum is shown, the higher forum should not accept the same for the first time. So, the learned Assistant Commissioner, without assigning any reason, should not have accepted the declaration forms for the first time and should not have reassessed the G.T.O. and T.T.O. and the tax, as has been done by him. This is contrary to rule of law and his order is liable to be set aside. The contention raised by the dealer-respondent that he has produced declarations before the learned assessing officer is not supported by records and it cannot be accepted.

During the course of hearing of the appeals, the dealer-respondent has raised a point that the assessment u/s 12(5) of the O.S.T. Act for the quarter ending on 31st March, 1973, is illegal inasmuch as the respondent had applied for registration certificate on 2nd January, 1973 and it was granted to him on 26th April, 1973. Reliance has been placed on the decisions reported in Commissioner of Sales Tax, Cuttack, Orissa v. Brijraj Rameshwar [1966] 17 STC 295 (SC) and Chandra Industries v. Punjab State [1972] 29 STC 558. There is nothing on record as to when actually the respondent had applied for registration certificate. That apart, no appeal has been preferred by the respondent against the orders of the lower forums. So, in such circumstances, the aforesaid contention is without any substance.

In this case, the question relating to acceptance of declarations has only been referred and the other question has not been stated.

3. Rule 27(2)(i) of the Orissa Sales Tax Rules provides :

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 deductions under item (ii) of Sub-clause (a) of Clause (A) of Sub-section (2) of Section 5 of the Act shall furnish a declaration in form XXXIV to the Sales Tax Officer before the completion of the assessment of the period to which the claim relates.

Rule 50(2) of the Rules provides :

The appellate authority may, before disposing of any appeal, make such further enquiry as it thinks fit or cause further enquiry to be made by the Assistant Sales Tax Officer or the Sales Tax Officer, as the case may be.

Indisputably, this rule refers to the first appellate authority. In the case of *Babulal Chhafiolia v. State of Orissa* [1963] 14 STC 880, the ambit of Rule 50(2) and the scope of exercise of first appellate powers came to be dealt with. That was a case where a revised return for the first time was filed before the appellate authority and on the basis of such revised return, the Assistant Commissioner examined the matter and gave relief to the assessee. The question that arose for consideration was whether the first appellate authority could have accepted the revised return contrary to the return which formed the basis of assessment which was being impugned in appeal. Dealing with the question, Narasimham, C. J., spoke for the court thus :

In this connection the difference between the procedures to be adopted by the Assistant Commissioner as the first appellate authority and the Sales Tax Tribunal as the second appellate authority may be noticed. The statutory provisions dealing with the procedure to be adopted by the Sales Tax Tribunal are set out in Rules 56 to 72. Before the Tribunal there are two parties and Rule 58 requires that notice should issue to the opposite party and Rule 61 imposes certain restrictions on the right of a party to adduce additional evidence on lines similar to Order 41, Rule 27, Civil Procedure Code. If therefore before the Sales Tax Tribunal additional evidence is to be taken, notice must be given to the other side and that party may have to be given a reasonable opportunity of adducing rebutting evidence. But where no such limitation is found in the procedure to be adopted by the first appellate authority as prescribed in Sub-rule (2) of Rule 50, the Member, Sales Tax Tribunal, was not justified in saying, as a proposition of law that the first appellate authority should not have admitted an entirely new question to be raised for the first time before him. The question is ultimately one of discretion conferred on him by the rules and no limitation can be placed on that discretion.

The decision of this Court has been upheld in appeal by the Supreme Court in the case of *State of Orissa v. Babu Lal Chappolia* [1966] 18 STC 17 (SC). The court held that the Assistant Commissioner while exercising his powers u/s 23(2) of the Orissa Sales Tax Act, 1947, was virtually in the same position as the Sales Tax Officer and the Act and the Rules thereunder did not contemplate notice to issue to the Sales Tax Officer if fresh evidence is to be adduced and utilised for setting aside the order of the Sales Tax Officer.

Undoubtedly, Rule 27 requires that the declarations should be furnished before assessment is made. In the scheme of the procedure for assessment, the declarations are bound to be produced before the assessment is completed in case the assessee is to be given the deductions he claimed. There is however no provision in the Act or the Rules to the effect that declarations not furnished at the original stage could not be produced later. There may be cases where for some good reason deductions though claimed could not be supported by production of declarations at the assessment stage. In the absence of any prohibition they can be certainly produced as evidence before the first appellate

authority and in view of what has been said by the Supreme Court in the case reported in *State of Orissa v. Babu Lal Chappolia* [1966] 18 STC 17 (SC), such additional evidence could be received by the first appellate authority. In a suitable case, such declarations can even be produced as additional evidence before the Tribunal in second appeal after complying with the requirements of Rule 61 of the Rules. It is in the discretion of the appellate authority to accept the evidence produced in support of the claim in appeal. The Member, Additional Sales Tax Tribunal, may be right in saying that in view of Rule 27, the assessee would not be entitled as of law to ask the declarations to be received and acted upon. But if the Assistant Commissioner in exercise of his discretion accepts the declarations, the same cannot be thrown out as having been filed after the assessment was over. It is true that there have been some observations in the case of *Madura Mills Company Limited v. Government of Madras* [1970] 25 STC 407, that unless the declarations are filed within a reasonable time, the same cannot be accepted. The facts of that case were very different and in view of the setting in which these observations have been made they should not have been relied upon by the Member, Additional Sales Tax Tribunal, for his conclusion, particularly when the law has been so clearly stated in the two cases referred to above.

The reasoning given by the Member, Additional Sales Tax Tribunal, that the assessee had not appealed and therefore, the question could not be considered was without any foundation as conceded by the learned standing counsel. The assessee had succeeded in getting the relief claimed and had also filed a memorandum of cross-objection to the appeal of the State. This reasoning should not have been advanced by the State nor should it have been accepted by the Member, Additional Sales Tax Tribunal.

4. We would accordingly answer the question referred to us by saying that the Member, Additional Sales Tax Tribunal, was not justified in holding that the Assistant Commissioner of Sales Tax had no power to accept the declarations without assigning reasons for such acceptance. There would be no order for costs.

R.C. Patnaik, J

5. I agree.