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**(1988) 12 OHC CK 0021**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 2062 of 1988**

Santuka Agencies

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 20-12-1988

**Acts Referred:**

Orissa Sales Tax Act, 1947 — Section 14, 23(4)(a)

**Citation :** (1989) 73 STC 188

**Hon'ble Judges :** K.P. Mohapatra, J;A.K. Padhi, J

**Bench :** Division Bench

**Advocate :** A.K. Roy, for the Appellant; A.B. Misra, Standing Counsel (CT), for the Respondent

**Final Decision :** Allowed

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## Judgement

K.P. Mohapatra, J.—In this writ petition the petitioner has challenged the order (annexure-2) passed by opposite party No. 3 virtually refusing to direct refund of sales tax to the tune of Rs. 6,242.26.

2. Facts stated in the writ petition are as follows :

The petitioner is a registered dealer under the Orissa Sales Tax Act (hereinafter referred to as the "Act") and a wholesaler of drugs and medicines. On 31st December, 1977 he held stock of drugs and medicines worth Rs. 84,932.46. For the assessment year 1977-78 he voluntarily deposited sales tax and additional sales tax amounting to Rs. 6,242.26 on 27th March, 1978 because, prior to 31st December, 1977 drugs were exigible to tax at the last point of sale. By Notification No. 66237-CTA 35/77 F dated 24th December, 1977 an amendment was brought to the Schedule and a new entry was inserted which was numbered as 93G by which drugs were subjected to tax at the first point in the series of sales with effect from 1st January, 1978. The assessment for the year 1977-78 was completed on 30th September, 1978 by the Sales Tax Officer (opposite party No. 4) in his orders (annexures-3 and 3A) but, he did not allow credit for the

amount of Rs. 6,242.26 which had been voluntarily paid by the dealer under mistake of law. Therefore, an application for refund of the amount of tax paid under mistaken notion of law was filed on 4th September, 1979 u/s 14 of the Act within the prescribed period before opposite party No. 4, but he refused to allow the refund and rejected the application on 6th November, 1979. Thereupon a revision application was filed before the Commissioner of Sales Tax (opposite party No. 2) on 28th November, 1979. In the meanwhile the petitioner preferred appeal to the Assistant Commissioner against the assessment for the year 1977-78 and ultimately approached the Sales Tax Tribunal in second appeal. The Tribunal by order dated 1st August, 1980 (annexure-4) directed the Sales Tax Officer to hold an enquiry about the return of goods with reference to the books of account of the dealer with the observation quoted below :

Regarding the assessment of tax on the closing stock of medicine that stood on 31st December, 1977, I think it is illegal in that the entire stock had not been sold on 31st December, 1977, as soon as the sale of medicine was subjected to first point sale tax from 1st January, 1978. Since the closing stock was never sold or purchased on 1st January, 1978, tax should not have been realised on it.

The revision application referred to earlier, however, remained pending with opposite party No. 2. The petitioner filed O.J.C. No. 665 of 1980 praying for a direction for early disposal of the same and this Court by judgment dated 15th October, 1987 (annexure-5) directed opposite party No. 2 to dispose of the revision application as expeditiously as possible and positively within three months from the date of receipt of a copy of the judgment. After the court's judgment, opposite party No. 3 heard the revision application and disposed of the same by the impugned order (annexure-2).

3. It appears from the impugned order that on the value of the stock of drugs and medicines worth Rs. 84,932.46 on 31st December, 1977, according to the tax schedule then prevailing, the petitioner deposited sales tax and additional sales tax amounting to Rs. 6,242.26 by cheque which was received by opposite party No. 4 on 27th March, 1978. After the amendment was brought to the tax schedule by inserting a new entry numbered as 93G, whereby, drugs were made subject to tax in the first point in the series of sales with effect from 1st January, 1978, the petitioner felt that he had paid sales tax of Rs. 6,242.26 on account of mistake under misconception of law and so he filed a refund application u/s 14 of the Act which was rejected by opposite party No. 4. The petitioner thereafter filed a revision application u/s 23(4)(a) of the Act on 28th November, 1979, but the record was found missing and so the case remained pending without being disposed of. It is also found from the said order that the order of the Sales Tax Tribunal by which the case was remanded for reassessment in the light of some observations was duly noticed. Ultimately, however, he took a view which was expressed as follows:

...Because of change of taxation policy of imposing tax at the first point of sale of medicines from 1st January, 1978, the stock of goods in the hands of the

petitioner which was not earlier taxed on account of purchases having been made on the strength of declaration form No. XXXIV, the petitioner opted to pay tax thereon voluntarily in one instalment. It is not the case that he paid the tax under a law which is subsequently declared ultra vires and hence the question of refund.

He further observed:

...The reference has also been made for adjustment of the tax. Since in the fresh copy of the revision application, such a prayer is nonexistent, the revisional authority could hardly pass an order about the adjustment of tax payable.

The above observations succinctly indicate the reasons which prompted opposite party No. 3 not to direct refund.

4. In *Commissioner of Sales Tax, U.P. Vs. Auriaya Chamber of Commerce, Allahabad*, ), sales tax was paid by the dealer in respect of forward contracts for the assessment year 1949-50 under the provisions of the U.P. Sales Tax Act. Reference was made to *The Sales Tax Officer, Pilibhit Vs. Budh Prakash Jai Prakash*, , in which the Supreme Court had interpreted Section 2(h) of the U.P. Sales Tax Act, 1948 and had held that enlarging the definition of "sale" so as to include forward contracts to that extent was ultra vires and declared it to be so. Relying upon the above decision, the dealer claimed refund of tax which had been deposited in accordance with the assessment order for the year and also for subsequent years for forward contracts under mistake. In that context it was held that in the scheme of the Act, sales tax was leviable only on valid transactions. Undoubtedly sales tax on forward contracts had been illegally recovered on a mistaken view of law. The same was lying with the Government. The assessee had claimed for refund of the taxes paid. It was specifically held as follows :

Where indubitably there is in the dealer legal title to get the money refunded and where the dealer is not guilty of any laches and where there is no specific prohibition against refund, one should not get entangled in the cobweb of procedures but do substantial justice.

In *Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes, Nowgong and Others*, , an identical view was taken. In that case also tax was paid on mistake of law as per assessment order. When the mistake was realised, refund of the amount was claimed. In the above context the order and the notice of demand were set aside by the High Court, but it declined to order refund of the taxes paid on the ground of delay and laches. The Supreme Court held that normally in a case where tax or money has been realised without the authority of law, there is a concomitant duty to refund the realisation as a corollary of the constitutional inhibition that should be respected unless it causes injustice or loss in any specific case or violates any specific provision of law. The assessment was made without jurisdiction and tax was collected without authority of law. Therefore, the taxing authority could not retain the money collected without the authority of law

and as such it was liable to refund the same. From the aforesaid principle of law enunciated by the Supreme Court it is clear that if tax has been paid and realised under mistaken notion of law, the taxing authority cannot retain the same and is bound to refund the amount to the dealer in accordance with law.

5. Section 14 of the Act provides for refund of sales tax, if an application has been made in the prescribed manner within 24 months from the date on which the order of assessment or order imposing penalty, as the case may be, was passed or from the date of the final order passed in appeal, revision or reference in respect of the abovementioned order whichever period is later. It is also provided that claim of refund of tax, penalty or interest paid shall not be allowed in cases where there is an order of reassessment until the reassessment is finalised. It appears from the impugned order of opposite party No. 3 that sales tax was paid by the petitioner. According to entry 93G of the Schedule, the petitioner was liable to pay tax at the first point in the series of sales with effect from 1st January, 1978. But under mistaken notion of law he had paid sales tax and additional sales tax amounting to Rs. 6,242.26 on the value of the stock of drugs and medicines worth Rs. 84,932.46 as on 31st December, 1977. So there is no doubt that the petitioner is entitled to refund or adjustment of the tax paid under mistake of law as the application for refund complied with the requirements of Section 14 of the Act and the rules framed thereunder in that regard as found by opposite party No. 3 in the impugned order itself.

6. At the time of hearing we were given to understand that as a result of the order passed by the Sales Tax Tribunal (annexure-4) the reassessment proceeding is still pending before the assessing officer. If that be so, it shall be the duty of the Sales Tax Officer (opposite party No. 4) to consider the refund application of the petitioner and allow refund of the amount or adjust the same against future liabilities. In case the reassessment proceeding has in the meantime been closed, he shall revive the refund proceeding and pass an identical order. This is how justice can be done to the petitioner who voluntarily paid sales tax under mistake of law in 1978 and for the last ten years is knocking at the doors of the authorities to get the refund of the amount or adjustment thereof.

7. For the foregoing reasons and subject to the observations made, the writ petition is allowed. The order passed by opposite party No. 4 rejecting the refund application, as well as annexure-2 are quashed. There shall be no order as to costs.

A.K. Padhi, J.

8. I agree.