(1968) 10 OHC CK 0009

In the Orissa High Court

Case No : O.J.C. No''s. 97 and 209 of 1967 and 4 of 1968

Satya Bhusan Ray and Others — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 25-10-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 265
Orissa Excise Rules, 1965 — Rule 103(1)

Citation : AIR 1969 Ori 182

Hon'ble Judges : S. Barman, C.J;S. Acharya, J

Bench : Division Bench

Advocate : Ranjit Mohanty and R.K. Kar, In Nos. 94 and 209/1967 and R.N. Misra and R.C. Patnaik, In No. 4 of 1968, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

Barman, C.J.—The petitioners challenge the validity of the amended Rule 103 (1) of the Orissa Excise Rules, 1965 framed by the Board of Revenue, Orissa and pray for refund of the excess fee illegally collected from the petitioners in circumstances hereinafter stated.

2. On August 14, 1965, the Board framed Rule 103 (1) which provided as follows:

"The fees for licenses for the retail vend of country spirit, fermented Tari, Pachwai, Ganja and Bhang shall be fixed by auction subject to a reserved fee sanctioned in each case by the Commissioner".

3. By a notification dated January 28, 1966, the Board amended the 1965 rules. The impugned amended Rule 103 (1) reads as follows:

"The fee for licenses for the retail vend of country spirit, fermented Tari, Pachwai, Ganja and Bhang as well as for the retail sale (hereinafter referred to as "off sale" or "vend") of foreign liquor shall be fixed bv auction subject to a reserved fee sanctioned in each by the Commissioner".

4. A sale notification was issued under Rule 103 (1) of the Board''s Excise Rules 1965 as amended on January 28, 1965 by which the Board of Revenue, Orissa required that all license fees for retail "off" vend of foreign liquor shall be fixed by auction and that the minimum fee for such a license shall be Rs. 600/- per annum while under the provisions of the rules licensee had to pay a fixed license fee of Rs. 600/- per annum only.

5. The Additional District Magistrate, Ganjam, issued a notification fixing February 4, 1966 for auction sale of foreign liquor off shops in the district for the year 1966-67.

6. Thereupon a writ petition Lakshmikanta Sahu v. Superintendent of Excise, Berhampur (O. J. C. No. 56 of 1966) was filed in this court challenging the validity of the amended Rule and praying for temporary injunction therein. On May 4, 1966 the said writ application (O. J. C. No. 56 of 1966) was dismissed by this Court and auction took place and money in excess of Rs. 600/- as fixed was collected. On April 10, 1967 the petitioner appealed to the Supreme Court who declared that the amended Rule 103 (1) is invalid in so far as it provides that a fee for license for retail sale (referred to as "off" sale or "off" vend) of foreign liquor shall be fixed bv auction. (Laxmikanta Sahu v. Superintendent of Excise, Berhampur 1968 SCD 14)

7. Thereafter the present writ petitions were filed on April 25, 1967, August 14, 1967 and January 2, 1968 respectively, all for refund of the fee in excess of Rs. 600/- illegally collected from the petitioners.

8. The points involved herein are fully covered by the judgment of this court delivered to-day in M. Abdul Hassan and Others Vs. State of Orissa and Others, and allied O. J. Cs. all heard together, on the basis of the settled position in law as laid down by the Supreme Court in State of Kerala v. Aluminium Industries 1965 16 STC 689 (SC); State of Madhya Pradesh Vs. Bhailal Bhai and Others, and Gill and Co. v. Commercial Tax Officer, Civil Appeal No. 1680-1595 of 1967 D/- 9-2-1968 see 1968 SC 80. It was held that the High Courts have the powers for the enforcement of statutory rights and fundamental rights, to give consequential relief by ordering repayment of money realised by the Government without the authority of law; where tax is levied by mistake of law then ordinarily it is the duty of the State, subject to any provision of the law relating to sales tax, to refund the tax. If refund is not made, remedy through court is open subject to the same restrictions and also to the period of limitation namely three years from the date when the mistake had become known to the person who has made the payment by mistake.

9. In this view of the case, the petitions are allowed and the opposite parties are directed to determine the amount of excess fee collected and refund the same within one month from the date of receipt of order passed herein. The petitioners are also entitled to a consolidated set of costs. Hearing fee Rs. 100/-.

Acharya, J.

10. I agree.

