(1989) 01 OHC CK 0018

In the Orissa High Court

Case No : O.J.C. No. 2103 of 1988

Satyasai Traders — APPELLANT

Vs

Sales Tax Officer and Another — RESPONDENT

Date of Decision : 02-01-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Sales Tax Act, 1947 — Section 24(1)

Citation : (1990) 76 STC 202

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel appearing for both parties. In second appeal before the Sales Tax Tribunal on behalf of the Revenue, the gross turnover was enhanced, as a result of which, a tax demand of Rs. 32,200 was levied on the petitioner. As he had already paid a sum of Rs. 9,000, the balance amount of Rs. 23,656 is now recoverable and demand has been made accordingly. In the meanwhile, the petitioner has filed an application for reference u/s 24(1) of the Orissa Sales Tax Act, 1947, to refer some questions of law arising out of the order of the Sales Tax Tribunal. The reference petition is pending disposal. The petitioner has approached this Court in this petition under Article 226 of the Constitution for stay of realisation of the sum of Rs. 23,656 pending disposal of the reference application. The point for consideration is whether this is a fit case in which by exercising our extraordinary jurisdiction under Article 226 of the Constitution or in exercise of powers u/s 151 of the CPC realisation of tax should be stayed.

2. Two decisions have been cited at the Bar in support and against grant of stay. In [1987] 67 STC 364 (SC) (Greaves Cotton and Co, Ltd. v. Sales Tax Officer), this Court took the view that if there is a strong prima facie case in support of grant of stay, the Court in exercise of its extraordinary jurisdiction is competent to grant stay. In Commissioner of Income Tax Vs. Bansi Dhar and Sons, . it has,

however, been held that stay of realisation of tax in exercise of jurisdiction u/s 151 of the CPC by the High Court in a pending reference case is not proper. It has also been observed that the High Court can interfere in exercise of its jurisdiction under Article 226 or 227 of the Constitution in an appropriate case. The ratio decidendi of this decision is that in an appropriate case pending disposal of an application for reference under the Orissa Sales Tax Act, this Court is competent to grant stay of realisation of tax in exercise of its extraordinary jurisdiction under Article 226 or 227 of the Constitution. Now it is to be found out whether the case in hand is an appropriate one and there are strong prima facie materials for which stay of realisation of tax is warranted. We find from the order of the Sales Tax Tribunal in second appeal that the case was disposed of on facts. Hardly there were questions of law. We are, therefore, of the view that there is no strong prima facie case in favour of the petitioner for grant of stay.

3. We, therefore, decline to grant stay for realisation of tax and accordingly, dismiss the writ petition.

Miscellaneous Case No. 2765 of 1988.

In view of the orders passed in the writ petition, the miscellaneous case is dismissed.

