
(1970) 02 OHC CK 0015

In the Orissa High Court

Case No : O.J.C. No"s. 173 of 1959 and 192 of 1965

Sinclair Murray and Company (Pvt.) Ltd.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 03-02-1970

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1970) 26 STC 451

Hon'ble Judges : G.K. Misra, C.J.; S. Acharya, J

Bench : Division Bench

Advocate : B.K. Mohanty, for the Appellant; S.C. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The petitioner is a limited company having its headquarters at Calcutta. It was assessed to sales tax for the quarters ending 30th June, 1949, to 31st December, 1950. In this writ application the relevant period is the quarter ending 31st March, 1950. On 14th July, 1951, the assessment in respect of this quarter was made by the Sales Tax Officer. On 28th September, 1957, the revisional authority set aside the assessment order for the aforesaid quarter and directed revision of the assessment. He came to the conclusion that Article 286(1) (a) of the Constitution governed the period from 26th January, 1950, to 31st March, 1950. Accordingly he gave the following direction :

The assessment for the quarter ending 31st March, 1950, should be revised levying sales tax on the sales effected by the petitioner up to and including 25th January, 1950 and exempting the sales effected from 26th January, 1950, to 31st March, 1950, which are covered by Article 286(1)(a) of the Constitution.

In accordance with this direction the Sales Tax Officer passed an order of reassessment on 2nd August, 1959, stating that a sum of Rs. 89,009.50 should be refunded to the petitioner. This revised order of assessment was intimated to the assessee on 6th August, 1959. The assessee, on 13th August, 1959, filed an

application for refund u/s 14 of the Orissa Sales Tax Act, 1947 (hereinafter to be referred to as the Act). The application for refund was rejected on 20th July, 1964, by the Sales Tax Officer on the ground that it was barred by limitation. On 22nd August, 1964, the assessee filed a revision application before the Commissioner. The case was heard on 7th April, 1965 and as no order was passed the petitioner filed this writ application on 13th July, 1965, for issuing a writ of certiorari for quashing the impugned order of the Sales Tax Officer passed on 20th July, 1964 and for issuing a writ of mandamus directing refund of the tax.

2. The only question for consideration is whether the refund application is barred by time. This necessitates an examination of Section 14 of the Act as it stood at the relevant period. It reads as follows :

14. The Collector shall, in the prescribed manner, refund to a dealer applying in this behalf any amount of tax paid by such dealer in excess of the amount due from him under this Act, either by cash payment or at the option of the dealer by deduction of such excess from the amount of tax due in respect of any other period :

Provided that no claim to refund of any tax paid under this Act shall be allowed unless it is made within twenty-four months from the date on which the order of assessment was passed or within twelve months of the final order passed on appeal, revision, review or reference in respect of the order of assessment, whichever period is later.

The proviso to Section 14 sets out the limitation to an application for refund. The application has to be made within 24 months from the date on which the order of assessment was passed. In the alternative, it is to be filed within 12 months of the final order passed on appeal, revision, review or reference, in respect of the very period of assessment and when the dealer is entitled to either of the two alternative periods, he is also entitled to the benefit of the extended period.

3. In order to appreciate the question of limitation, the respective contentions of the parties may be noticed. The learned Standing Counsel contends that the final order in revision was passed by the Collector on 28th September, 1957, wherein he clearly indicated that the dealer had no liability to pay tax for the period 26th January, 1950, to 31st March, 1950. According to him, once the appellate authority gave a clear exposition of law that Article 286(1)(a) of the Constitution was attracted and there was no liability, the dealer ought to have filed an application for refund within 12 months of the date of that order. Mr. Mohanty, for the petitioner, on the other hand, contends that the revisional order of the Collector did not finally dispose of the matter, but gave a direction to the assessing authority for revising the assessment and for giving refund on the basis of such reassessment.

4. In our view, in the peculiar facts and circumstances of this case, Mr. Mohanty's contention must be accepted. As has been indicated earlier, the direction given by the revisional authority was that the assessing authority

should make a fresh assessment and pass an order exempting the sales effected from 26th January, 1950, to 31st March, 1950. If the revisional order had been absolute, in its expression, that the dealer was exempted from liability and was entitled to make an application for refund, the contention of the learned Standing Counsel would prevail. The revisional authority resorted to a different course. Possibly he wanted that the entire matter should be examined on reassessment and the claim of the assessee for refund should be determined by the assessing authority in the light of the legal pronouncements made by the revisional authority. If that be the position, then the order of the revisional authority passed on 28th September, 1957, cannot be taken to be a final order to enable the petitioner to apply for refund. On the language of the order so passed the petitioner must have to wait until the reassessment order is made and that order alone would indicate as to what extent the sales are exempt from liability being inter-State in character.

5. On the aforesaid analysis, the effective order would be that passed by the Sales Tax Officer on 2nd August, 1959, when he made reassessment. Or, rather, for the purpose of limitation, the effective date would be 6th August, 1959, when the above order of reassessment was communicated to him. The petitioner availed of the earliest opportunity in filing his refund application on 13th August, 1959. The application is not, therefore, barred by time.

6. Reliance was placed by the learned Standing Counsel on an unreported decision of this court in O.J.C. No. 173 of 1959 wherein, a similar refund application was held to have been barred by time. That case, however, is distinguishable on facts. It was clearly observed therein that the applicability of Section 14 of the Act would depend on the facts and circumstances of each case. In paragraph 6, their Lordships observed :

In my opinion, Mr. Das''s contention has no force on the facts of this case.

In that case the order of the revisional authority was not conditional but was absolute and no further action was to be taken before giving effect to the relief of refund. After the refund order was passed, from time to time the dealer was intimated by the sales tax authorities to make an application for refund. Despite that the dealer was negligent and their Lordships observed that he had to thank himself for the unfortunate result. While we accept the principle laid down in that case, we are clearly of opinion that it has no application to the facts of the present case.

7. The learned Standing Counsel submitted that this court should merely issue a writ directing the Commissioner to hear the matter and dispose of the revision application pending before him. Ordinarily, such a course is adopted by us. But in view of the fact that the revision has been pending before the Commissioner since 1964 and in view of the further fact that we are satisfied that the petitioner has got a clear case, no useful purpose would be served by giving a direction for further hearing of the revision.

8. In the result, the writ application succeeds. A writ of certiorari be issued quashing the order of the Sales Tax Officer dated 20th July, 1964, refusing refund of the tax. A writ of mandamus be also issued directing the opposite parties to make refund of the tax to the petitioner without any delay.

The application is allowed, but, in the circumstances, there will be no order as to costs.

S. Acharya, J.

I agree.