(1972) 03 OHC CK 0005

In the Orissa High Court

Case No : O.J.C. No. 979 of 1971

S.L. Gupta and Sons APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 07-03-1972

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1972) 38 CLT 468 : (1973) 31 STC 239

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

Bench : Division Bench

Advocate : B.P. Chadgotia, for the Appellant; Standing Counsel (Sales Tax), for the Respondent

Judgement

R.N. Misra, J.—This is an application under Articles 226 and 227 of the Constitution asking for a declaration that Section 13-A of the Orissa Sales Tax Act (hereinafter referred to as the Act) is ultra vires the Constitution of India and for quashing of the notices issued under that section, copies whereof are annexures 7 and 12 to the writ petition.

2. The short facts necessary for disposal of this writ application may now be stated. Shri S. L. Gupta happens to be the proprietor of the petitioner firm. It carries on business at Balasore and is registered as a dealer under the Act having been assigned Registration No. BA 2262. The petitioner was assessed to sales tax for the years 1968-69 and 1969-70. Additional tax demands of Rs. 3,075.48 were raised for these two years. The petitioner challenged the additional demand by filing of appeals before the Assistant Commissioner of Sales Tax. As it now appears, the appeals were dismissed and second appeals have been filed before the Tribunal. On 27th August, 1971, notices were issued to the petitioner by the Assistant Sales Tax Officer of Balasore-I Circle, requiring the assessee to pay up the arrear tax failing which action u/s 13(5) of the Act was to be taken. Annexures 4, 6 and 6-a are such notices. Annexure 4 is in respect of Rs. 3,075.48. That admittedly is the arrear demand in respect of the petitioner.

Annexure 6 refers to a demand of Rs. 1,952. The notice is addressed to the petitioner, but therein the registration number has been given as BA 3004. Annexure 6-a is addressed to the petitioner also and an amount of Rs. 3,726.73 has been demanded to be paid failing which action under Rule 16(2) of the Rules under the Central Sales Tax Act was threatened to be taken. In the last notice (annexure 6-a), there is no further indication excepting mentioning the name of the petitioner. On 15th October, 1971, the Assistant Sales Tax Officer issued a notice to the Commandant, Proof & Experiment Establishment at Chandipur in the district of Balasore in terms of Section 13-A of the Act. For convenience, the entire notice is extracted :

Whereas it appears that some money is due or may become due from you to Sri S. L. Gupta & Sons, Balasore, at P.O., Balasore, BA 2262 a dealer under the Orissa Sales Tax Act who has failed to comply with a notice served under Sub-section (4) of Section 13 or you hold or may hold subsequent to the issue of this notice some money for or on account of the said dealer. You are hereby required to pay into the Government treasury within seven days from the date of receipt of this notice if the money is due from you or held by you or within a fortnight of the money becoming due or being held, so much of the money or whole of it, as the case may be, so as to pay the amount of tax or penalty due from the dealer as specified below. Your payment in compliance with this notice shall be deemed to have been a payment under the authority of the dealer and the receipt from the Government treasury shall constitute a valid discharge of your liability to the said dealer to the extent of payment specified in the receipt. You are hereby warned that if you discharge your liability to the dealer in a manner other than that required in this notice you will be personally liable to the State Government to the extent of liability so discharged or to the extent of the liability of the said dealer for tax or penalty, or both, whichever is less.

1. Tax ... Rs. 3,212.48 under O. S. T. 2. Rs. 3,726.73 under C. S. T. Rs. 6,939721

3. The petitioner challenges the propriety of the order in annexure 7. During hearing of the writ petition the challenge regarding the vires of Section 13-A of the Act was not pressed, nor is it disputed that in respect of Rs. 3,075.48, the petitioner was in arrears and, therefore, action under Section, 13-A of the Act could be taken to that extent. The dispute is pointedly confined in respect of the excess amount shown in annexures 7 and 12 which as per the counter-affidavit are said to relate to the company.

4. The Commercial Tax Officer, Balasore-I Circle, has filed an affidavit saying that Sri S. L. Gupta happened to be a director of S.L. Gupta & Sons (Implements) Private Ltd. The registered office of the company is at Calcutta, but in respect of its business at Balasore, the company has been registered both under the Orissa Sales Tax Act as also the Central Sales Tax Act. It is claimed that Sri Gupta was looking after the business of the company and in terms of the explanation to Section 2(c) of the Act, Sri Gupta must be taken to be a dealer. The company

had been assessed under the two Acts and an additional demand had been raised against the company for Rs. 1,952.00 and Rs. 2,372.04 in respect of the assessments under the two Acts. The notices of demand therefore had been served on Sri Gupta and he had filed appeals before the appellate authority on behalf of the company. As Sri Gupta is deemed to be a dealer, action taken u/s 13-A of the Act against him was justified in respect of the arrears of Sri Gupta''s firm as also of the private limited company.

5. There is no dispute that the company is registered under the Companies Act at Calcutta. There is no clear material before us from which we can hold that the main business of the company is run within the jurisdiction of the Commercial Tax Officer, Balasore. On the authority of a Bench decision of this Court in Mcleod & Co. Ltd. v. State of Orissa [1971] 1 C.W.R. 790, we would hold that the petitioner can be treated as a dealer on behalf of the non-resident company.

6. This, however, cannot dispose of the dispute raised in the writ petition. Annexure 7 clearly indicated that the arrears were in respect of Sri S. L. Gupta & Sons bearing Registration No. BA 2262. There was no indication of any other arrears. At the foot of the notice it was stated that the arrear tax dues under the Orissa Sales Tax Act amounted to Rs. 3,212.48, while under the Central Sales Tax Act, the arrears came to Rs. 3,726.73. In the counter-affidavit of the Sales Tax Officer, in paragraph 8, the particulars of arrears are stated thus :

Rs. 1,260.48 for assessment as proprietor for the year 1968-69. Rs. 1,815.00 for assessment as proprietor for the year 1969-70. Rs. 1,952.00 for assessment on the company for the year 1969-70. Rs. 2,372.04 balance of demand on the company for the year 1969-70

Total Rs. 7,399.52. There was wide discrepancy between the two amounts. While we agree with the contention of the learned Standing Counsel that action u/s 13-A of the Act could have legitimately been taken even against the petitioner for the arrear tax dues from the company on the principle indicated in the aforesaid reported decision of this court, we are not prepared to sustain the action taken in this case on account of the several infirmities. Firstly there is discrepancy in the amount indicated in the notice. The amount is stated to be due from the registered dealer bearing Registration No. BA 2262, while as a fact the action is now sought to be justified on the basis that the amount is due from three registered dealers, that is, the petitioner (BA 2262), the company registered under the Orissa Act (BA 3004) and the company registered under the Central Sales Tax Act (BAC 750). Wide powers are vested in the taxing authorities for collection of arrears of tax and these provisions are on the basis of necessity and public policy. A statutory form is prescribed for the notice u/s 13-A(1) of the Act in form X-C. Therein the defaulting dealer''s particulars are required to be indicated. At the foot, details of arrears are also required to be shown.

The notice in question does not at all refer to the non-resident company. On the other hand, there is a clear mention of the petitioner to be the dealer and the firm''s registration number has been mentioned. After the writ application was filed, the Assistant Sales Tax Officer served a further notice on the Commandant, Proof and Experiment Establishment (annexure 12), where the amount indicated in paragraph 8 of the counter affidavit has been mentioned, but there was no indication that the company was in arrears. The petitioner is S. L. Gupta & Sons, a proprietary firm. It is not the case of the department that the firm is the dealer within the meaning of the explanation to Section 2(c) of the Act. Sri S. L. Gupta is said to be the dealer by application of the fiction in the explanation u/s 2(c) of the Act. It becomes difficult for us, under the circumstances, to accept the stand of the opposite parties that the notice u/s 13-A(1) was a valid one and was in terms of the statutory requirements.

7. We would, accordingly, allow the writ petition, quash the notices in question dated l6th October, 1971 and 21st December, 1971, issued by the, Assistant Sales Tax Officer, Balasore-I Circle, to the Commandant, Proof and Experiment Establishment at Chandipur in the district of Balasore as per annexures 7 and 12 of the writ petition. We, however, make it. clear that it is open to the taxing department to take again appropriate action u/s 13-A(1) of the Act in accordance with law. The writ petition succeeds in part. There shall be no Order as to costs.

B.C. Das, J.

8. I agree.

