
(1981) 10 OHC CK 0019

In the Orissa High Court

Case No : Special Jurisdiction Case No. 61 of 1977

State of Orissa

APPELLANT

Vs

Babulal Ballabbhdas

RESPONDENT

Date of Decision : 21-10-1981

Acts Referred:

Central Sales Tax (Amendment) Act, 1969 — Section 9, 9(1)

Citation : (1982) 50 STC 200

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

Bench : Division Bench

Advocate : Standing Counsel Sales Tax, for the Appellant;

Judgement

R.N. Misra, C.J.—The Member, Additional Sales Tax Tribunal, has stated this case and referred the following question for our opinion:

Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was correct in law to have annulled the penalty levied under Rule 8(2) of the Central Sales Tax (Orissa) Rules, 1957, for the quarter ending 31st March, 1967, in view of the provisions of Section 9 of the Act 103 of 1976 : [Central Sales Tax (Amendment) Act] ?

2. The brief facts are : The assessee is a registered dealer under the Central Sales Tax Act and omitted to make a return in respect of its turnover for the quarter ending 31st March, 1967. The assessing officer while completing the assessment imposed a penalty of Rs. 192 on a finding that there was a delay of 86 days in making the return. The assessee preferred an unsuccessful first appeal. In second appeal, the Tribunal accepted the appellant's submission by saying:

In this second appeal, the only question in dispute is the imposition of penalty of Rs. 192 for not filing the return under the Central Sales Tax Act for the quarter ending 31st March, 1967, by the appellant who happened to be a registered dealer under the Central Sales Tax Act. The question whether the procedural

matters of the said general sales tax will apply in the matter of Central Sales Tax Act, recently came up for discussion before the Supreme Court in the case reported in *Manganese Ore (India) Ltd. Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur*, . It has been held in that case that in the absence of any substantive provision under the Central Sales Tax Act, no penalty could be levied for not filing the return. In view of that principle, the penalty imposed on the appellant should be annulled.

Soon after the appeal was disposed of by the Tribunal came the Central Act 103 of 1976, which became operative from 7th September, 1976, and in Section 9 thereof, there was a validation of action taken including imposition of penalty. The substantive provision of Section 9 clearly indicates the retrospective application of the provision. Sub-section (1) says :

The provisions of Section 9 of the principal Act shall have effect, and shall be deemed always to have had effect, in relation to the period commencing on the 5th day of January, 1957, and ending with the date immediately preceding the date of commencement of this Act as if that section also provided....

Sub-section (2) as far as relevant provided :

Notwithstanding anything contained in any judgment, decree or order of any court or tribunal or other authority, all penalties under the general sales tax law of any State imposed or purporting to have been imposed in pursuance of the provisions of Section 9 of the principal Act, and all proceedings, acts or things taken or done for the purpose of, or in relation to, the imposition or collection of such penalties, before the commencement of this Act shall, for all purposes, be deemed to be and to have always been imposed, taken or done as validly and effectively as if the provisions of Sub-section (1) had been in force when such penalties were imposed or proceedings or acts or things were taken or done and....

In view of the validating provision, the imposition of penalty could not be called in question and though there was no clear provision authorising imposition of penalty for delayed returns, as indicated by the Supreme Court in the case reported in *Manganese Ore (India) Ltd. Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur*, , the validating statute was intended to uphold the levy and on the basis of the same, we must hold that the levy of penalty is not open to challenge. Our answer is in favour of the revenue.

3. As there is no appearance of the assessee, there is no assessment of costs.

B.K. Behera, J.

4. I agree.