(1979) 01 OHC CK 0007

In the Orissa High Court

Case No : S.J.C. No. 32 of 1977

State of Orissa — APPELLANT

Vs

Basudev Das and Another — RESPONDENT

Date of Decision : 10-01-1979

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(2)(b), 5(2)(A)(a)(ii)

Citation : (1982) 49 STC 143

Hon'ble Judges : R.N. Misra, J;P.K. Mohanti, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an application of the State of Orissa u/s 24(2)(b) of the Orissa Sales Tax Act for a direction to the Sales Tax Tribunal to state a case and refer the following questions for opinion of the court:

(1) Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, is legally justified in accepting the claim of the opponent u/s 5(2)(A)(a)(ii) of the Orissa Sales Tax Act when the declarations are not in conformity with the rules laid down under Rule 27(2) of the Orissa Sales Tax Rules ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is legally justified to entertain the claim for deductions and direct the assessing officer to entertain the claim for the purpose of determining the taxable turnover of the dealer ?

2. The assessee is a registered dealer and one Mangulu Sahu and Co., a registered dealer carrying on business at Berhampur, functions as its commission agent. During the year 1971-72, in respect of a sum of Rs. 17,571.54, deduction from the gross turnover was claimed for fixation of the taxable turnover of the assessee on the plea that it was a sale to a registered dealer. Rule 27 of the Orissa Sales Tax Rules provides that a dealer who wishes to deduct from his

gross turnover the amount of sale on the ground that he is entitled to make such deduction under item (ii) of Sub-clause (a) of Clause (A) of Sub-section (2) of Section 5 of the Act shall on demand, produce a copy of the relevant cash receipt or bill according as the sale is a cash sale or a sale on credit and a declaration in form XXXIV duly filled in and signed by the purchasing dealer or by such responsible person as may be authorised in writing in this behalf by the purchasing dealer. The Tribunal found that there was a formal declaration as provided in form XXXIV, but there was no sale bill and in lieu thereof a sale patti from the authorised agent was forthcoming. Looking at the details contained in the sale patti and what would ordinarily appear in a bill, the Tribunal came to hold that there was compliance of Rule 27(2) of the Rules and accordingly allowed the deduction of the turnover of Rs. 17,571.54 for determining the assessee''s taxable turnover.

3. According to the learned standing counsel, the sale patti should not have been accepted as a substitute of the cash receipt or the sale bill, inasmuch as the sale patti is not in fact a real substitute of the other. We would agree with the learned standing counsel that the Tribunal generalised the position in too wide a term when it stated that the sale patti would be a substitute of a cash receipt or a sale bill. In the given case, however, the learned standing counsel is not in a position to point out as to in what manner, the sale patti was not satisfying the requirements of the rule by either being a cash receipt or a sale bill. It is not the case of the learned standing counsel that the patti in question lacked in any particulars which in ordinary course, a sale bill or a cash receipt would contain. To a pointed question, the learned standing counsel''s answer is that in the sale patti in hand, the commission agent''s commission probably was reflected. At any rate, that would be an additional material and not that there was any deficiency in the sale patti which would not provide the adequate information contained in a sale bill or a cash receipt. In the circumstances, we find it difficult to accept the submission advanced by the learned standing counsel that the Tribunal acted contrary to law in accepting the sale patti and the declaration read together as compliance of Rule 27(2) of the Orissa Sales Tax Rules, so as to allow the deduction to the assessee as representing the sale to a registered dealer. In the circumstances, we are inclined to hold that no question of law arises and the finding of the Tribunal is essentially one that has borne out by fact.

4. The application is accordingly rejected.