(1987) 07 OHC CK 0026

In the Orissa High Court

Case No : Special Jurisdiction Case No. 4 of 1981

State of Orissa APPELLANT

Vs

Bhawani Bhandar RESPONDENT

Date of Decision : 06-07-1987

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 12(4), 12(8), 24(1)

Citation : (1988) 68 STC 196

Hon'ble Judges : H.L. Agrawal, C.J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : B. Agarwala, R.S. Agarwala, M.L. Agarwala, S.S. Rout and G.P. Patnaik, for the Respondent

Judgement

S.C. Mohapatra, J.—This is a reference u/s 24(1) of the Orissa Sales Tax Act, 1947.

2. The following question of law has been referred to by the Tribunal:

Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal is correct in holding that in a proceeding u/s 12(8) of the Orissa Sales Tax Act the burden of proof that the declarations produced before the assessing officer are not true and genuine is on the State (Revenue) when such proceeding is in consequence of reopening of the completed assessment u/s 12(4) of the Orissa Sales Tax Act wherein previously the declarations in question have been accepted ?

3. Petitioner is a dealer registered under the Act in Puri-I Circle. In course of assessment u/s 12(4) of the Act, for the year 1973-74, it claimed deduction of Rs. 4,67,606.04 from his turnover on account of sale to a registered dealer M/s. Jharendra Das. Sometime after the assessment was concluded u/s 12(4) of the Act, it was reopened u/s 12(8) of the Act. The dealer was called upon to produce the purchasing registered dealers to whom he claimed to have made the sales. The dealer while taking time to produce the purchasing dealers filed two

affidavits of the purchasing dealers. In the assessment proceeding u/s 12(4) of the Act, the assessing officer recorded the statement of purchasing dealer Maheswar Parida and allowed the deduction of sales to him. This statement coupled with an affidavit in the proceeding u/s 12(8) of the Act was accepted by the Tribunal. The affidavit of Jharendra Das was accepted by the Tribunal and the turnover of sales to him was deducted from the total turnover. Whether the sales were made to the registered dealers by the assessee-dealer is a question of fact. It is not a case of finding without any material. Thus, the question as posed is only of academic interest since the matter is concluded by findings of fact. No question of law having arose out of the order, the reference is misconceived.

4. In the result, we decline to answer the question which is academic in its nature and the reference is discharged. There shall be no order as to costs.

H.L. Agrawal, C.J.

5. I agree.