

(1972) 04 OHC CK 0016
In the Orissa High Court
Case No : S.J.C. No's. 301 to 306 of 1969

State of Orissa

APPELLANT

Vs

Damodar Sahu

RESPONDENT

Date of Decision : 18-04-1972

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(5), 24(1)

Citation : (1973) 39 CLT 1282 : (1973) 30 STC 262

Hon'ble Judges : G.K. Misra, C.J.; K.B. Panda, J

Bench : Division Bench

Advocate : S.C. Mahapatra, for the Appellant;

Final Decision : Allowed

Judgement

K.B. Panda, J.—These are six reference applications made u/s 24(1) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the Act) by the Additional Sales Tax Tribunal (Shri R. C. Kar), at the instance of the State of Orissa, arising out of the judgment of his predecessor, Shri. U.N. Misra, dated 27th January, 1969, posing the following two questions for answer :

(i) Whether on the facts and in the circumstances of the case, the Assistant Sales Tax Officer, Assessment Unit, Bhubaneswar, Puri II Circle, has no jurisdiction to assess the assessee ; and

(ii) Whether on the facts and in the circumstances of the case, the Additional Sales Tax Tribunal is right in allowing the appeal and setting aside the assessment made by the Assistant Sales Tax Officer, Assessment Unit, Bhubaneswar, with direction for de novo assessment proceedings by another assessing officer of Puri I Circle?.

2. Facts are not in controversy. The assessee-opponent, then an unregistered dealer, carried on business of selling rice at Bhubaneswar. Mostly his purchases of rice were from Pipili. His liability to pay tax has been fixed from 1st October, 1962, which is not challenged and he has been assessed to tax for quarters

ending December, 1962, and March, 1963, years ending 1963-64 and 1964-65 and quarters ending June, 1965, and September, 1965, u/s 12(5) of the Act.

3. Rice then was a commodity which was liable to purchase tax and not sales tax. So it was contended on behalf of the assessee that the purchases being made at Pipili, the Sales Tax Officer, Puri II Circle, under whose jurisdiction Pipili comes, is the appropriate authority to assess him to tax and not the Assistant Sales Tax Officer, Assessment Unit, Bhubaneswar, Puri II Circle. This contention did not find favour with the department and so the assessee lost in first appeal. However, in second appeal the then Additional Sales Tax Tribunal (Shri U.N. Misra) took a contrary view and allowed the appeals occasioning these references.

4. The learned Additional Tribunal while disposing of the appeals expressed thus :

There is no dispute that the assessee-appellant used to purchase rice at Pipili. There is also no dispute that, rice is taxable at the purchase point. There is also no controversy that the assessee-appellant used to sell rice at Bhubaneswar. The learned Additional State Representative contended that since Bhubaneswar is also the place of business of the appellant the assessing officer at Bhubaneswar was justified in taxing the appellant. I regret, I am not able to accept such a contention, as rice is taxable at the purchase point and not at the sale point. Therefore, in the fitness of things, rice which was purchased at Pipili should have been taxed by the competent assessing officer for Pipili and the taxing officer at Bhubaneswar has no jurisdiction to tax him at Bhubaneswar.

Evidently the learned Additional Tribunal has put all emphasis on goods taxable at purchase point and goods taxable at sale point, as though that is the determining factor which would confer jurisdiction to one unit or the other. To say the least, the entire approach of the learned Tribunal is distorted. Under the same Act, certain commodities are made taxable at purchase point whereas certain others at sale point. The same authorities are to assess both on the purchase turnover as well as on the sale turnover of any assessee commoditywise.

5. u/s 29, the State Government has been empowered to make rules for carrying out the purposes of the Act. In the rules, "Assistant Sales Tax Officer" and "place of business" are denned as hereunder :

Rule 2. (c) " "Assistant Sales Tax Officer" means in respect of any place of business of a dealer, the Assistant Sales Tax Officer appointed by that designation by the State Government u/s 3 of the Act to assist the Commissioner, within whose jurisdiction that place of business is situated."

Rule 2. (i) " "Place of business" means any place where a dealer sells or purchases any goods or keeps accounts of sales or purchases.

From the above definition of "place of business", as given in the rules, it is pretty clear that no distinction has been made in respect of purchase tax goods or sales tax goods. Rather they are taken at par and the emphasis is on "where the

accounts of sales or purchases are kept" and that is the "place of business" of that dealer. Admittedly in this case, the assessee has his "place of business" at Bhubaneswar where his accounts of purchases and sales are kept. Therefore, there is nothing wrong for the Assistant Sales Tax Officer, Assessment Unit, Bhubaneswar, to tax the assessee under whose jurisdiction the assessee has his "place of business". On the above analysis, the finding of the learned Additional Tribunal is utterly untenable.

6. We would answer question (i) in the affirmative and question (ii) in the negative. In the result, the references are allowed but in the circumstances without costs.

G.K. Misra, C.J.

I agree.