

(1975) 12 OHC CK 0028
In the Orissa High Court
Case No : S.J.C. No's. 193 to 195 of 1974

State of Orissa

APPELLANT

Vs

Harekrushana Sahu

RESPONDENT

Date of Decision : 12-12-1975

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 16, 24(1), 4

Citation : (1976) 42 CLT 159 : (1982) 50 STC 180

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

Bench : Division Bench

Judgement

R.N. Misra, J.—On applications made by the State of Orissa u/s 24(1) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the "Act"), the Member, Additional Sales Tax Tribunal, has stated these cases and referred 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 not wrong in annulling the assessment for the quarter ending 31st March, 1969, on the ground that the assessee's turnover did not exceed Rs. 25,000 during the assessment year 1968-69 ?

(2) Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, is not wrong in annulling the assessments for the year ending 1969-70 and the quarters ending 30th June, 1970, and 30th September, 1970, on the ground that the annual gross turnover of the opponent is only Rs. 18,000 ?

(3) Whether, on the facts and in the circumstances of the case, the order of the Member, Additional Sales Tax Tribunal, arising out of improper appreciation of law is not perverse and untenable in law ?

It is conceded that the third question cannot be treated as an independent one and it would be sufficient if the first two questions are answered. Accordingly, we shall not deal with the third question.

2. The periods of assessment are quarter ending 31st March, 1969, year 1969-70, and quarters ending 30th June, 1970, and 30th September, 1970. The assessee is a grocer and is said to have started his business in January, 1968. The assessing officer obtained information that even though the assessee's turnover had exceeded the minimum taxable limit, he had not been registering himself as a dealer. Accordingly, proceedings were initiated u/s 12(5) of the Act and on examination of the materials placed before him, the assessing officer came to hold that the assessee's liability would commence with effect from 1st January, 1969. Accordingly, he taxed the assessee for the quarter ending 31st March, 1969. With effect from 1st July, 1969, amendment of Section 4 by Orissa Act 15 of 1968 came into force by which for the sum of Rs. 10,000, appearing in the original provision, Rs. 25,000 was substituted. Yet, the assessing officer assessed the assessee to tax by relying upon the provision of Section 4(3) of the Act.

3. The assessee's first appeals were dismissed. In second appeals, the assessee reiterated his objection, namely, that in view of the provisions of Section 4(1) as amended by Orissa Act 15 of 1968, the assessee had no liability at all and all the assessments were without basis. The Member, Additional Sales Tax Tribunal, accepted the assessee's contention by saying :

In view of the arguments it is to be seen whether on admitted turnover of Rs. 30 per day as has been fixed by the assessing officer, the dealer is liable to be taxed in view of the amendment of Section 4(1) effected by the amending Act of 1968. After the amendment, Sub-section (1) of Section 4 reads as follows :

Subject to the provisions of Sections 3-B, 5, 6, 7 and 8 and with effect from such date, as the State Government may, by notification, in the Gazette, appoint, being not earlier than 30 days after the date of the said notification every dealer whose gross turnover during the year immediately preceding the date of commencement of the Orissa Sales Tax (Amendment) Act, 1968, exceeded Rs. 25,000 shall be liable to pay tax under this Act on sales and purchases effected after the date so notified.

It is now to be seen whether the turnover of the appellant exceeded Rs. 25,000 during the year immediately preceding the commencement of the Orissa Sales Tax (Amendment) Act, 1968. Admittedly, the said Amendment Act was brought into force with effect from 1st July, 1969. This dealer's liability is being fixed for the last quarter of 1968-69. Hence, as per the Act it is to be seen whether the dealer's turnover exceeded Rs. 25,000 during the assessment year 1968-69. As it has not so exceeded the assessment made must be annulled. Once this is annulled the other two assessments where the G. T. O. is only to the tune of Rs. 18,000 must also be annulled....

4. Section 4(1) in the parent Act read thus :

Subject to the provisions of Sections 5, 6, 7 and 8 and with effect from such date, as the Provincial Government may, by notification in the Gazette, appoint,

being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded Rs. 5,000 shall be liable to pay tax under this Act on sales effected after the date so notified :

Provided...

By the amending Act 24 of 1950 in place of Rs. 5,000 the amount of Rs. 10,000 was substituted. Sub-section (2) of Section 4 was also amended by the amending Act of 1950 and the following provision was made:

Every dealer to whom Sub-section (1) does not apply shall be liable to pay tax under this Act on sales which have taken place in Orissa with effect from three months after the commencement of the year immediately following that during which his gross turnover on sales which have taken place in Orissa first exceeded Rs. 10,000.

Sub-section (2) was further amended by Act 37 of 1951 and after the provision underwent this amendment, it read thus :

Every dealer to whom Sub-section (1) does not apply shall be liable to pay tax under this Act on sales which have taken place in Orissa with effect from the quarter immediately following a period not exceeding twelve months during which his gross turnover on sales which have taken place in Orissa first exceeded Rs. 10,000.

This provision remained in force until it was amended by Orissa Act 15 of 1968. The limit of Rs. 10,000 was raised to Rs. 25,000 and the State Government was authorised by notification to appoint a date with effect from which the amended provision in Section 4(1) was to take effect. Admittedly, the appointed date is 1st July, 1969. The amended provision has already been noticed in the extracted portion of the Tribunal's order and it is unnecessary to quote it again.

5. The assessee's stand has been that as his turnover during the year immediately preceding the date of commencement of the Orissa Sales Tax (Amendment) Act of 1968 (i. e., 1st July, 1969) has not exceeded Rs. 25,000, he shall not have liability under the Act and it is claimed that in view of the language of Sub-section (1), the year preceding the appointed date must be taken as the relevant period for computing the quantum of gross turnover. The learned standing counsel has placed reliance on Section 16 of the amending Orissa Act 15 of 1968. That section with the heading "removal of doubts" makes the following provision :

For the removal of doubts it is hereby declared that the liability of any dealer to pay tax under the principal Act in respect of any period prior to the date appointed by notification under Sub-section (1) of Section 4 of the principal Act as amended by this Act shall not in any way be affected by any amendment made under this Act.

According to the learned standing counsel, in view of this categorical provision, for any period prior to 30th June, 1969 (i. e., preceding the appointed date), the liability has to be determined under the principal Act and Section 4(1) of the parent Act and Section 16 of the amending Act must be read together so that a harmonious construction would be given to both the provisions. Reliance is placed on a Bench decision of the Madras High Court in the case of Bhanji Bagawandass Vs. Commissioner of Income Tax, , where it has been observed:

A saving Act, whether it is substantive or procedural in scope, being the by-product of legislative wisdom, acts on its own, uninfluenced by other considerations such as hardship, inconvenience and equity. In the operational field it may work hardship, its results may be at once startling and inconvenient. So long as such a law gives a clear indication as regards its content and extent of saving, then it is self-active and its effect ought not to be sloped down by a mere argument, however interesting and attractive it may be and for the reason it affects vested rights.

We agree that Section 16 of the Orissa Act 15 of 1968 may not be a saving Act, but the principle indicated in the Madras decision would have application to the situation. The view taken by the Member, Additional Sales Tax Tribunal, in his appellate decision is certainly erroneous. The periods up to 30th June, 1969, had to be dealt with in terms of Section 16 of the amending Act of 1968 and liability had to be computed on the basis of the parent provision and without reference to Section 4(1), as it stood after the amendment by Orissa Act 15 of 1968. u/s 4(3) of the Act, every dealer who has become liable to pay tax under the Act is to continue to be liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed Rs. 25,000. Therefore, the assessments made for the subsequent periods in this case were also not invalid.

6. Our answers to the questions referred accordingly are :

(1) On the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was wrong in annulling the assessment for the quarter ending 31st March, 1969.

(2) On the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was wrong in annulling the assessments for the year 1969-70 and the quarters ending 30th June, 1970, and 30th September, 1970.

We make no order as to costs of these proceedings.

N.K. Das, J.

7. I agree.