
(1981) 09 OHC CK 0027
In the Orissa High Court
Case No : S.J.C. No. 121 of 1976

State of Orissa

APPELLANT

Vs

Indersons Motors

RESPONDENT

Date of Decision : 10-09-1981

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (1982) 50 STC 192

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

Bench : Division Bench

Advocate : Standing Counsel Sales Tax, for the Appellant; Bijan Ray, for the Respondent

Judgement

R.N. Misra, C.J.—The following question has been referred to us under our orders on an application of the revenue u/s 24(2)(b) of the Orissa Sales Tax Act, 1947 :

Whether, on the facts and in the circumstances of the case and keeping the explanation to Section 11(3) of the Act in view, the Tribunal was justified in knocking off the penalty ?

2. The assessee is admittedly a dealer registered under the Orissa Sales Tax Act, 1947 (hereinafter referred to as the "Act"). For the quarter ending 30th June, 1973, the assessee made a return of its turnover as provided by the statute, and to the return it enclosed a cheque in respect of the admitted tax. The cheque, when presented in due course, about a month after the date of issue rebounded on the grounds that the assessee had not sufficient money in its account with the bank. The assessing officer proceeded on the footing that there had been no return in the eye of law and imposed penalty of Rs. 2,000 u/s 11(3) of the Act holding that the dealer had not filed the return for the quarter. The assessee's first appeal was dismissed, and in the second appeal the assessee reiterated its claim that no justification was made out for imposing the penalty. The Tribunal took the view that there was no material for holding that on the date of issue of the cheque the assessee did not have sufficient funds in its account to meet the

amount under the cheque. The appellate authority also relied upon the dictum laid down by the Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa, where the Supreme Court indicated that though there was provision for imposition of penalty, it was not obligatory for the assessing officer to levy penalty unless contumacy of the assessee was found and on such finding the imposition of penalty was set aside.

3. The explanation appended to Section 11(3) of the Act runs thus :

A return unaccompanied by a receipt from the treasury showing full payment of the admitted tax or composition money or by a crossed cheque or crossed bank draft covering the admitted tax or composition money, as the case may be, ... shall not be deemed to be a return for the purpose of this section and, in case such cheque or bank draft is dishonoured for payment, the return shall not be deemed to be a return for the purpose of this section.

4. From the Tribunal's decision we find that there is no reference to this provision in the statement. The scheme of the Sales Tax Act is that the admitted tax has to be paid before the return is made and if there be any excess tax due after assessment is made, it has to be paid in terms of Section 13 of the Act. When a cheque is issued, until it remains valid it is the duty of the person who has issued the cheque to provide appropriate funds in his account to enable the cheque to be honoured when presented. The Tribunal appears to have proceeded as if the assessee was standing his trial for an offence u/s 420 of the Indian Penal Code to find out the intention of the assessee at the date of the issue of the cheque and also to find out whether on that date there was sufficient money in the bank account of the assessee. The cheque has a prescribed life under the rules. It is not the case here that on account of non-presentation of the cheque for encashment within that period, the cheque was not honoured. It is the option of the payee to get the cheque encashed within the live period of the cheque. Since it is the admitted case that the cheque was presented within the live period, it was the obligation of the assessee to back the cheque with sufficient funds in its account to enable its encashment when presented. The explanation has been incorporated into the statute to meet the scheme of the Act. The Tribunal, in our view, had no justification to refer to the decision of the Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa, in a case of this type and to knock off the penalty by saying that there was no material placed on record by the assessing officer that on the date when the cheque was issued the dealer did not have sufficient funds in its account to cover the cheque amount. On the question of law as presented, we must answer against the assessee by saying that on the facts and in the circumstances of the case and keeping the explanation to Section 11(3) of the Act in view, the Tribunal was not justified in knocking off the penalty.

5. The counsel for the assessee pointed out that since the penalty amount was knocked off in its totality the Tribunal never applied its mind to find whether the quantum of penalty required interference. We leave it to the Tribunal, while

taking steps u/s 24(5) of the Act to look into this aspect of the matter.

No costs.

N.K. Das, J.

6. I agree.