(1981) 07 OHC CK 0011

In the Orissa High Court

Case No : Special Jurisdiction Case No. 88 of 1976

State of Orissa APPELLANT

Vs

K. Dandapani Subudhi RESPONDENT

Date of Decision : 16-07-1981

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (1983) 53 STC 379

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

Bench : Division Bench

Advocate : Standing Counsel Sales Tax, for the Appellant; B. Agarwala, for the Respondent

Judgement

R.N. Misra, C.J.—This is a reference u/s 24(1) of the Orissa Sales Tax Act of 1947 (hereinafter called "the Act") at the instance of the revenue and the following question has been referred for our opinion :

Whether, on the facts and in the circumstances of the case, the Sales Tax Tribunal, Orissa, was justified to hold that the assessee was not liable to pay sales tax with effect from 1st July, 1969, to 31st October, 1969 ?

2. The assessee was an unregistered dealer carrying on business in grocery and stationery articles as also controlled food articles. He started his business with effect from 4th July, 1968, on controlled commodities, and grocery and stationery articles were added to the business with effect from 1st June, 1969. The assessment period is 1969-70. The assessing officer examined his books of account, and taking into consideration certain defects found, determined the liability under the Act with effect from 1st June, 1969, as by then the gross turnover exceeded Rs. 10,000. Assessment was made u/s 12(5) of the Act and gross and taxable turnovers were determined at Rs. 48,396.51 and Rs. 30,249.13 respectively. The assessee preferred an appeal before the Assistant Commissioner challenging the assessment. The rejection of the accounts was upheld. One of the contentions of the assessee was that the amending Act of

1968 came into force with effect from 1st July, 1969, by which the non-taxable limit was raised from Rs. 10,000 to Rs. 25,000 of the gross turnover. It was contended that as the gross turnover of the assessee did not exceed Rs. 25,000 on 1st July, 1969, his liability to pay tax ceased with effect from the date the amending Act came into force. This contention was ultimately upheld by the Tribunal.

3. The learned standing counsel relies upon a Bench decision of this Court in the case of State of Orissa v. Harekrushna Sahu (1976) 1 CWR 68, where pointedly this aspect arose for consideration and after hearing the parties, the court held that the liability which accrued prior to the date indicated in the notification u/s 4(1) of the Act including the liability under Sub-section (3) of Section 4, remained unaffected by the amendment of 1968. The decision squarely answers the point now in dispute against the assessee. Mr. Agarwala for the assessee referring to the manner in which the provision was made in Orissa Act 28 of 1958 and in Orissa Act 15 of 1968 contended that the decision reached in the reported case required reconsideration. According to the counsel for the assessee, in the earlier amending Act of 1958, Section 24 provides a saving clause in respect of liability whereas in the amending Act 1968, Section 16 made provision for removal of doubts. In Section 16, according to the assessee''s counsel, the liability that was saved was one that arose u/s 4(1) of the principal Act and not under Sub-section (3). This submission seems to have been made under a wrong reading of Section 16. What is referred to in Section 4(1) of the principal Act and in Section 16 of the amending Act is not the liability under Sub-section (1) of Section 4, but the notification indicated in that Sub-section. Section 16, in our view, has been rightly interpreted on the earlier occasion where a Bench of this Court has held that all the liabilities under the section would be saved under that section without reference to the liability indicated in Sub-section (1). In that view of the matter, we do not agree with Mr. Agarwala''s submission canvassed before us.

4. It is next contended that if the interpretation given by us is sustained, it would amount to discrimination in the case of a continuing dealer prior to the Act and a dealer who would get into the business after the amending Act of 1968. We do not think that there is any scope for the contention of discrimination. A continuing dealer and a new dealer do not belong to the same class, and if legislation is made making the continuing dealer subject to one type of dealer (sic) and the new dealer would be subject to advantages, it would not amount to discrimination within the meaning of Article 14 of the Constitution. In several taxing statutes, benefits are given to new entrants and in no case, has it been held that it amounts to discrimination. Under the Income Tax Act of 1961, several reliefs have been extended to particular types of business assessees and unless equally placed assessees are separately treated, the allegation of discrimination is not sustainable.

Neither of the contentions of Mr. Agarwala for the assessee impresses us. We

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-of-orissa-appellant-hash-k-…

would accordingly decline to accept his submissions and choose to follow the reported decision of this Court in State of Orissa v. Harekrushna Sahu (1976) 1 CWR 68. Following it, our answer to the question would be in favour of the revenue and against the assessee, viz., that the liability of the assessee would continue for the period between 1st July, 1969, and 31st October, 1969.

There would be no order for costs.

B.N. Misra, J

I agree.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-of-orissa-appellant-hash-k-…