**(1987) 09 OHC CK 0027**

**In the Orissa High Court**

**Case No :** S.J.C. No''s. 31 and 32 of 1981

State of Orissa — APPELLANT

Vs

Karamchand Thapar and Bros. Pvt. Ltd. — RESPONDENT

**Date of Decision :** 18-09-1987

**Acts Referred:**
Central Sales Tax Act, 1956 — Section 9

**Citation :** (1988) 68 STC 275

**Hon'ble Judges :** H.L. Agrawal, C.J;P.C. Misra, J

**Bench :** Division Bench

## Judgement

H.L. Agrawal, C.J.—In these references u/s 24(1) of the Orissa Sales Tax Act (for short, "the Act"), the Additional Sales Tax Tribunal, Orissa, has referred the following question of law for opinion of this Court:

Whether, on the facts and in the circumstances of the case, the learned Member, Additional Sales Tax Tribunal, is correct in law to have annulled the penalty imposed under Rule 8(2) of the Central Sales Tax (Orissa) Rules, 1957 ?

2. The relevant facts are as follows:

The opposite party is a registered dealer under the Act. For the assessment years 1968-69 and 1969-70, penalties of Rs. 1,300 per year were imposed upon the dealer under the provisions of Rule 8(2) of the Central Sales Tax (Orissa) Rules, 1957 for not filing the annual return in respect of the Central sales tax turnover within the prescribed period. The appeals filed by the dealer against the said order of the assessing authority before the Assistant Commissioner of Sales Tax were dismissed. The dealer then took the matter before the Tribunal and the stand of the dealer that there being no provision to levy penalty for not filing the return under the Central Sales Tax Act, the penalty could not have been imposed, was accepted in view of the decision of the Supreme Court in the case of Manganese Ore (India) Ltd. v. Regional Assistant Commissioner of Sales Tax, Jabalpur [1976] 37 STC 489 (MP) where it was held that no penalty could be imposed under the provisions of the State Acts for not filing the annual return in respect of the Central sales tax transactions in the absence of any provision in the Central Sales Tax Act itself.

3. Since in view of this judgment the State Governments were faced with the problem of refunding the amount already collected in the past by way of penalty, the law was amended by the Central Sales Tax (Amendment) Act, 1976 (Act 103 of 1976) amending Section 9 of the Central Sales Tax Act on 9th September, 1976 with retrospective effect legalising the imposition of penalty by the respective State Governments thus removing the lacuna pointed out by the Supreme Court. In that view of the matter, the Revenue made applications u/s 24(1) of the Act for making references to this Court, and accordingly the present references have been made.

4. The question that now arises for consideration is regarding the effect of the amendment on the orders imposing penalty. The effect of the amendment is that all the provisions relating to offences and penalty under the general sales tax law of each State became applicable in relation to the assessment, reassessment, collection and the enforcement of payment of tax, etc. By the amending Act, Sub-section (2A) was inserted to operate with retrospective effect to validate the imposition and collection of penalty even levied before the commencement of the amending Act which were otherwise invalid by reason of the decision of the Supreme Court in the case of Manganese Ore (India) Ltd. [1976] 37 STC 489.

5. The amending provisions had fallen for consideration before some of the High Courts and the imposition and collection levied before the commencement of the amending Act were held to be within the authority of law in view of the amending provisions. In this connection, reference may be made to Commissioner of Sales Tax Vs. Bombay Commercial Traders, and Pannalal Kankariya and Sons Vs. Additional Assistant Commissioner of Sales Tax and Others, . I find myself in complete agreement with the view taken by the learned Judges in both these cases and would therefore hold that in view of the change in the legal position, the orders imposing penalities stand saved and protected.

6. The answer to the question must therefore be given in favour of the Revenue and against the dealer. No costs.

P.C. Misra, J.

7. I agree.