
(1990) 07 OHC CK 0044
In the Orissa High Court
Case No : S.J.C. No"s. 58, 61 and 62 of 1986

State of Orissa

APPELLANT

Vs

Mahabir Prasad Agrawalla

RESPONDENT

Date of Decision : 23-07-1990

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(8), 24(2), 24(3)
Orissa Sales Tax Rules, 1947 — Rule 84

Citation : (1990) 79 STC 163

Hon'ble Judges : S.C. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : S. Pasayat, B.P. Mohanty, N. Paikray, B.C. Panda, M.N. Harsawardhan and A. Ray, for the Respondent

Judgement

S.C. Mohapatra, J.—These three applications have been filed u/s 24(2)(b) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as "the Act") by the State of Orissa. Since same question in respect of the same dealer is involved in respect of which a common order was passed by the Sales Tax Tribunal, they are heard together and are disposed of in this common order.

2. The dealer carries on inter-State sale for which he is registered under the Central Sales Tax (Registration and Turnover) Rules, 1957, made under the Central Sales Tax Act, 1956. In respect of years 1978-79 to 1980-81, the Sales Tax Officer initiated proceedings for assessing the escaped turnover of the dealer. Notice to the dealer was sent through the process server of the Sales Tax Officer. The same could not be validly served. Again an attempt was made by which it was affixed on the plea that the dealer refused to accept the same. Thereafter, the Sales Tax Officer, before making enquiry for completing the assessments ex parte, issued notice to the dealer by registered post. The same was returned unserved by the postman with endorsement of refusal by the addressee. Assessment being completed ex parte in the aforesaid background, dealer preferred appeals before the Assistant Commissioner where he assailed the

assessment orders on one, amongst other grounds, that the report of refusal by the process server when notice was sent to be served on the dealer for second time, is not correct since the dealer was absent from his residence being at Raipur for medical treatment. At the time of hearing the appeals, learned Advocate for the dealer, while challenging the validity of report of the process server, submitted that the notice should have been sent through postal agency. The Assistant Commissioner held that the refusal of notice as reported by the process server is sufficient and on merits he confirmed the assessment. Dealer preferred appeals before the Sales Tax Tribunal. In view of the amount of turnover involved, appeals were heard by all the three Members together as per the statutory provisions. The Chairman gave a separate order and the Judicial Member gave another order. The Accounts Member on consideration of both the orders agreed with the Judicial Member. All the three Members agreed that the notices served by affixture by the process server on refusal by the dealer were not valid. On merit, except indicating the submissions of learned counsel for the dealer, the Chairman did not come to any definite conclusion. The Judicial Member, however, held that the matters would have been remanded for further enquiry with a direction to afford adequate opportunity to the dealer. Accounts Member agreed to it. However, all the three Members having held that service of notices by the process server was invalid, annulled the assessments.

3. The State of Orissa filed applications u/s 24(1) of the Act to refer a question of law by stating a case to this Court. The Chairman was of the view that a statement is to be made to this Court on the question of validity of the statutory notices. Two Members, however, in two separate orders held that the question of validity of service of statutory notices is essentially a question of fact and accordingly, declined to state a case. In view of the majority view, applications were rejected. Against the said refusals, these applications have been filed.

4. Mr. A.B. Misra, learned Standing Counsel, submitted, amongst others, that assuming that the service through the process server was invalid, the Chairman found that the intimation was sent by registered post which was refused. This finding of fact was not dissented from by the other two Members. Accordingly, the Chairman's finding :

".....the refusal to accept the subsequent intimation was immaterial."

gives rise to a question of law in respect of the sufficiency of notice by registered post.

5. Although Mr. Paikray, learned counsel for the dealer, submitted that this point was not urged in the second appeals and even in the applications for reference before the Tribunal, we are satisfied that this is a question though not raised, was decided. A question of law arises out of the order where it is raised and decided or raised but not decided or not raised but decided. Validity of the refusal of intimation sent by registered post though not raised, was decided. Accordingly, a question of law arises out of the order and the Tribunal was not justified in

refusing to state a case at least on this question. Accordingly, there is great force in the contention of Mr. Misra that a statement of the case is to be called for u/s 24(3).

6. In case a statement of the case is called for there would be delay in disposal of the reference. In view of the majority decision of the Tribunal matter is to be remanded to give opportunity to the dealer to prove some facts as indicated in the order. Assessment is in respect of periods 1978-79 to 1980-81. Proceedings were initiated in 1981. In the process of considering the validity of notice nine years have already passed. If we accept ultimately after statement of case is received that refusal notices sent by registered post were valid and sufficient notice to the dealer, majority decision is to be ordered by the Tribunal u/s 24(5) of the Act. Thus, the ultimate object of reopening of the assessments for these years would be further delayed.

7. The object of statement of a case is that the High Court would not be required to delve into facts and make enquiry with regard to the same and question of law on the facts stated would be answered. In some cases where facts are not clear in the orders of assessment, first appellate order or the second appellate order or where records would be required for reference at the time of hearing or where facts found in second appeal are assailed, this Court is to wait for the statement of the case called for u/s 24(3) of the Act Where the facts as revealed from the orders are the only facts on which answer to question of law depends, it would be a futile exercise to comply with requirement of statute only without any purpose. This would defeat the public policy of early disposal. Therefore, in a given case where this Court is satisfied that no useful purpose would be served except complying with the requirement of the provision of statute and parties would not be prejudiced if no statement of case is called for and the facts available in the orders of taxing authorities are sufficient to answer the question of law arising out of the order, this Court can treat the facts as found to be statement of case referred to examine the question of law arising out of those facts and answer the same for further orders of the Tribunal u/s 24(5) of the Act.

8. In the present case to avoid further delay when both parties do not dispute the finding that the Chairman found that an intimation of the reopening of assessment sent by registered post was refused by the dealer, we treated the same as a statement of the case and proceeded to examine the question of law since it would not prejudice either party. Rather the same would be beneficial to both parties inasmuch as assessment for these years would become final and dealer would be relieved of the apprehension for a further period that the question may be answered against him. Besides, in case he has deposited the tax demanded, he would get refund of the same at an early date. If the answer is given in favour of Revenue, the assessment proceeding would be completed early and funds for the exchequer would be available early if the assessing officer finds that the dealer is liable to pay further tax as per the assessment order.

9. Rule 22 of the Central Sales Tax (Orissa) Rules provides that the Rules under

the Orissa Sales Tax Act shall mutatis mutandis apply to assessments under the Central Sales Tax Act. Rule 84 of the Orissa Sales Tax Rules provides that notice may be served as provided in the Code of Civil Procedure, 1908 or by registered post. Even under the provisions of the Code of Civil Procedure, court may direct service of notice both ways. Where acknowledgment due is not received back within thirty days, Court may presume service of notice to be sufficient if the registered notice is sent in correct address and the registered letter is properly stamped. Where the registered letter is returned back unserved with endorsement of refusal made by the postman, court may presume that the addressee did not receive the letter after it was offered to him because he wanted to avoid the same. Under the Post Offices Act or the instruction of the postal department, a postman has no power to make affixture as in case of a process server of court. Therefore, in the present case the finding that registered letter was refused to avoid service of notice can be inferred when it was not challenged that the letter was not properly stamped or was sent in incorrect address. The Chairman was not correct in law in finding that such refusal is immaterial. When Rule 84 provides that notice can be sent in either manner on the finding that if one mode is invalid the other mode becomes valid.

10. Accordingly, the question of law that arises is answered in stating that refusal of registered letter is valid service of notice on the facts and in the circumstances of the case and the annulment of the assessment by the Tribunal is not correct.

11. On our answer, the Tribunal is to pass an order u/s 24(5) of the Act. In the present case Tribunal is to pass an order to remand the matters to the Sales Tax Officer to give opportunity to the dealer as indicated by the majority of two Members for completing the assessment afresh.

12. In the peculiar circumstances of this case, we make no order as to costs.

J.M. Mahapatra, J.

13. I agree.