(1986) 12 OHC CK 0031

In the Orissa High Court

Case No : S.J.C. No''s. 136 and 137 of 1978

State of Orissa — APPELLANT

Vs

Raja Stores — RESPONDENT

Date of Decision : 01-12-1986

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 19(1), 24(1)

Citation : (1987) 65 STC 82

Hon'ble Judges : H.L. Agrawal, C.J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : A. Pasayat, for the Respondent

Judgement

H.L. Agrawal, C.J. and S.C. Mohapatra, J.—These are references made u/s 24(1) of the Orissa Sales Tax Act, 1947 (for short "the Act"), by the Member, Additional Sales Tax Tribunal, Orissa, involving the interpretation of Section 19 of the Act.

2. The Tribunal has stated a case and referred the following question of law for opinion of this Court:

Whether on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal is correct in law in not treating the assessee as an entire transferee of business within the ambit of Section 19(1) of the Orissa Sales Tax Act and the explanation given thereunder ?

3. M/s. Orissa Modern Emporium, Keonjhar, a registered dealer under the Act, carried on business in electrical goods, sports goods, radio and its component parts. Undisputedly, the dealer sold his stock-in-trade to the opposite party who carried on business in the same line in the name and style of "M/s. Raja Stores". The Sales Tax Officer, Cuttack III Circle, Jaipur Road, served a notice on the opposite party u/s 12(5) of the Act and held him liable for payment of sales tax from 21st August, 1973, i. e., the date of starting of the business, by invoking the provisions of Section 19(1) of the Act treating the opposite party-firm as a transferee of the business of M/s. Orissa Modern Emporium and raised demands

for Rs. 943.76 and Rs. 810.72 respectively for two periods, namely, quarters ending 30th September, 1973 and 31st December, 1973.

4. The opposite party went in appeal before the Assistant Commissioner of Sales Tax, Cuttack Range, but failed.

Thereupon, he preferred an appeal before the Additional Sales Tax Tribunal and the learned Member by his order dated 27th October, 1976, in Second Appeals Nos. 501-502 of 1976-77 set aside the assessment and allowed the appeals with a direction for refund of the tax, if any, paid by the opposite party.

An application was thereafter made u/s 24(1) of the Act before the Tribunal for stating a case to the High Court and the Tribunal has accordingly made these references.

5. The whole argument centres around the interpretation of Section 19 of the Act.

There is no dispute that the opposite party had started his business from 21st August, 1973, in the same premises in which M/s. Orissa Modern Emporium, a registered dealer having registration certificate No. CUB-III-206 dated 8th November, 1967, was carrying on business in almost similar goods.

6. In order to appreciate the question, it is necessary to quote Section 19 :

19. (1) When the ownership of the business of a dealer liable to pay tax under this Act is entirely transferred any tax payable in respect of the business till the date of the transfer and remaining unpaid at the time of transfer, shall, without prejudice to any action that may be taken for its recovery from the transferor, be payable by the transferee as if he were a dealer liable under this Act for such tax and the transferee shall be liable to pay tax on the sales made by him on and from the date of such transfer and shall within thirty days of the transfer apply for registration under this Act unless he is already registered.

Explanation.-When a dealer carries on business in the same premises substantially in the same goods in succession to a dealer liable under this Act, it shall be presumed that there has been an entire transfer of the business notwithstanding any change in the constitution, style or name of the business unless the contrary is proved by the dealer succeeding to the business.

7. The Tribunal referred to the case of (1) Santokh Singh v. Punjab State '' (P & H) arising out of the Punjab General Sales Tax Act containing a similar provision and a case of the Madhya Pradesh High Court in (2) Bajranglal Bajaj v. State of Madhya Pradesh [1965] 16 STC 350 and took the view that the provisions of Section 19 would be attracted only if there has been an entire transfer of the business from the predecessor to the successor; and inasmuch as, there was no evidence to show that the opposite party had purchased the goodwill, the furniture and the assets and liabilities of M/s. Orissa Modern Emporium as well, it was not possible to record a finding that the opposite party was a transferee of the entire business of M/s. Orissa Modern Emporium.

8. The provisions of Section 19(1) of the present Orissa Act are almost in pari materia with those contained in the Punjab and Bihar Acts. The language of Section 19 makes the transferee of the ownership of the business of a dealer liable only in a case where the business of the dealer is entirely transferred to him. Therefore, in order to attract the provisions of Section 19 and fasten the liability on the transferee, it has to be proved by the department that the ownership of the business in respect of which any tax had remained unpaid has been entirely transferred to the transferee.

The view taken by the Member, Additional Sales Tax Tribunal, finds full support not only from the two authorities referred to in its order, but also from a Bench decision of the Patna High Court in the case of Hajipur Plywood Factory v. State of Bihar [1974] 34 STC 45 where Section 20 of the Act containing exactly similar provisions as those contained in Section 19 of the Orissa Act had fallen for interpretation in a somewhat similar situation. Referring to the case of Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen, , it was held that it must be proved that the business as a running concern was transferred and nothing substantial was kept back by the vendor. In other words, it must be established that besides the transfer of the stock-in-trade, the business assets, ordinarily and generally its goodwill which means not only the name but also the place and the properties of the running concern, which were held by the concern for the purpose of carrying on the business, were all transferred.

9. The Tribunal as a fact-finding authority has taken into consideration this aspect of the matter and has recorded a finding that there was no evidence on record to establish all these material facts save and except that the stock-in-trade was sold by the registered dealer to the opposite party.

In that view of the matter, the question of law referred by the Tribunal has got to be answered in the affirmative against the petitioner and in favour of the opposite party.

10. Before concluding the matter, however, we must indicate yet another aspect of the matter which, although does not appear to have been canvassed before the assessing authorities, is equally relevant. The liability of the transferee of the business of a dealer to pay any tax under the Act arises only if the amount in question or any part thereof remains unpaid at the time of transfer. There is no material to show as to whether any assessment order was passed against M/s. Orissa Modern Emporium or, for the matter of that, any demand was raised. Rather, from the facts stated it appears that the assessment proceedings were started right against the opposite party, the successor of the registered dealer.

In the circumstances, we make no order as to costs of these references.

