(1982) 10 OHC CK 0012

In the Orissa High Court

Case No : S.J.C. No. 48 of 1978

State of Orissa APPELLANT

Vs

Santosh Kumar and Co. RESPONDENT

Date of Decision : 06-10-1982

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

Citation : (1983) 54 STC 322

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

Bench : Division Bench

Advocate : A. Pasayat and Dilip Kumar Mohanty, for the Respondent

Judgement

R.N. Misra, C.J.—The Member, Additional Sales Tax Tribunal, Orissa, has stated this case u/s 24(1) of the Orissa Sales Tax Act, 1947 (hereafter referred to as the "Act"), at the instance of the State and has referred the following two questions for opinion of the court:

(1) Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, is legally correct to consider M/s. Shree Shew Bhandar as not a fictitious dealer and whether it is legally correct to accept the declarations furnished by the said dealer to the present assessee amounting to Rs. 4,26,871.38 ?

(2) Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, is legally correct to direct the assessing officer to scrutinise the declarations filed by the assessee granted by M/s. Shree Shew Bhandar and allow such of them as are in order?

2. The brief facts are these :

The assessee is a registered dealer carrying on business as a wholesaler in grocery articles and its place of business is Malgodown, Cuttack. For the quarter ending 31st December, 1971, the assessee claimed deduction of Rs. 4,26,871.38

on account of sales to M/s. Shree Shew Bhandar bearing registration certificate No. CU-II-3364. The purchasing dealer''s certificate of registration was effective from 11th February, 1970. The claim for deduction was rejected by the assessing officer.

The first appellate authority upheld the rejection by saying :

...enquiries revealed that the purchasing firm was a fictitious one and the cash transactions were not genuine. The registration certificate of the purchasing registered dealer has been cancelled. The appellant also could not produce the cash book or any other evidence to prove that the transactions were genuine. Therefore, the assessing officer has rightly not accepted the declarations as required under Rule 27(2) of the Orissa Sales Tax Rules, 1947, in respect of such purchases. In view of the decision of the Orissa High Court in the case of Member, Sales Tax Tribunal v. S. Lal & Co. [1961] 12 STC 25 and that of the Calcutta (sic) High Court in the case of Pahar Chand & Sons v. State of West Bengal (sic) [1972] 30 STC 211, it is the responsibility of the selling dealer to prove that the transactions were genuine and the declarations produced by the purchasing dealer were valid for the purpose of allowing deduction. I, therefore, do not interfere with the assessment which is confirmed.

The Member, Additional Sales Tax Tribunal, in second appeal went into the question of genuineness of the registration of the purchasing dealer at some length. He found that on 9th December, 1969, the purchasing dealer in support of his claim for registration had appeared and the Sales Tax Officer had recorded the following order :

...Dealer appeared with accounts which are examined. He has started the business in grocery on retail basis from 1st December, 1969, in his own house. He has maintained only purchase account. His total purchase during 1st December, 1969, to 8th December, 1969, is Rs. 778.90 (the figure mentioned in the application). He has no landed property. Statement recorded separately on S/A which is on record. Hence, security of Rs. 300 in the shape of N.D.C. duly pledged in favour of the Sales Tax Officer, Cuttack II Circle, may be demanded from him, on receipt of which the question of granting R.C. will be considered.

A note was put up to the effect that the dealer had furnished security in the shape of N.D.C. and the Inspector had furnished his report. On 11th February, 1970, the following order was made by the assessing officer :

...I have taken pains to reproduce the entire matter of registration of M/s. Shew Bhandar to show that the revenue has not taken proper caution when such registration certificate was granted to M/s. Shew Bhandar. It is unfortunate that such mistake crept into an important matter like registration of dealer. After committing such mistakes, the department is pursuing innocent dealers who are sellers and are not connected with the matter of registration.

The matter was further examined in second appeal and the Member, Additional

Sales Tax Tribunal, observed:

But here, in this case, there is nothing to indicate that this present appellant Santosh Kumar or his business had anything to do with registration certificate of M/s. Shree Shew Bhandar. In view of these facts, his claim for deduction cannot be disallowed. In the result, the appeal must succeed. The deductions claimed by the appellant must be allowed. But it appears that the assessing officer, even though the appellant produced declarations granted by M/s. Shree Shew Bhandar, has not taken care to scrutinise them on the assumption that M/s. Shree Shew Bhandar is a bogus dealer. But as M/s. Shree Shew Bhandar had a valid registration certificate, it is for the assessing officer to scrutinise those declarations filed by the appellant and allow all such as are in order.

Out of such a direction, at the instance of the State this reference has been made.

3. That M/s. Shree Shew Bhandar is a validly registered dealer is a pure finding of fact and no question of law arises in regard to any dispute relating to it. Sufficient material has been placed by the Member, Additional Sales Tax Tribunal, to come to his conclusion on fact. The only option that could be left, once the purchasing dealer was found to be a duly registered dealer, was a direction to the assessing officer to scrutinise the declarations. There is, therefore, no scope for any reference to be made to this Court. The attempt of the State was wholly uncalled for. We decline to answer the questions by saying that these are not questions of law which are referable to this Court.

4. The assessee should be entitled to costs of the reference. Hearing fee is assessed at Rs. 200.

5. Before we part with this ease, we must bring to the notice of the State that registration of dealers is indeed a serious matter and its officers authorised to grant registration should be very careful. Once a certificate of registration is issued to a person and he becomes a registered dealer, he is entitled to certain benefits under the Act. Certificates granted by the public officers have their value and people in the commercial field would in normal course accept such certificates to be genuine. The fact that registration has been granted, yet the person holding the certificate is a fictitious one seem to be contradictions in term. A certificate of registration can be granted only when the dealer, apart from being a businessman, satisfies the other requirements prescribed by law. A registration certificate cannot be granted to a non-existent person. The fact that there have been some persons who are labelled by the department as fictitious dealers goes to show that the officers under the Act either collude with dishonest people in the field or fail to exercise due diligence and allow fraud to be practised in the commercial field. Whether it is collusion or negligence, these officers bring disrepute to the State and introduce uncertainty and lack of confidence into a true field of trust. It is high time that the State Government institutes appropriate enquiries, take such steps as are necessary to eliminate fictitious

dealers from the field and also take strong`ion against persons connected with such matters so that there be no recurrence of it in future.

J.K. Mohanty, J.

6. I agree.

