(1980) 01 OHC CK 0006

In the Orissa High Court

Case No : O.J.C. No''s. 19 to 21 of 1976

State of Orissa APPELLANT

Vs

Udayanath Sahu RESPONDENT

Date of Decision : 08-01-1980

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 4(2), 9

Citation : (1982) 50 STC 178

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

Bench : Division Bench

Advocate : S.C. Mohapatra, for the Respondent

Judgement

R.N. Misra, J.—The Member, Sales Tax Tribunal, Orissa, has stated these cases u/s 24(1) of the Orissa Sales Tax Act, at the instance of the revenue for opinion of the court on the following two questions :

(i) Whether, on the facts and in the circumstances of the case, the assessee''s liability determined u/s 4(2) of the Orissa Sales Tax Act prior to its amendment with effect from 1st July, 1969, by amending Act 15 of 1968 will not continue for a period of three consecutive years ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified to hold that the assessee whose liability to pay tax had accrued with effect from 1st March, 1969, and who ultimately got himself registered u/s 9 of the Orissa Sales Tax Act for the period 31st March, 1970, could also be held not liable to pay tax for the quarters ending 30th September, 1969, and 31st December, 1969 ?

2. The assessee deals in grocery and stationery articles and was an unregistered dealer in respect of such business for the period between 8th June, 1968, and 31st March, 1970. He, however, got himself registered with effect from 25th February, 1970. The Sales Tax Officer issued notice u/s 12(5) of the Act requiring production of accounts and on examination of the same held that the assessee

had incurred liability for registration under the Act from the quarter ending on 31st March, 1969. Accordingly, he made assessments for the quarters ending 31st March, 1969, and 31st March, 1970.

3. The Assistant Commissioner of Sales Tax on the assessee''s appeals held that the assessee''s liability for registration commenced from 1st January, 1969. He, however, annulled the assessments for the quarters ending 30th September, 1969, and 31st December, 1969, by holding :

...Further, in view of the amending Act, 1968, the appellant''s assessment for the quarters ending 30th September, 1969, and 31st December, 1969, is not sustainable as liability does not survive beyond 30th June, 1969. For the quarter ending 31st March, 1970, the appellant got registered on 25th February, 1970, and, therefore, his liability accrues with effect from 25th February, 1970.

Notwithstanding such a finding, the Assistant Commissioner did not grant complete relief for the entire period, and therefore the assessee preferred second appeals. The Tribunal held :

...Therefore, his liability to pay tax would ensue from 1st March, 1969. So the G. T. O. for the quarter ending 31st March, 1969, should be determined at Rs. 1,240. For the quarter ending 30th June, 1969, the G. T. O. should be arrived at Rs. 5,400. As the determined G. T. 0. for 1969-70 did not exceed Rs. 25,000 the appellant should not have been held liable to pay for other quarters. The learned assessing officer should determine the T. T. 0. and tax to be paid rateably...

4. Section 4(1) of the Act is the charging section. In the case of State of Orissa v. Harekrushna Sahu (page 180 infra) (1976) 1 CWR 68, this Court indicated how the liability to pay sales tax under the Act was varied from a turnover of Rs. 5,000 to Rs. 25,000. Under the original Act of 1947, the quantum was Rs. 5,000. By Act 24 of 1950, it was enhanced to Rs. 10,000 and by Orissa Act 15 of 1968, the minimum was again raised to Rs. 25,000. The amendment came into force with effect from 1st July, 1969. Section 16 of the amending Act provided:

For the removal of doubts it is hereby declared that the liability of any dealer to pay tax under the principal Act in respect of any period prior to the date appointed by notification under Sub-section (1) of Section 4 of the principal Act as amended by this Act shall not in any way be affected by any amendment made under this Act.

Keeping that provision in view, this Court on the earlier occasion indicated :

We agree that Section 16 of the Orissa Act 15 of 1968 may not be a saving Act, but the principle indicated in the Madras decision Bhanji Bagawandass Vs. Commissioner of Income Tax, would have application to the situation. The view taken by the Member, Additional Sales Tax Tribunal, in his appellate decision, is certainly erroneous. The periods up to 30th June, 1969, had to be dealt with in terms of Section 16 of the amending Act of 1968 and liability had to be computed on the basis of the parent provision and without reference to Section

4(1), as it stood after the amendment by Orissa Act 15 of 1968. u/s 4(3) of the Act, every dealer who has become liable to pay tax under the Act is to continue to be liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed Rs. 25,000. Therefore, the assessments made for the subsequent periods in this case were also not invalid.

What have been said on the earlier occasion apply in all fours to the present case. The period of assessment is within the limit of three years from 30th June, 1969, and even if the assessee''s turnover fell short of Rs. 25,000, the liability attached u/s 4(3) of the Act continued his liability to pay tax and for the period under consideration, the assessment could not be annulled. The Tribunal, in our opinion, went wrong in according relief to the assessee. Our answers to the questions referred, therefore, are :

(i) On the facts and in the circumstances of the case, the assessee''s liability determined u/s 4(2) of the Act prior to its amendment with effect from 1st July, 1969, by amending Act 15 of 1968, will continue for a period of three consecutive years as provided u/s 4(3) of the Act.

(ii) On the facts and in the circumstances of the case, the Tribunal was not justified to hold that the assessee would not be liable to pay tax for the quarters ending 30th September, 1969, and 31st December, 1969.

We make no order for costs.

R.N. Das, J.

5. I agree.