

(1960) 07 OHC CK 0004
In the Orissa High Court
Case No : S.J.C. No. 36 of 1958

The State of Orissa

APPELLANT

Vs

Lakhoo Varjang

RESPONDENT

Date of Decision : 12-07-1960

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 23(3), 24(1)

Citation : (1961) 12 STC 162

Hon'ble Judges : R.L. Narasimham, C.J;G.C. Das, J

Bench : Division Bench

Advocate : G.K. Misra, for the Appellant; B.N. Mohanty and B.K. Mohanty, for the Respondent

Judgement

R.L. Narasimham, C.J.—This is a reference by the Member, Sales Tax Tribunal, Orissa, u/s 24(1) of the Orissa Sales Tax Act stating the following questions of law for the opinion of this Court:

(1) Whether on the facts and circumstances of the case the Tribunal was right in admitting the additional ground and granting relief thereunder.

(2) Whether the relief directing refund of the tax was the proper consequential relief that could be granted and was rightly granted by the Tribunal in the facts and circumstances of the case.

2. The facts found are as follows: The opposite party was a building contractor in Balasore Circle for the quarters ending 30th June, 1949, 30th September, 1949, 31st December, 1949, and 31st March, 1950. He failed to get himself registered as a dealer in the said circle for the said quarters and thereupon the Sales Tax Officer, Balasore Circle, by his order dated 17th January, 1952, assessed him to sales tax u/s 12(5) of the Act and also imposed on him a penalty of Rs. 10 for his failure to get himself registered under the Act. The opposite party then appealed to the Assistant Collector of Sales Tax against the order imposing the penalty but did not challenge the assessment order u/s 12(5). His main contention before

the Assistant Collector was that there was no "wilful" failure on his part to get himself registered and that consequently, the penalty should not have been imposed. The Appellate Assistant Collector however rejected this plea holding that the assessing officer had jurisdiction to impose the penalty and that as it was a token one, it did not call for interference. This order was passed on 11th May, 1952. Thereafter the opposite party filed a second appeal before the Collector of Sales Tax who, as the law then stood, was the competent second appellate authority. That appeal also was confined to the levy of penalty and there was no challenge to the original order of assessment made by the Sales Tax Officer on 17th January, 1952. In the meantime, by an amendment made to the Orissa Sales Tax Act by Orissa Act 20 of 1957, the Sales Tax Tribunal was constituted as the second appellate authority and the appeal filed before the Collector of Sales Tax was transferred, on 10th January, 1958, to the Sales Tax Tribunal for disposal. By that time the decision of the Supreme Court in *The State of Madras v. Messrs Gannon Dunkerley, (Madras) Ltd.* [1958] 9 S.T.C. 353. was received. Thereupon the opposite party filed additional grounds before the Sales Tax Tribunal challenging the original order of assessment dated 17th January, 1952, passed by the Sales Tax Officer, and urging that he was not liable to pay any sales tax as the contracts (in respect of which he was assessed to sales tax) were all pure works contracts. The learned Member, Sales Tax Tribunal, thought that he had jurisdiction to allow additional grounds to be taken at that stage, relying mainly on his powers under Rule 61 of the Orissa Sales Tax Rules. Then, following the aforesaid decision of the Supreme Court, he set aside the order of assessment dated 17th January, 1952, and also the order imposing penalty. Thereupon the Sales Tax Department filed a petition asking the Member, Sales Tax Tribunal, to state a case before the High Court, for decision as to whether at the second appellate stage, it was open to the opposite party to challenge the original order of assessment. Hence, this reference.

3. The Member, Sales Tax Tribunal, has misconceived his jurisdiction. He has not got any general dispensing power to reopen assessments which have become final by reason of the conduct of the assessee in not challenging the same at the appropriate time and to revise or modify the same in the light of subsequent development of case law. He overlooked the provisions of Section 22 of the Sales Tax Act. The opposite party never challenged the order of assessment dated the 17th January, 1952, passed by the Sales Tax Officer either in his first appeal before the Assistant Collector, or in his second appeal before the Collector. His appeals were confined to the question of penalty. u/s 23(1) the assessee is conferred the right to appeal either against the order of assessment or against penalty or both. The choice is left entirely to him. When, therefore, he chose only to challenge the order of penalty before the two appellate authorities, namely, the Assistant Collector and the Collector of Sales Tax and not the order of assessment, the latter order became final by virtue of Section 22 of the Act, the last portion of which is as follows :

and save as is provided in Section 23 no appeal or application for revision shall

lie against any such assessment or order as the case may be.

4. It is true that while sitting as a second appellate authority in exercise of the powers conferred by Section 23(3) of the Act, as amended, the Tribunal may allow additional evidence to be taken, subject to the limitations prescribed in Rule 61 of the Orissa Sales Tax Rules. But this additional evidence must be limited only to the questions that were then pending before the Tribunal. When the order of assessment had become final long before the constitution of the Tribunal on account of the conduct of the assessee in not challenging the same before the appellate authorities, the Tribunal had no jurisdiction to allow either additional grounds to be taken or additional evidence to be led, as regards the liability of the assessee to be assessed to sales tax. He should have noticed that his appellate jurisdiction u/s 23(3) of the Act is only against the appellate order of the Assistant Collector dated 11th May, 1952, and not against the original order of assessment passed by the Sales Tax Officer on 17th January, 1952. The Assistant Collector's order dealt solely with the question of penalty and did not go into the question of the liability of the assessee to be assessed because that question was never raised before him. The Member, Sales Tax. Tribunal, should not therefore have allowed additional grounds to be taken or additional evidence to be led in respect of a matter that had been concluded between the parties even at the first appellate stage. If the aggrieved party had kept the question of assessment alive by raising it at the first appellate stage and also in the second appellate stage, the Member, Sales Tax Tribunal, would have been justified in admitting additional evidence on the same and in relying on the aforesaid decision of the Supreme Court in Gannon Dunkerley's case [1958] 9 S.T.C. 353. for setting aside the order of assessment. No subsequent change in case law can affect an order of assessment which has become final under the provisions of the Sales Tax Act. Doubtless the right of a party to apply for refund u/s 14 of the Act is slightly wider, as pointed out by me in Orient Paper Mills Ltd. v. The State of Orissa [1957] 8 S.T.C. 749. But here the Tribunal was not purporting to act u/s 14 of the Act, nor was any application under that section made before him. He was functioning only as a second appellate authority over the order of the Assistant Collector and his powers are strictly limited by Sections 22 and 23 of the Act.

5. The questions are therefore answered as follows :-

Question No. 1 :-This question is answered in the negative. The Tribunal was not right in admitting additional grounds for granting relief.

Question No. 2 :-The order of the Tribunal in directing refund of the tax was not proper, on the facts and circumstances of this case.

There will be no order for costs.

G.C. DAS, J.

6. I agree.