

(1964) 04 OHC CK 0013

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 27 to 33 of 1963

William Jacks and Co. Ltd.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 22-04-1964

Acts Referred:

Constitution of India, 1950 — Article 245, 265, 286, 286(1)
Orissa Sales Tax Act, 1947 — Section 7

Citation : AIR 1965 Ori 190 : (1965) 16 STC 693

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

Bench : Division Bench

Advocate : N.N. Bhattacharya, for the Appellant; S.C. Mahapatra, for the Respondent

Judgement

Narasimham, C.J.—These seven references were made to this Court, u/s 24 (3) of the Orissa Sales Tax Act (in pursuance of the directions given by this Court) by the member, Orissa Sales Tax Tribunal.

2. The questions referred to this Court are as follows:--

(i) Whether on the facts and circumstances of the case the Press Note dated 2-11-55 and 31-12-1956 could be deemed to have been issued u/s 7 of the Orissa Sales Tax Act and, as such, had full statutory force behind them and whether even otherwise the press notes were not binding on the State Government.

(ii) Whether on the facts and circumstances of the case the assessments for the relevant quarters being initiated and completed within the interim, period of vacuum between the press notes D/- 2-11-1955-and 31-12-1956 were not absolutely illegal and unwarranted in view of the mandatory character of the said press notes ?

(iii) Whether on the facts and circumstances of the case, in view of the above press notes, and Section 9B (3) of the Orissa Sales Tax Act, before its

amendment in 1958, the petitioner was not entitled. to refund of the tax, paid before assessment in excess of the collections actually made from the purchasers, which were to be deposited with the Government being not realisable under the provisions of both the Constitution and the Act itself.

(iv) Whether, in the facts and circumstances of the case, in view of the third press note having been published in the Orissa Gazette on the 2nd January 57, permitting levy of sales tax only from that date, any valid assessment for the quarters ending 31-12-1953, was not barred by limitation, under the provisions, of the Orissa Sales Tax Act, as it stood at the material period.

(v) Whether in facts and circumstances of this case, in view of the involuntary nature of the payment made by the petitioner under threat and coercion prior to the making of assessment, the assessments for the quarters ending 31-3-1954 to 30-6-1955 should not be restricted to the actual collections only under" the terms of the third press note."

3. The petitioner is a non-resident dealer who was assessed to sales tax for seven quarters commencing with the quarter ending 31-12-1953 and ending with the quarter ending 30-6-1955--the assessment orders having been passed on 4-12-1956 in respect of sales of goods made by him to customers in Orissa. It is admitted that the tax due for these quarters was fully paid long before the assessment.

4. To appreciate the points of law involved, it is necessary briefly to refer to the history of the case law and consequential orders passed by the State Government regarding the liability to sales tax, of inter State transactions. In the well known United Motors" case reported in The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, decided on 30-3-1953 their Lordships of the Supreme Court held that even those transactions of sale which involved an inter State element may be liable to be taxed by the State where the goods were actually delivered for consumption. In this judgment these sales may be compendiously referred to as "explanation sales"--an expression used by their Lordships of the Supreme Court themselves in subsequent decisions. On 5-6-1954 the Government of Orissa issued a press note (hereinafter referred to as the first press note) in which while relying on the aforesaid judgment of the Supreme Court in the United Motors" Case, they stated that it has been decided to levy sales tax on such explanation sales effected on or after 1-4-1953. Certain consequential directions were also given in the first press note but these need not be referred to here.

On 6-9-1955 their Lordships of the Supreme Court, in the Bengal Immunity case reported in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, reversed their previous judgment in the United Motors" case and held that such explanation sales were not taxable by the State where they were delivered for consumption. Then, on 2-11-1955 the Government of Orissa issued another Press Note (hereinafter referred to as the second press note) by which

they immediately suspended the levy of sales tax on such sales. This press note may be quoted in full :

..... "PRESS NOTE

It is notified for the information of all concerned that the levy of sales tax from the resident businessmen outside the territory of the State of Orissa who are engaged in the business of selling goods in the State of Orissa within the meaning of the "Explanation" to Article 286(1)(a) of the Constitution of India, has been suspended with immediate effect.

Sd. T. Prusty Under Secretary to Government, Revenue (C. T.) Department.

It is admitted that this press note was published in the Orissa Gazette No. 44 of 1955 (Part VII-p. 542). On 2-3-1956, Parliament passed the Sales Tax Laws (Validation) Act, 1955, by which the effect of the judgment of the Supreme Court in the Bengal Immunity case was taken away in respect of the Explanation sales which took place between 1-4-1951 and 6-9-1955, and the levy and collection of sales tax on such sales was validated. The Government of Orissa then came out with a third press note D/- 31-12-1956 which was published in the Orissa Gazette on 2-1-1957. The first paragraph of the press note revoked the second press note issued on 2-11-1955. In the Second paragraph it was further directed that all proceedings for assessment and collection of sales tax in respect of such sales transacted between 1-4-1953 and 6-9-1955 should be taken up and completed. It was also directed that if a dealer could prove that he did not collect sales tax from sales no tax could be levied in respect of such sales (condition No. 1), but taxes already deposited with Government or collected by Government, will not be refunded (condition No. 3). The other conditions or restrictions mentioned in that press note are not material.

In the present case, however, as already stated the assessment in respect of the aforesaid seven quarters were already made against the petitioner on 4-12-1956 prior to issue of the third press note but after the coming into force of the Sales Tax Laws (Validation) Act. It is also admitted that the impugned transactions of sale are all "Explanation Sales".

5. Mr. Bhattacharjee's arguments may now be briefly noticed. According to him the three press notes though purporting to be "press notes" were in effect statutory notifications issued u/s 7 of the Orissa Sales Tax Act, and each of them was in force until revoked or cancelled by the succeeding press note. Hence from the date of the second press note namely 2-11-1955 till the date of publication of the third press note, namely 2-1-1957, it should be deemed that there was in force a statutory notification of the State Government issued u/s 7 of the Orissa Sales Tax Act, exempting these Explanation sales from liability to sale tax. Hence the sale tax authorities had no jurisdiction to assess the petitioner to sales tax so long as the second press note was in force. As regards the third press note, it should not be given retrospective effect and consequently it would not constitute sufficient authority to validate the assessment orders passed by the Sales Tax

Officer prior to 2-1-1957.

6. Mr. Bhattacharjee is undoubtedly right in his contention that when there is a gazette notification made by the State Government, the Court must look into the substance of that notification and not merely the form. Whatever may be the description given in that notification, if in substance it appears to be an order passed in exercise of a statutory power, full effect must be given to it even though the notification does not purport to have been issued in exercise of any statutory power.

7. Section 7 of the Orissa Sales Tax Act confers on the State Government the power to exempt, either in whole or in part, any class of dealers from payment of sales tax. This power of exemption can obviously be used only where, but for the order of exemption, the dealer would be liable to pay sales tax. On the other hand, if, under the law as it stood on a particular day--as interpreted by the Supreme Court, a dealer was not liable to pay sales tax Government could not obviously issue an exemption order u/s 7 in respect of that dealer.

The first press note merely informed the persons concerned that in consequence of the judgment of the Supreme Court in *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, Government would levy a tax on all sales effected on or after 1-4-53. They could have easily levied sales tax on all sales which took place prior to 1-4-1953 (subject to the rule of limitation as regards assessment proceedings), but as the judgment of the Supreme Court was delivered only on 30-3-1953 Government thought that the Explanation sales which took place on or after 1-4-53 should alone be subject to payment of sales tax. It must therefore be held, accepting Mr. Bhattacharjee's contention, that as regards Explanation Sales which took place prior to 1-4-53, the first press note was in the nature of a statutory exemption u/s 7 of the Orissa Sales Tax Act.

8. But when the second press note was issued on 2-11-55, the law regarding the liability to sales tax of these Explanation sales underwent a change in consequence of the Judgment of the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, and such sales were not liable to sales tax in Orissa. Hence so long as the judgment in that case remained in force, Government could not issue an exemption order in respect of such sales u/s 7 of the Orissa Sales Tax Act. Hence, by no stretch of imagination can it be said that the second press note, dated 2-11-55 must be deemed in the eye of law to be a statutory notification u/s 7 of the Orissa Sales Tax Act. Even if no such press note had been issued no sales tax authority could levy sales tax on such Explanation sales in view of the judgment in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, holding such sales to be not taxable. The press note was therefore issued merely by way of an administrative direction, for the guiding of the sales tax authorities--to suspend levy of sales tax on such sales. Though Mr. Bhattacharjee contended that the second press note should be deemed to be a statutory notification apart from the provisions of Section 7 of the Orissa Sales Tax Act, he could not point out any other provision

in that Act under which such a direction could be issued to all persons concerned.

9. But when the Sales Tax Laws Validation Act was brought into force on 21-3-56, the effect of the judgment of the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, was taken away by Parliament and such Explanation sales also became liable to sales tax. Government could, at that stage, have issued another press note directing the authorities to continue the assessment proceedings, but the matter was delayed and the third press note was issued only on 2-1-1957. Mr. Bhattacharjee contended that even if it be assumed that the second press note was issued merely byway of an administrative instruction on 2-11-1955, nevertheless, from 21-3-56 it should be deemed to have become a statutory notification u/s 7 of the Orissa Sales Tax Act. We are not prepared to accept such a contention. An order which was only an administrative order on the date of its issue cannot subsequently become a statutory order u/s 7 of the Orissa Sales Tax Act, merely because the Validation Act was passed by Parliament subsequent to the issue of that order.

10. Coming to the third press note, the first paragraph of that note merely revoked the earlier second) press note. In the second paragraph of the third press note, however, Government further directed the sales tax authorities to proceed with the assessment and collection of sales tax in respect of Explanation sales which took place between 1-4-53 and 6-9-55. Apparently they did not want to proceed with the assessment and collection of tax in respect of Explanation sales which might have taken place from 1-4-51 to 31-3-53 even though the levy in respect of such sales was expressly validated by the Sales Tax Laws Validation Act. As pointed out in paragraph 7 above the first press note had already exempted from sales tax transactions which took place prior to 1-4-53, and hence the second press note referred only to those transactions which took place after" 1-4-53.

11. In the aforesaid view of the three press notes, it is obvious that the validity of the impugned assessment orders cannot be challenged. It is true that the assessment orders were passed on 4-12-56 on which date the second press note was still in force, hut nevertheless the assessments were made only after the coming into force of the Sales Tax (Laws) Validation Act, in consequence of which these Explanations sales were liable to be taxed.

12. I would accordingly answer the questions as follows :

Question No. (i) -- The press notes, dated 2-11-1956 and 31-12-1956 could not be deemed to have been issued u/s 7 of the Orissa Sales Tax Act, and as such they had no statutory force. They were binding on the Government administratively, but they cannot affect the legal liability to pay tax in view of the Sales (Tax) Laws Validation Act.

Question No. (ii)--The answer is in the negative. The press note did not in any way affect the validity of the assessment orders made after the coming into force

of the Sales Tax Laws Validation Act.

Question No. (iii)--The answer is in the negative. The petitioner is not entitled to refund as the tax was lawfully payable.

Question No. (iv)--The assessment for the quarter ending 31-12-1953 is not barred by limitation as it was made within thirty six months from the relevant date.

Question No. (v)--There is no finding by the Member, Sales Tax Tribunal, that the tax was paid under threat or coercion. In any case as the tax has been found to be lawfully payable and was actually paid, the petitioner cannot claim refund in view of condition (3) of the third press note. The answer to this question is also in the negative.

13. The references are answered accordingly. The petitioner shall pay one consolidated hearing fee, in respect of all these references, which we fix at Rs. 200/-. (Rupees two hundred only) to the opposite party.

Misra, J.

14. I agree.