(1964) 04 OHC CK 0008

In the Orissa High Court

Case No : O.J.C. No. 335 of 1963

William Jacks Co. APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 16-04-1964

Acts Referred:
Constitution of India, 1950 — Article 226
Orissa Sales Tax Act, 1947 — Section 14

Citation : AIR 1965 Ori 75 : (1964) 30 CLT 553 : (1964) 15 STC 855

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Narasimham, C. J.

1. This is an application under Article 226 of the Constitution requesting this court for the issue, of an order to the sales tax authorities, directing them to refund certain amounts paid voluntarily by the petitioner by way of sales tax for the two quarters ending 30-6-53 and 30-9-53. The payments were actually made on 20-4-54 and 27.5.54. At the time of payment of the said taxes, the principle laid down by the Supreme Court in the United Motors Case, reported in The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, was the law of the land. There is no dispute that the transactions of sale of the petitioner would come within the expression "Explanation Sales" used by their Lordships of the Supreme Court themselves as a compendious expression while describing the sales covered by the aforesaid decision. The taxes were therefore lawfully payable at that time. Subsequently, however, the Supreme Court reversed that decision, when they delivered their judgment in the Bengal Immunity case reported in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, on 6-9-1955. In view of this later judgment the levy and collection of

sales tax on these "Explanation Sales" became invalid--though subsequently, Parliament by passing the Sales Tax Laws Validation Act, 1955 (which was brought into force on 21-3-1956) took away the effect of the judgment of the Supreme Court in the Bengal Immunity case. The petitioner, however, contended that the aforesaid Validation Act will not apply to the facts of the present case, but we do not wish to express any opinion on this Question now.

2. It is admitted that no assessment order was formally made against the petitioner in respect of the two quarters in question by the sales-tax authorities, but when he subsequently applied for refund, his application was rejected by the sales tax authorities on the ground that the claim was barred by limitation and was therefore not maintainable.

3. We are thus asked, in this application, to direct the refund of certain sums of money paid as sales tax some time in 1954. A preliminary objection was raised by Mr. S.C. Mohapatra for the Department to the effect that this claim for refund is barred by limitation and that in any case the petitioner should file a regular civil suit.

4. In cur opinion the preliminary objection mast prevail. Section 14 of the Orissa Sales Tax Act, 1947 deals with the right of refund, of an assessee, where salts tax is not payable by him in whole or part. The proviso to that section however prescribes a special period of limitation for such application for refund, viz., 24 months from the date on which the order of assessment was passed, or 12 months of the final order passed on appeal, revision, review, or reference, whichever is later. Mr. Bhattacharya urged that the proviso has no application here because admittedly no order of assessment was passed. He therefore claimed a right of refund under the main portion of Section 14 of the Orissa Sales Tax Act, urging that the right under the main portion of that section is unaffected whether mere was an assessment or not.

We are however unable to accept this contention. Section 14 expressly says that refund shall be made "in the prescribed manner", and Chapter VIII of the Orissa Sales Tax Rules prescribes the procedure to be adopted for applying for refund u/s 14. Form 12 of the said Rules says that in any application for refund the date on which the order of assessment was passed shall be mentioned. It therefore follows that even for the purpose of claiming refund under the main portion of Section 14, there must be an order of assessment passed by the sales tax authorities. The petitioner cannot therefore claim any right of refund under the provisions of Section 14.

5. Mr. Bhattacharjee has not been able to invite our attention to any other provision in the Sales Tax Act or in the Sales Tax Rules, under which a light of refund can be claimed where a tax is voluntarily paid before an order of assessment is passed. This right, if any, will come under the Central law subject of course to the rules of limitation as laid down in the Limitation Act. As pointed out by their Lordships of the Supreme Court in Burmah Construction Co. Vs. The

State of Orissa and Others, , the High Court''s jurisdiction under Article 226, in cases of this type would arise only for enforcing a statutory obligation on an officer of the State, (here the Sales Tax Officer). But once it is clear that there is no order of assessment and there is no right to be enforced against the sales tax officer, under the provisions of the Orissa Sales Tax Act, this petition must fail; and the petitioner must be left to pursue his normal remedies for the purpose of enforcing his light of refund, if any.

For these reasons, without deciding other questions, we are of opinion that this is not a fit case for exercising our jurisdiction under Article 226 of the Constitution.

This application is therefore dismissed with costs. Hearing fee Rs.. 100/- (Rupee one-hundred).

6. Misra, J. : I agree.