Uttareswari Rice Mill Vs. Sales Tax Officer, Intelligence Wing, Vigilance and anr.

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Court : Orissa

Decided On : Jun-24-1968

Reported in : AIR1969Ori1; 34(1968)CLT1064

Judge : S. Barman, C.J. and ;S. Acharya, J.

Acts : Orissa Sales Tax Act, 1947 - Sections 12(8)

Appeal No. : O.J.C. No. 464 of 1967

Appellant : Uttareswari Rice Mill

Respondent : Sales Tax Officer, Intelligence Wing, Vigilance and anr.

Advocate for Def. : R.N. Misra, Adv.

Advocate for Pet/Ap. : P.V.B. Rao, Adv.

Disposition : Petition allowed

Judgement :

Barman, C.J.

1. This is a writ petition where the petitioner challenges the legality of a notice dated March 31, 1967 purporting to be under Section 12(8) of the Orissa Sales

Tax Act for alleged escaped assessment of his turnover for the year ending 1963-64 in the circumstances hereinafter stated.

2. It is said that on March 30, 1967 the Sales Tax Officer, Intelligence Wing, Vigilance, Berhampur, made a search in the business premises of the petitioner and seized several books of accounts stated to have been found in the business premises of the petitioner; on the next day, March 31, 1967 also he seized some more books of accounts alleged to have been recovered from the business premises of the petitioner; on both the occasions neither the petitioner nor any of the adult male members of the petitioner were present at the time when the seizure was made by the Sales Tax Officer as stated by the petitioner.

3. On March 31, 1967 the Sales Tax Officer issued a notice purporting to be under Section 12(8) of the Act, the relevant portion of which is set out as follows:

'Whereas it appears to me that yourgross turnover in the year immediatelypreceding the during the financialyear ending the commencement of theOrissa Sales Tax Act, 1947 and 31stMarch 19

exceeded Rs. 10000 but that you have nevertheless wilfully failed to apply for registration under Section 9 of the Act;

Whereas I have reason to believe that your turnover for the quarter ending 1963-64 on which Sales Tax was payable under the Orissa Sales Tax Act, 1947 has escaped assessment

has been under-assessed.

You are hereby required to submit within one calendar month from the date of receipt of this notice a return in Form IV (enclosed) showing the particulars of your turnover for the year ending 1963-64.'

4. The said notice was served on an employee of the petitioner purporting to reopen the assessment for the year 1963-64. Thereupon, the petitioner appeared before the Sales Tax Officer and filed a copy of the old return which he had filed in accordance with Section 11 of the Act. The petitioner attended before the Sales

Tax Officer on several occasions with a view to know the reason for issuing a notice under Section 12(8) of the Act. But the petitioner was never informed of any reason by the Sales Tax Officer.

5. The petitioner's case is that the Sales Tax Officer obtained several statements behind his back from witnesses in pursuance of his intention to proceed with reassessment under Section 12(8). The petitioner requested the Sales Tax Officer to furnish him with copies of such statements so that he may be in a position to know the reasons for the issue of notice under Section 12(8) and such other information so as to enable him to defend in the reassessment proceedings. The petitioner's said application for copies of statements was however rejected by the Sales Tax Officer. The petitioner thereafter filed an application in revision which also was dismissed. In these circumstances he filed this writ petition on December 26, 1967.

6. The main grounds in support of this writ petition are these:

(i) The proceedings started pursuant to the notice issued under Section 12(8) are illegal or without jurisdiction inasmuch as the Sales Tax Officer had not indicated any reason for issuing such notice as required by law; it was a roving enquiry on the part of the Sales Tax Officer groping in darkness.

(ii) The impugned notice issued by the Sales Tax Officer was contrary to the principles of natural justice as the petitioner was not intimated the reason for issue of such notice, and without knowing the reason the petitioner was not in a position to place his case before the Sales Tax Officer; indeed, the impugned notice was like a charge-sheet without a charge and therefore invalid, inoperative and without jurisdiction.

(iii) The Sales Tax Officer committed a serious illegality in not furnishing the information asked for by the petitioner nor giving any reason for proceedings under Section 12(8) of the Act; it was submitted that the notice issued was also violative of the provisions of the statute inasmuch as the statute requires the use of the words 'for any reason' and not 'have reason to believe' as mentioned in the impugned notice.

7. The Sales Tax Officer filed counter affidavit denying the allegations of the petitioner. The points taken by the Sales Tax Officer are, in substance, these: The impugned notice under Section 12(8) of the Act was based upon positive materials available with the Sales Tax Officer and as a matter of fact the seizure of documents which formed the basis of the proceedings under Section 12(8) was known to the assessee petitioner as stated in paragraph 3 of the counter affidavit; this is not a case based upon no materials; the petitioner was not entitled to have a copy of the statements recorded by the Sales Tax Officer until and unless the Sales Tax Officer sought to make use of them in any assessment proceedings; the information relating to disclosure of such facts is protected from being disclosed under Section 28 of the Act and that the petitioner can have grievance only when he is not given a due opportunity of meeting the points during the assessment proceedings.

It is stated that on August 10, 1967 the petitioner appeared through his advocate for verification of records and he also appeared on the following day, that is August 11, 1967; that the seized documents were asked to be inspected by the assessee and necessary permission was granted and actual inspection was also made. The point of the Sales Tax Officer is that every opportunity was given to the petitioner to have access to the documents on various dates as stated in paragraph 7 of the counter to the writ petition. According to the Sales Tax Officer no prejudice was caused to the petitioner in the proceedings and he was given all reasonable opportunities including inspection of books of accounts which were seized.

A further affidavit was also made on behalf of the Sales Tax Department which, inter alia, stated that the said notice was issued after obtaining information about certain clandestine dealings of the petitioner as stated therein. The deponent of the said further affidavit also stated that he found from the records that details of materials which had led to the initiation of the proceedings under Section 12(8) were recorded in the relevant case records which have been kept available for reference in court at the time of hearing.

8. The points involved in this writ petition are substantially covered by a decision of this court in B. Patnaik Mines (P) Ltd. v. N.K. Mohanty, ILR 1967 Cut 446 where on a similar notice under Section 12(8) couched in the same language as quoted above, this court held that the Sales Tax Officer had no jurisdiction under Section 12(8) to issue the impugned notice which was by way of making a fishing enquiry without indicating therein any reason for the alleged under-assessment in that case; that said notice was held to be a charge-sheet without mentioning any charge. It was also held that the issue of the said notice by the Sales Tax Officer was in excess, colourable exercise of jurisdiction and violation of the principles of natural justice; issue of the said impugned notice by the Sales Tax Officer resulted in injustice to the assessee-petitioner. The basic principles which weighed with this court in deciding that case, which we also follow herein, are these.

The court cannot decide unless there is some indication in the notice under Section 12 (8) of any reason for the alleged escaped assessment; whether or not the Sales Tax Officer has jurisdiction to issue the notice only depends on the existence of the reason for the alleged escaped assessment for which the impugned notice was issued; in other words, there must be in fact a reason for the alleged escaped assessment and natural justice demands that the notice issued to the dealer must mention the reason of the alleged escaped assessment so as to enable the dealer to meet the charge of escaped assessment; it is not understandable how the dealer would meet the charge of alleged escaped assessment unless there is at least some indication of one transaction, the turnover of which was not included in the previous assessment.

9. Mr. R. N. Misra, learned counsel appearing for the Sales Tax Department, sought to distinguish the present case on facts from those in ILR 1967 Cut 446 cited above. His point is that in the present case the petitioner was given every opportunity to have access to the materials on the basis of which the impugned notice was issued. This argument, however, does not appear to be tenable because the position at the point of time the notice was issued under Section 12(8) without indicating any reason whatsoever in the notice of the alleged escaped assessment is material. Assuming the Sales Tax Department had behind the back of the petitioner collected information--said to be clandestinely -- purporting to

show escaped assessment, even so the impugned notice when issued does not show that there was any reason for the issue of such notice for the alleged escaped assessment. It is not sufficient for the Sales Tax Officer to 'have reason to believe' that the petitioner's turnover for the quarter in question had escaped assessment as stated in the notice. It is not understandable how after the issue of the notice to the petitioner, the Sales Tax Officer proceeded to collect materials behind the back of the petitioner in support of the alleged escaped assessment.

10. In this view of the case, we hold that the Sales Tax Officer had no power or jurisdiction to issue the impugned notice. The writ petition is accordingly allowed; the said impugned notice dated March 31, 1967 and the proceedings taken pursuant to the said notice are all quashed. There will be no order as to costs.

Acharya, J.

11. I agree.