

Sri Govindaram Saraf Vs. State of Orissa

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Court : Orissa

Decided On : Apr-02-1963

Reported in : [1963]14STC622(Orissa)

Judge : R.L. Narasimham, C.J. and ;G.K. Misra, J.

Appeal No. : O.J.C. No. 145 of 1962

Appellant : Sri Govindaram Saraf

Respondent : State of Orissa

Advocate for Def. : R.K. Ghosh, Adv.

Advocate for Pet/Ap. : R. Mohanty, ;M.L. Jhunjhunwala and ;R.K. Kar, Advs.

Disposition : Application allowed

Judgement :

G.K. Misra, J.

1. This is an application under Articles 226 and 227 of the Constitution of India for issuing a writ of certiorari to quash the order dated 27th February, 1962, of the Sales Tax Tribunal in Appeal No. 822(P)/61-62. The facts relevant for the decision of this case are that the learned Assistant Commissioner of Sales Tax, Sambalpur, set aside the order of assessment of the Sales Tax Officer under Section 23(2)(b) of the Orissa Sales Tax Act, 1947 (hereinafter to be called the Act) and remanded the case for fresh assessment. Against the remand order the petitioner filed an appeal before the Sales Tax Tribunal under Section 23(3)(a) of the Act. The petitioner filed the appeal on payment of a fee of one rupee only. The Tribunal called upon the petitioner to pay court-fee of Rs. 45.90 nP. amounting to five per centum of the amount in dispute. Against this order the writ application has been filed.

2. Petitioner's contention is that under Rule 85 of the Orissa Sales Tax Rules, 1947 (hereinafter called the rules), he is liable to pay the minimum of one rupee. This contention was rejected by the learned. Tribunal. Chapter XII of the Rules deals with payment of fees. Rule 85 is as follows :-

'85. Subject to the provisions of Rule 86 the following fees shall be payable:- * * *

(iii) On a memorandum of Five per centum of the amount appeal under Sub-section (3) in dispute calculated to the of Section 23 to the Tribunal. nearest rupee subject to a minimum of one rupee and a maximum of one hundred rupees.'An Explanation has been appended to this rule which may be quoted below :-

Explanation :-In this rule 'the amount in dispute' means the difference between the amount of tax or penalty, if any, or both demanded and the amount admitted by the dealer to be payable.under Rule 88(2)(c)(ii) fees payable under Clause (iii) of Rule 85 shall either be paid in cash or by affixture of court-fee stamps. It is some-

what inaccurate to say that court-fee is paid on the memorandum of appeal. The crucial words in Rule 85(ii) are 'the amount in dispute'. Ordinarily an Explanation is not a definition section. But in this rule, the Explanation defines the words 'the amount in dispute' as meaning the difference between the amount of tax or penalty, if any, or both demanded and the amount admitted by the dealer to be payable. The amount of tax or penalty demanded has a well-known connotation. There can be no demand of tax or penalty until an assessment is made. There is no assessment quantifying the liability after the original order of assessment was set aside by the Assistant Commissioner, and consequently there can be no demand of the tax until further assessment, if any, is made in pursuance of the remand order. It is well-known that the liability is already fixed and does not depend upon the assessment. The assessment merely particularizes the exact sum which a person is liable to pay. The petitioner (the dealer) does not admit that any amount is payable by him. There exists no difference between the amount demanded and the amount admitted. The difference is indeterminate at the stage when the appeal was filed before the Tribunal, and as no amount in dispute can be determined, the question of the petitioner paying five per cent, fee thereof does not arise and the fee payable is only the minimum of one rupee.

3. It is now well-settled that a writ of certiorari can be issued not only in cases of illegal exercise of jurisdiction but also to correct errors of law apparent on the face of the record. The error of law committed by the learned Tribunal is apparent on the face of the record. He completely overlooked the Explanation as embodying the meaning of the words 'amount in dispute'.

4. The order of the learned Tribunal must therefore be quashed. The petitioner is entitled to a refund of the amount of fees, if any, paid in excess of the required amount in accordance with law. In the result, the application is allowed, the order dated 27th February, 1962, of the learned Tribunal is quashed and a writ of certiorari be issued as directed.

R.L. Narasimham, C.J.

5. I agree.

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