

Orissa Stores Vs. State of Orissa

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Court : Orissa

Decided On : Jul-26-1990

Reported in : [1990]79STC359(Orissa)

Judge : S.C. Mohapatra and ;J.M. Mahapatra, JJ.

Acts : Orissa Sales Tax Act, 1947 - Sections 12(1), 12(4), 12(7) and 23

Appeal No. : S.J.C. Nos. 25 and 26 of 1979

Appellant : Orissa Stores

Respondent : State of Orissa

Advocate for Def. : A.B. Misra, Standing Counsel (S.T.)

Advocate for Pet/Ap. : K.C. Samantray and ;A.C. Jena, Adv.

Judgement :

S.C. Mohapatra, J.

1. Statement of the case was called for under Section 24(3) of the Orissa Sales Tax Act, 1947, on the following question :

'Whether, on the facts and in the circumstances of the case, the learned Tribunal was justified in remanding the matter for fresh assessment instead of annulling the entire assessment ?'

2. The dealer has been assessed under Section 12(4) of the Act in respect of the year 1972-73 and the quarter ending June, 1973. Notice was not served on the dealer personally. The Tribunal found that such notice was served on one Maheswar Dolai who is not connected with the business in any manner. The Tribunal remitted the matter back to the Sales Tax Officer for assessing the dealer in accordance with law after giving notice to him. Making grievance of the same, the dealer filed application that period of limitation for completing assessment having expired, there was no scope for remand of the case and the assessment should have been annulled.

3. Section 12(7), second proviso, fixed the period of limitation for completion of assessment. It reads as follows :

'12. Assessment of tax.--

(1) to (6).....

(7) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act :

Provided.....

Provided further that no order assessing the amount of tax due from a dealer in respect of any year or part thereof shall be passed later than thirty-six months from the expiry of the year :

Provided further that the period of limitation fixed in the proviso immediately preceding shall not apply to assessment under Sub-section (5) or Sub-section (8) of this section or to enhancement of assessment or order of fresh assessment made or passed under Section 23.

(8)

4. In view of the aforesaid provision for the year 1972-73, assessment under Section 12(4) is required to be completed within thirty-six months from March 31, 1973, i.e., within March 31, 1976. In respect of the quarter ending June, 1973, such assessment is to be completed within thirty-six months from the expiry of the

year, which ends on March 31, 1974. Accordingly, assessment for this quarter is to be completed on or before March 31, 1977.

5. No assessment can be completed without notice. Order without notice is liable to be vacated. Order being vacated proceeding remains pending. It is true that limitation fixed would not be attracted to fresh order of assessment made or passed under Section 23 as is provided in the third proviso to Section 12(7). But such fresh assessment means where notice had been validly served. On the assessment order being set aside it goes to the stage where the defect or deficiency is found out. Where the defect or deficiency as found affects the jurisdiction as in the case of absence of notice, protection under third proviso is not available. Merely because the Tribunal sets aside the order of assessment under Section 23 for absence of notice, the third proviso cannot give protection to Revenue. Accordingly, as on April 16, 1974, completion of assessment has become barred by limitation and there was no scope for any assessment.

6. Even though assessment cannot be completed under Section 12(4) of the Act beyond the period of limitation, there is no prohibition for accepting the return as provided under Section 12(1) of the Act. Accordingly, assessment is not to be annulled but the same is to be confined to the return figure.

7. In the result, answer to the question is made in favour of the dealer to the extent indicated above. No costs.

J.M. Mahapatra, J.

8. I agree.

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