

Gama Mohanta Vs. State of Orissa, Represented by the Commissioner of Sales Tax

Gama Mohanta Vs. State of Orissa, Represented by the Commissioner of Sales Tax

SooperKanoon Citation : sooperkanoon.com/532183

Court : Orissa

Decided On : Jul-14-1994

Reported in : 1994(II)OLR249

Judge : G.B. Pattnaik and ;B.N. Patnaik, JJ.

Acts : [Central Sales Tax Act, 1956](#) - Sections 3 and 6(1)

Appeal No. : S.J.C. Nos. 73 and 74 of 1987

Appellant : Gama Mohanta

Respondent : State of Orissa, Represented by the Commissioner of Sales Tax

Advocate for Def. : S.K. Patnaik, Addl. Standing Counsel (Commercial Tax)

Advocate for Pet/Ap. : B.K. Mohanty, N. Paikray and R.P. Kar

Judgement :

G.B. Pattnaik, J.

1. These two references have been made under Section 24 of the Orissa Sales Tax Act by the learned Sales Tax Tribunal framing certain questions of law arising out of the order of the Tribunal to be answered by this Court.

2. The questions framed by the learned Tribunal are extracted hereinbelow :

(i) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was material on record to show that the goods (sabai Ropes) moved from Orissa to Madhya Pradesh and the movement was effected by the applicant so as to construe a sale in course of inter- State trade ?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the applicant despatched Sabai ropes from Haldipada Railway Station without considering the applicant's prayer for confrontation and for rebuttal ?

(iii) Whether on the facts and in the circumstances of the case, the turnover as sustained by the Tribunal bears any nexus to the alleged suppression and/or any basis for its determination as has been indicated ?

(iv) Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding imposition of penalty and/or quantum thereof (for the year 1980-81) without establishing a mens rea ?

At the outset, Mr. Mohanty appearing for the petitioner contends that the questions as posed do not involve any question of law, but he submitted that the Court may re-frame the questions which are questions of law and arise out of the order and according to him the following questions of law require to be answered by this Court :

(i) On the facts and in the circumstances of the case, has the Revenue discharged the burden on it under Section 6(1) of the Central Sales-Tax Act to prove that the dealer shall be liable to pay tax on all sales effected by him under the Central Sales Tax. Act ?

(ii) The Tribunal having found that there was absence of any material or evidence to come to the conclusion regarding inter- State trade, whether was at all justified in affirming the order of assessment ?

3. Admittedly, the petitioner is a registered dealer under the Central Sales Tax Act. For the assessment years 1980-81 and 1981-82, the Assessing Officer found that the assessee has sold 600 quintals of Sabai ropes to the Forest Department of Madhya Pradesh. But that had not been reflected in the accounts of the assessee nor the assessee furnished any satisfactory explanation. On consideration of the materials on record, the Assessing Officer came to the conclusion that the dealer-assessee has suppressed the sale of 600 quintals which is in course of inter-State trade and accordingly a best-judgment assessment was made and the Gross Turnover as well as Taxable Turnover for the two years was enhanced. Further a sum of Rs. 2 lakhs was levied as penalty for the assessment year 1980-81 as the assessee was found to have deliberately suppressed the sale.

Against the order of the Assessing Officer, the dealer preferred two first appeals and before the first appellate authority also produced some 'C' forms in relation to the assessment year 1981-82. The first appellate authority did not accept these 'C' forms and ultimately confirmed the orders of assessment for both the years as well as the levy of penalty for the year 1980-81.

The assessee then preferred two second appeals before the Tribunal. The Full Bench of the Tribunal after hearing counsel for the parties and on examining the entire materials on record came to the conclusion that the dealer entered into an agreement with the Forest Department of Madhya Pradesh for supply of 600 quintals of Sabai ropes and that the dealer received payments for such supply of Sabai ropes. The plea of the assessee that the supply was made by one Nandakishore Agrawal being authorised by the dealer was not accepted by the appellate authority as well as by the Tribunal on the ground that it was nothing but an after-thought. The Tribunal also rejected the contention of the assessee that no despatch has been made from Haisdipada Railway Station and ultimately affirmed the finding of the appellate authority that the dealer suppressed the sale transactions for which payments were received through Bank. But so far as the increase of the G.T.O. and T.T.O. is concerned, the Tribunal reduced the same on the ground that the enhancement is excessive. The reduction was made to the extent of fifty per cent and, therefore, the penalty was reduced to Rs. 1 lakh.

After disposal of the second appeals by the Tribunal, the assessee having invoked the jurisdiction under Section 24(1) of the Orissa Sales Tax Act for making a reference to this Court, the Tribunal framed the questions as stated earlier, which have now been re-framed and are required to be answered by this Court.

4. So far as the first question as re-framed is concerned, under Section 6(1) of the Central Sales Tax Act, a dealer incurs the liability of paying tax on inter-State sale when such sale takes place within the meaning of Section 3 of the said Act. Under Section 3 a sale would be deemed to have taken place in the course of inter-State trade or commerce, if the sale occasions the movement of goods from one State to another or is effected by transfer of document of title to the goods during their movement from one State to another. This being the position of law, the question really that arises for consideration is whether on the facts and in the circumstances of the case, the Tribunal was justified in recording a finding that there has been an inter-State sale. Mr. Mohanty appearing for the petitioner contends that what is necessary to be proved is that there must be a sale and that the goods moved from one State to the other as a covenant or incident of the sale which has to be proved by the Revenue and not the assessee. Therefore, even if the Revenue has been able to establish that there was an agreement between the assessee and the Officer of the Madhya Pradesh Government to sell 600 quintals of Sabai roper, and that 600 quintals of Sabai ropes had been supplied to the Officer of Madaya Pradash Government for which payment was received by the assessee, but it has not been established that such sale had, in fact, taken place pursuant to the agreement in question and, therefore, the ultimate conclusion that there has been an inter-State sale is erroneous. There is no dispute with the proposition that it is for the Revenue to establish that there has been a movement of goods occasioned by sale from one State to another and such movement is in course of inter-State sale in order to make the assessee liable under Section 6(1) of the Central Sales Tax Act. But if the second appellate order of the Tribunal is examined, it will appear that a finding has been made on the statement of the assessee himself made on 3-7-1932 and on 13-7-1982. On 3-7-1982, the assessee himself stated on oath :

'The Sales Tax Officer wanted to know if I have made transactions of Sabai ropes weighing 600 quintals with the Forest Department of Madhya Pradesh

Government. In this connection I have to say that I have not shown this transaction, in the accounts for the year 1978-79 to 1980-81. It might relate to the year 1981-82. As I have not brought the books of account for the years 1981-82 I cannot give the detailed particulars i.e. the bill number or R/R number of each transaction.....'

On 8-7-1982, the assessee further stated ;

'In continuation of my statement dated 3-7-82 in respect of Sabai Rope transactions with the Forest Department, Govern- ment of Madhya Pradesh, I am to say mat the goods supplied to Forsst Department, Government of Madhya Pradesh have been despatched by parties belonging to West Bengal against order of supply standing in my name, as I could not arrange the huge volume of stock immediately.....'

The aforesaid statements of the assessee are sufficient to rocord a conclusion that there was an arrangement between the assessee and hz Forest Department of Madhya Pradesh to supply Sabai ropes weighing 600 quintals, and 600 quintals had been despatched to Madhya Pradesh, and that the said transaction had not been reflected in the accounting year 1978-79 to 1980-81 as it relates to the year 1981-82. Therefore, the initial statement made by the assessee on 3-7-1982 does establish the fact of an agreement between the parties and that of movement of goods from one State to the other. The subsequent statement made on 18-7-1S82 only makes out a plea that the supply was made not by the assessea but by somebody also from West Bengal on behalf of the assessee and that plea on the materials on record was found to be falsified and not established. Therefore, the Tribunal was justified to come to the conclusion that there has been an inter-State sale which the assessee had not disclosed in his return The conclusions of the Assistant Commissioner which have been affirmed by the Tribunal to the effect that the assessee was a registered dealer in Mayurbhanj Circle, that the goods were sold on the strength of his registration certificate and that the goods moved from Orissa to Madhya Pradesh and certain payments were received by the assessee have all been affirmed by the second appellate authority namely the Sales Tax Tribunal. Therefore. the ultimate conclusion that the Sabai ropes had

been sold in course of inter-State trade during the relevant year and were despatched from Orissa to Madhya Pradesh by the dealer cannot be said to be erroneous in any manner. In this view of the matter, our answer to the first question framed is in favour of the Revenue and against the assessee and we hold that the Tribunal was fully justified in coming to the conclusion that the assessee incurred the liability under Section 6(1) of the Central Sales Tax Act and the Revenue has duly discharged its burden to establish the necessary ingredients.

5. Coming to the second question framed, this is, in fact, an ancillary question arising out of the first question and in view of what has been discussed earlier, our answer can only be that the Tribunal was entirely justified in affirming the findings of the appellate authority and did not commit any error in arriving at its ultimate conclusion that there has been an inter-State sale by the assessee.

6. Both the reference applications are accordingly disposed of and our answer to both the questions re-framed is against the assessee and in favour of the Revenue.

B.N. Patnaik, J.

I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com