

The Orient Paper Mills Ltd.

Vs

The State of Orissa and Others

Civil Appeals Nos. 273 to 277 of 1960

(T. L. Venkatarama Ayyar, S. K. Das, J. C. Shah, M. Hidayatullah, J. L. Kapur JJ)

24.03.1961

JUDGMENT

SHAH, J. –

The Orient Paper Mills Ltd., - hereinafter called the assesseees - are a public limited company having their registered office at Brajrajnagar in the district of Sambalpur, Orissa State. The assesseees are manufacturers of paper and paper-boards and are registered as dealers under the Orissa Sales Tax Act, 1947 - hereinafter referred to as the Act. The assesseees used to collect tax from the purchasers on all sales effected by them including sales to dealers in other States. For the quarters ending March 31, 1950, June 30, 1950, September 30, 1950, December 31, 1950 and March 31, 1951, the assesseees paid Sales-tax which they were assessed by the Assistant Collector of Sales-tax to pay, on their turnover which included sales outside the State of Orissa.

After this court delivered the judgment in *The State of Bombay and Another v. The United Motors (India) Ltd. and Others* [[1953] S.C.R. 1069.] the assesseees applied for refund under s. 14 of the Act of tax paid in respect of goods despatched for consumption outside the State of Orissa contending that according to the law expounded by this court, the transactions of sales outside the State were not taxable under the Act because of the prohibition imposed by Art. 286(1)(a) of the Constitution read with the Explanation. Refund was refused by the Assistant Sales Tax Officer and the order was confirmed by the Board of Revenue. In the view of the taxing authorities, the orders of assessment in respect of the five periods had become final on the diverse dates on which they were made and were not liable to be reopened merely because the law applicable to the transactions was not correctly appreciated by the taxing authorities. In petitions moved by the assesseees for writs of certiorari and mandamus against the orders of the Board of Revenue, the High Court of Orissa held that the only restriction upon the right of a dealer to apply for refund which "is found within the four corners of s. 14 of the Act" being the law of limitation prescribed by the proviso to that section, transactions in question not being liable to tax as they were inter-State transactions, the tax collected must be refunded on applications submitted within the period prescribed. The High Court then proceeded to hold that the recovery of tax paid for the first two quarters was barred by limitation but not recovery of tax paid for the remaining three quarters, and issued an order in the nature of mandamus directing refund of tax in respect of the last three quarters. The State of Orissa and the assesseees have appealed with special leave against the judgment of the High Court by these five appeals.

Counsel for the State of Orissa contends that no refund could be granted because the orders of assessment had become final and s. 14 of the Act applied only to cases of refund in which a superior taxing authority in appeal or revision against the order of assessment directs or declares that the tax

has not been properly collected, and it does not apply to cases of assessment which have become final, even if made on an erroneous view of the law. The assesseees support the view of the High Court that s. 14 applies to all claims for refund and also contend that the recovery of tax paid for the first two quarters was not barred by the law of limitation.

It is unnecessary for the purposes of these appeals to consider the respective contentions of the parties. In our view the claim of the assesseees must fail because of the retrospective amendment of the Act by the Orissa Legislature. By s. 14A which was incorporated by the Orissa Sales Tax (Amendment) Act, 28 of 1958, it was provided :

"Notwithstanding anything contained in this Act where any amount is either deposited by any person under sub-section (3) of s. 9B or paid as tax by a dealer and where such amount or any part thereof is not payable by such person or dealer, a refund of such amount or any part thereof can be claimed only by the person from whom such person or dealer has actually realised such amounts whether by way of sales-tax or otherwise and the period of limitation provided in the proviso to s. 14 shall apply to the aforesaid claims."

In terms, the section provides that refund of tax paid which the dealer was not liable to pay can only be claimed by the person from whom the dealer has actually realised it whether as sales-tax or otherwise. The section therefore deprives the assesseees of the common law right to claim refund of the amounts paid as tax under an error of law that it was recoverable by the taxing authority. Counsel for the assesseees does not dispute that by the amending provision, the right to obtain refund of tax is denied to him by the Legislature. He contends that the Act is beyond the competence of the State Legislature and in any event, it is void because it imposes an unreasonable restriction upon the assesseees fundamental right guaranteed under Art. 19(1)(f) of the Constitution.

By item 54 of List II of Schedule 7 to the Constitution, the State Legislature was indisputably competent to legislate with respect to taxes on sale or purchase of papers and paper-boards. The power to legislate with respect to a tax comprehends the power to impose the tax, to prescribe machinery for collecting the tax, to designate the officers by whom the liability may be enforced and to prescribe the authority, obligations and indemnity of those officers. The diverse heads of legislation in the Schedule to the Constitution demarcate the periphery of legislative competence and include all matters which are ancillary or subsidiary to the primary head. The Legislature of the Orissa State was therefore competent to exercise power in respect of the subsidiary or ancillary matter of granting refund of tax improperly or illegally collected, and the competence of the Legislature in this behalf is not canvassed by counsel for the assesseees. If competence to legislate for granting refund of sales-tax improperly collected be granted, is there any reason to exclude the power to declare that refund shall be claimable only by the person from whom the dealer has actually realised the amounts by way of sales-tax or otherwise ? We see none. The question is one of legislative competence and there is no restriction either express or implied imposed upon the power of the Legislature in that behalf.

Art. 19(1)(f) of the Constitution prescribes the right to freedom of citizens to acquire, hold and dispose of property; but the right is by cl. (5) subject to the operation of any law, existing or prospective, in so far as it imposes reasonable restrictions on the exercise of that right in the interest of the general public. Assuming that by enacting that refund of tax shall only be made to the purchasers from whom the tax has been collected by the dealers and not to the dealers who have paid the tax the fundamental right under Art. 19(1)(f) is restricted, we are unable to hold that the

restriction imposed by s. 14A of the Act is not in the interest of the general public. The Legislature by s. 9B(1) of the Act authorised registered dealers to collect tax from the purchasers which they may have to pay on their turnover. The amounts collected by the assesseees therefore primarily belonged not to the assesseees but to the purchasers. On an erroneous assumption that tax was payable, tax was collected by the assesseees and was paid over to the State. Under s. 9B, cl. (3) of the Act as it stood at the material time, the amounts realised by any person as tax on sale of any goods shall, notwithstanding anything contained in any other provision of the Act, be deposited by him in a Government treasury within such period as may be prescribed if the amount so realised exceeded the amount payable as tax in respect of that sale or if no tax is payable in respect thereof. As the tax collected by the assesseees was not exigible in respect of the sales from the purchasers, a statutory obligation arose to deposit it with the State and by paying that tax under the assessment, the assesseees must be deemed to have complied with this requirement. But the amount of tax remained under s. 9B of the Act with the Government of Orissa as a deposit. If with a view to prevent the assesseees who had no beneficial interest in those amounts from making a profit out of the tax collected, the Legislature enacted that the amount so deposited shall be claimable only by the persons who had paid the amounts to the dealer and not by the dealer, it must be held that the restriction on the right of the assesseees to obtain refund was lawfully circumscribed in the interest of the general public.

Counsel for the assesseees contended that they stood in danger of being compelled at the instance of the purchasers to repay the amount collected as tax even after it is deposited with or paid by them to the State Government, and a statutory provision which deprives them of their right to claim refund amounts to an unreasonable restriction, because they are under an obligation to pay the amount to purchasers but they cannot reimburse themselves by recourse to the State which holds the amounts. But by s. 9B, the assesseees were liable to deposit the amount in excess of what was lawfully recoverable from the purchasers as tax. When under the orders of assessment they paid amounts to the State, requirements of s. 9B were complied with and the amount remained with the State in deposit, subject to the obligation, if a demand was made within the period prescribed, to restore the same to the persons from whom the assesseees has recovered it. We do not think that there is any reason to hold that the assesseees would be exposed to any enforceable claims at the instance of the purchasers to refund the tax collected by them if they have deposited it with the State in discharge of the statutory obligation incurred by them.

Appeals Nos. 273 and 274 of 1960 will therefore be dismissed and Appeals Nos. 275 of 277 of 1960 will be allowed. As the State succeeds relying upon a statute enacted after the judgment was pronounced by the High Court, we direct that there shall be no order as to costs of the appeals in this Court.

Appeals Nos. 273 and 274 of 1960 dismissed.

Appeals Nos. 275 to 277 of 1960 allowed.

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