

CASE NO.:
Appeal (civil) 7540 of 2001

PETITIONER:
Sales Tax Officers and Ors.

RESPONDENT:
Dutta Traders

DATE OF JUDGMENT: 18/09/2007

BENCH:
S.H. Kapadia & B. SUDERSHAN Reddy

JUDGMENT:
JUDGMENT

O R D E R

1. Respondent is a wholesale dealer in biscuits of different brands under the provisions of the Orissa Sales Tax Act, 1947 and Central Sales Tax Act, 1956. On 14th October, 1999, goods were being unloaded from vehicle No.WB-24-A-0112 when the Investigating Officer of Vigilance Wing, Balasore Division, found certain irregularity and, accordingly, the Sales Tax Officer (Vigilance), raised a sum of Rs. 32,592/- as tax and Rs. 54,320/- as penalty under Section 16-D of the Orissa Sales Tax Act, 1947 (for short, the Act).

2. The main contention of the respondent is that the Sales Tax Officer (Vigilance) is not competent to make assessment under Section 16-D of the Act inasmuch as he is an officer under the control of Inspector General of Police (Vigilance) and has no power to make assessment.

3. Under notification dated 14th May, 1997, the Commissioner delegated his powers and duties under Section 16-D of the Act to the Sales Tax Officers and Inspectors of Sales Tax Department. The said notification was issued under Section 3(3) of the Act. The notifications issued indicate officers by designation who have been conferred with the powers of the Commission.

4. By a cryptic order, the High Court opined that since the Sales Tax Officer (Vigilance) had been functioning under the Inspector General of Police (Vigilance), he was not competent to realize the amount and, therefore, the realization of the aforestated amounts as tax and penalty was without jurisdiction and, accordingly, the order of the Additional Commissioner dated 1st January, 2000 stood quashed. Against the said judgment, the Department has come to this Court by way of Civil Appeal.

5. Two questions arise for consideration in this Civil Appeal. Firstly, whether the High Court was right in holding that the Sales Tax Officer (Vigilance) was not entitled to realize the aforestated amounts as he has been functioning under the Inspector General of Police (Vigilance). The second question is whether the Sales Tax Officer (Vigilance) was entitled to assess and recover/realize the sum of Rs.32,592/- as tax from the assessee.

6. On the first question, we quote hereinbelow Section 17 of the Act.

17. Delegation of Commissioner's Functions.

Subject to such conditions and restrictions as the State Government may, be general or special order, impose, the Commissioner may, by order in writing, delegate any of his powers and duties under this Act or the rule made thereunder, to any person appointed under Section 3 to assist him.\035

On reading Section 17 of the Act, it is clear that the Commissioner is empowered, by an order in writing, to delegate any of his powers and duties under the Act to any person appointed under Section 3 to assist him.

7. For the sake of clarity, we quote hereinbelow Section 3(1) of the Act.

3. Taxing authority-

(1) The State Government may appoint any person to be the Commissioner of Sales Tax, Orissa and he shall exercise such powers and discharge such functions as are or may be conferred or imposed by or under the provisions of this Act.\035

On reading Section 3(1), it is clear that the State Government may appoint any person to be the Commissioner of Sales Tax and he shall exercise such powers and discharge such functions as may be conferred or imposed on him under the provisions of the Act.

8. In the present case, on 14th May, 1997, following notification was issued by Commissioner of Sales Tax under which he has delegated his powers and duties, inter alia, under Section 16-D of the Act, to Sales Tax Officers and to the Inspectors of Sales Tax appointed under Section 3(3) of the Act.

"OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES: ORISSA CUTTACK:

NO.V(VI)45/97. 110008/C.T.;

Dated: 14.5.97

NOTIFICATION

In exercise of the powers conferred by Section 17 of the O.S.T.Act, 1947 (Orissa Act 17 of 1947) I, S.K. Samantaray, I.A.S., Commissioner of Sales Tax, Orissa do hereby delegate my powers and duties under new Section 16-AA and Section 16-D of the said Act to the Sales Tax Officers and to the Inspectors of Sales Tax appointed under sub-section (3) of Section 3 of the O.S.T. Act and direct that the said powers and duties shall be exercised and discharged by the Sales Tax Officers and by the Inspectors of Sales Tax in the State of Orissa within their respective jurisdictions.

Sd/-

A.K. Samantaray
Commissioner of Sales Tax,
Orissa, Cuttack"

Following the notification dated 14th May, 1997, one more notification has also been issued on 12th October, 1998 which indicates that the powers under Section 16-D of the Act have been delegated to officers, area-wise. The said notification gives an entire list of officers who are given powers, designation-wise and area-wise.

9. Every department is entitled to have its own vigilance officers. In the present case, we find that the Sales Tax Officer appointed to search and seize is from the Sales Tax Department and he is a Sales Tax Officer (Vigilance) who has been given the power under Section 16-D of the Act not only to search and seize the documents but also to recover the amount on the spot. Therefore, on the first point, the High Court had erred in stating that the Sales Tax Officer (Vigilance) was not entitled to assess and recover the tax as he functioned under the Inspector General of Police.

10. Coming to the second question, formulated above, we find, on examination of the scheme of the Act, that the word 'dealer' has been specifically defined under Section 2(C) of the Act to mean any person who carries on business of purchasing, selling, supplying or distributing goods directly or otherwise and includes a commission agent, a broker, a

mercantile agent, a person who transfers property in goods, a person who delivers goods of hire purchase etc. Section 3(1) of the Act has been quoted above. Section 3-A refers to the powers and functions of the Commissioner. He is given the power under Section 3-A(i) to superintend and control all persons employed in the executive administration of Sales Tax. Section 4 deals with incidence of taxation. Section 5 deals with rate of tax. Section 11 refers to filing of returns by the dealer as may be required by the Commissioner by notice served in the prescribed manner. Section 12 deals with assessment of tax. It says, inter alia, that if the Commissioner is satisfied that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns. Section 12(2)(a) states that if the Commissioner is not satisfied with the production of evidence and returns filed by the dealer, then, in accordance with the procedure prescribed under Section 12, the Commissioner shall, after hearing the dealer, assess him on the basis of the turnover. Under Section 12(4), the Commissioner is also empowered to make best judgment assessment. Therefore, in our view, Section 12 refers to assessment to be made by the Commissioner. Under Section 16-A of the Act, the State Government may, in order to prevent or check evasion of tax, by notification, direct creation of a barrier and it may empower the Commissioner in this behalf to stop the vehicle and to take such steps in the matter of recovery of tax which the Commissioner believes to have been evaded.

11. Section 16-D of the Act deals with production and inspection of documents and accounts in certain cases. We quote hereinbelow Section 16-D in its entirety:

16-D Production and inspection of accounts and documents in certain cases.

Without prejudice to the provisions contained in Sections 16-A and 16-B, where a transporter or a bailee or the owner or lessee of a warehouse to whom goods are delivered for transmission keeps such goods, before delivery thereof is taken from him, in any office, shop, warehouse, godown, vessel, boat, receptacle, vehicle or any other place, the Commissioner shall have the power to enter into and search such office, shop, godown, vessel, receptacle, vehicle or other place, as the case may be, and to examine the goods and inspect all records relating thereto and, in every such case, the transporter, bailee, owner or lessee of the warehouse or the person-in-charge of such goods and records shall give all facilities for such examination and inspection and shall produce the bills of sale or such other documents as may be required relating to the goods and give his name and address and the name and address of the transporter, bailee, owner or lessee of the warehouse or the person-in-charge of such goods and records, as the case may be.

Explanation I - For the purposes of this Section -

(i) "transporter" means the owner or any person having possession or control of a good vehicle, who transports on account of any other person for hire or on his own account, any good from one place to another, and includes any person whose name is entered in the permit issued under the Motor Vehicles Act, 1988 as the holder thereof, the driver or any other person-in-charge of such vehicle;

(ii) "bailee" means the person to whom goods are delivered;

(iii) "lessee" means the person to whom the lease of goods is granted by the lesser; and

(iv) "goods vehicle" means a goods carriage as defined in the Motor Vehicle Act, 1988.

Explanation II- For the purpose of this section, where goods are delivered to a transporter, bailee or the owner or lessee of a warehouse for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time of such delivery and terminate at the time when delivery is taken from the transporter, bailee or the owner or lessee of the warehouse, as the case may be.

(2) If the Commissioner has reason to suspect that any transporter, bailee or the owner or lessee of a warehouse is attempting to contravene the provisions of sub-section (1) or to evade payment of any tax due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the transporter, bailee or, as the case may be, the owner or lessee of the warehouse, as may be necessary, granting a receipt for the same and shall retain the same as long as may reasonably be necessary for examination thereof or for a prosecution.

(3) The power conferred under sub-section (2), shall include the power to break open any box, almirah or other receptacle in which any account, register or other documents of the transporter, bailee or the owner or lessee of a warehouse or to break open the doors of any premises where any such account, register or documents of any goods may be kept.

(4) The powers exercisable under sub-section (3) shall not be delegated to any officer below the rank of a Sales Tax Officer appointed under this Act or the rules made thereunder.

(5) The Commissioner shall have the power to seize any goods vehicle or seize and confiscate any goods of any transporter, bailee or the owner or lessee of a warehouse, which are found in any office, shop, godown, vehicle or vessel or any other place while on transit but not accounted for by the transporter, bailee or the owner or lessee of the warehouse, as the case may be, in his accounts, registers and other documents maintained in respect of such goods.

Provided that before taking action for the confiscation of goods under this sub-section, the Commissioner shall give the person affected an opportunity of being heard and make an enquiry in the prescribed manner.

Provided further that where the person affected makes payment to the Commissioner the amount of tax at the appropriate rate payable in respect of such goods to be assessed in the prescribed manner with a penalty equivalent to twenty per centum of the value of the goods seized, the goods and the vehicle seized as aforesaid shall be released."

12. It is well settled that the concepts of chargeability, assessment, quantification and recovery of tax are independent concepts under any taxing law. Section 12 of the Act refers to assessment whereas provisions after Section 15 of the said Act refers to recovery and collection of tax. The scheme of the Act, therefore, is based on the dichotomy between assessment on one hand and recovery of tax on the other hand. Under Section 12, the assessing officer has to examine the returns. He may accept the returns. If he finds that the returns are not in order, subject to giving notice to the assessee, he is entitled to pass appropriate assessment orders. However, in cases falling under Section 16-D where evasion is detected at the check-post by the Sales Tax Officer (Vigilance) and in order to get the goods released, which goods have been seized by the said officer, the person(s) named in the section offers to pay the tax, then, in such a case, the Sales Tax Officer is expressly given the authority to compute the tax and call upon such person(s) to make the payment. On such payment of tax together with penalty, the Sales Tax Officer (Vigilance) is required to release the goods which have been seized. Hence it is the case of computation of tax of and incidental to the recovery of tax on the spot.

13. The main argument advanced on behalf of the respondent is that the Sales Tax Officer (Vigilance) has no power to assess the tax. It is

contended that the power to assess tax exists only in Section 12 of the Act. It is contended that the Sales Tax Officer (Vigilance) who carries out search and who seizes the goods under Section 16-D has no power to assess the tax and, in the circumstances, the said officer can only carry out the search, seize the truck and goods and refer the matter to the assessing officer who is, thereafter, required to carry out the assessment proceedings against the defaulter. We find no merit in this argument. The word 'assess' in Section 16-D has different connotation. In our view, the word 'assess' in Section 16-D talks about computation. Computation is also assessment. Section 16-D is a Code by itself. It operates in a different sphere. Under Section 12 of the Act, the assessing officer analyzes the returns which are filed by the dealer whereas in cases falling under Section 16-D where the assessee offers to pay the tax on the spot for release of his goods/vehicle, the Sales Tax Officer (Vigilance) is required to calculate/compute the tax and, on payment of tax, he allows the goods/truck to be released. In our view, this computation undertaken by the Sales Tax Officer (Vigilance) on the spot is also an assessment. However, that assessment (computation) of the tax has nothing to do with the regular assessment under Section 12 of the Act.

14. For the afore-stated reasons, we set aside the impugned judgment of the High Court. We express no opinion on the merits of the matter particularly, with regard to quantification of the amount of tax and penalty. Respondent herein would be entitled to adopt appropriate proceedings with regard to quantification of penalty and tax before the appropriate authority in accordance with law.

15. The Civil Appeal is, accordingly, allowed with no order as to costs.