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ORIENT PAPER MILLS V. STATE OF ORISSA: **CASE ANALYSIS**

AUTHORED BY - GAYATRI MANDAR KULKARNI

Abstract

This case analysis reviews *Orient Paper Mills Ltd. v. State of Orissa*, where the appellants, registered dealers under the Orissa Sales Tax Act, 1947, sought a refund of sales tax collected and paid on interstate transactions deemed non-taxable following judicial precedents. Despite the appellants' compliance with assessment orders, retroactive amendments through Section 14-A of the Orissa Sales Tax (Amendment) Act, 1958, restricted refunds to purchasers from whom taxes were collected. The Supreme Court upheld the legislation, emphasizing legislative competence and public interest. The ruling reinforced that refunds are claimable solely by those who bore the tax burden, safeguarding constitutional principles and fiscal accountability. This case highlights the interplay between legislative authority, taxpayer rights, and public interest within taxation frameworks.

Name of the Case: The Orient Paper Mills Ltd vs The State Of Orissa And Others

Citations: (1962) 1 SCR 549: AIR 1961 SC 1438: MANU/SC/0066/1961

Date of Judgement: 24 March 1961

Names of Judges/Bench: Das, S.K., Kapur, J.L., Hidayatullah, M., Shah, J.C., Aiyar, T.L. Venkatarama

Facts in Brief

The appellants, who were registered as dealers under the Orissa Sales Tax Act of 1947, used to collect sales tax from customers on all purchases, including sales to dealers in neighbouring states. They were assessed and paid tax on their turnover, which included sales outside the State of Orissa, but following this Court's decision in *State of Bombay v. The United Motors (India) Ltd.*¹, they applied under section 14 of the Act for refund of tax paid on the ground that sales outside the State were not taxable under clause (1)(a) of Art. 286 of

¹The State Of Bombay And Another vs The United Motors (India) Ltd. And ... on 30 March, 1953; Equivalent citations: 1953 AIR 252, 1953 SCR 1069

the Constitution read with the Explanation. The Sales Tax Authorities and the Board of Revenue both declined to provide a refund.

In petitions for writs of certiorari and mandamus filed by the appellants against the rulings of the Board of Revenue, the High Court granted refund of tax paid for certain periods while refusing it for others. However, the Orissa Sales Tax Act was revised with retroactive effect in 1958, introducing S. 14-A, which stated that a refund may only be requested by the person from whom the dealer had realised the sum by means of sales-tax or otherwise.

Issues

The appellant company operated a paper and board production and sales business in the state of Orissa. It held a Central Excise Act licence in Form L.4 as stipulated by the Central Excise Rules., 1944. The aforementioned Rules were used to demarcate the company's factory and grounds. The plant benefited from a private railway siding on the plant grounds. A new siding was built outside the old factory grounds in 1960; the company's appeal to the Excise authorities to extend its licence to include the new railway siding in the production area was denied. On February 27 and 28, 1961, the corporation loaded certain waggons of paper after clearing these items through excise payment duty under.

Rules

“The right to own, possess, and dispose of property is guaranteed by *Article 19(1)(f) of the Constitution of India* of the Constitution, but it is subject to the operation of any laws—current or future—insofar as they impose reasonable limitations on the exercise of that right in the interest of the public at large.”

The Legislature permitted authorised dealers to collect tax from customers in accordance with *Section 9B(1) Orissa Sales Tax (Amendment) Act, 28 of 1958*, of the Act. The funds collected by the assess thus belonged principally to the purchasers rather than the assess. Tax was collected and given over to the State based on the incorrect premise that tax was payable.

“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.”

“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, under s. 9B, cl. (3) of the Act as it stood at the material time. Because the tax collected by the assess was not eligible in respect of the purchaser’s sales, a statutory responsibility to deposit it with the State emerged, and by paying that tax under the assessment, the assess must be judged to have satisfied with this requirement.”

It is unable to conclude that the restriction imposed by Section 14A Orissa Sales Tax (Amendment) Act, 28 of 1958, of the Act is not in the interest of the general public, even if it is assumed that by enacting that the 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.

The State Legislature was unquestionably empowered to enact laws relating to taxes on the sale or purchase of papers and paperboards under *item 54 of List II of Schedule 7 of the Constitution of India*. The competence to legislate with regard to a tax includes the ability to levy the tax, specify the methods of collection, name the officers who will be responsible for enforcing the liability, and set forth their qualifications, responsibilities, and insurance coverage. All things that are incidental or secondary to the principal head are included in the several heads of legislation in the Schedule to the Constitution, which delineates the limits of legislative authority. The Legislature of Orissa State was thus competent to exercise authority in the subsidiary or ancillary subject of awarding refund of tax wrongfully or illegally collected, and counsel for the assess did not challenge the Legislature's competence in this regard. Is there any reason to exclude the authority to declare that the refund shall be claimable only by the person from whom the dealer has genuinely realised the sums by means of sales-tax or otherwise if competence to legislate for giving reimbursement of wrongfully collected sales-tax is granted? We don't see any. The issue is one of legislative competence, and there are no clear or implicit limitations on the Legislature's ability in this regard.

Critical Analysis

The Orient Paper Mills Ltd., often known as the assessee, is a public limited company with its registered office in Brajrajnagar, in the Sambalpur district of the Indian state of Orissa. The Orissa Sales Tax Act, 1947, also known as the Act, registered the assessee as dealers and they are paper and paperboard makers. On all sales they made, including sales to dealers in other States, the assessee used to collect tax from the buyers. The assessee paid the sales tax that they were required to pay by the assistant collector of sales tax for the quarters ending March 31, 1950, June 30, 1950, September 30, 1950, December 31, 1950, and March 31, 1951 on their revenue, which included sales beyond the State of Orissa

The arguments of the counsel for the petitioner contended that they were in danger of being compelled to recompense the amount amassed as tax even after it was deposited with or paid by them to the State, Regime, and a statutory provision depriving them of their right to claim refund amounts to an adamant restriction, because they are obligated to pay the amount to purchasers but cannot reimburse themselves through recourse to the State which hoarded the money. However, under Section 9B, assess were required to deposit any sum in excess of what was legitimately recoverable from purchasers as tax. When they paid the State money due to assessment orders, the requirements of s. 9B were met, and the money remained in the State's possession on deposit, subject to the requirement that it be reinstated to the people from whom the assess had recovered it if an authoritative ordinance was made within the allotted time frame. We do not believe there is any justification to believe that the assess would be subject to any enforceable claims at the request of the purchasers to recover the tax they have accumulated if they have deposited it with the State in fulfilment of the statutory duty they have incurred.

The petitioners paid the taxes on time, but when they learned of the Supreme Court's decision in the United Motors case² construing Article 286(1) of the Constitution of India, they believed they were not required to pay sales tax on the transactions covered by these applications because they were inter-state sales. Their refund claims were mostly based on the Supreme Court's judgement, which they claimed made it crystal obvious that they owed no sales tax on those purchases. The Supreme Court's subsequent overturning of that decision in the Bengal Immunity case³ with regard to other issues, however, did not affect the earlier

²([1953] 4 S.T.C. 133; A.I.R. 1953 S.C. 252) (State of Bombay v. United Motors (India) Ltd.)

³([1955] 6 S.T.C 446; A.I.R. 1955 S.C. 661) (Bengal Immunity Co. v. State of Bihar)

ruling with regard to the non-liability to pay sales tax in respect of these transactions. The primary justification given by the Member (C.T.), Board of Revenue in his decision of February 12, 1955 for declining to award a refund was that the order of sales tax assessment had become final; that the petitioners did not wish to dispute it on appeal or revision, and that it should not be reopened only due to a change in the law brought about by the Supreme Court's judgement in the United Motors case. According to the Sales Tax Authorities, the principle of 'res judicata' would apply in some way if an assess against whom a sales tax assessment order is made allows the assessment to become final after exhausting the remedy by way of appeal or revision under Section 23 of the Act or interference by the High Court under Section 24 it will not be possible for him to get a refund, even if the Supreme Court later rules that the assessment was unconstitutional and the refund request was submitted within the deadline outlined in Section 14 of the Act. The validity of this viewpoint has been vigorously contested, and the answer to this question will be crucial to the outcome of these applications.

Conclusion And The Given Judgment

It was decided that under S. 14(A) of the Orissa Sales Tax (Amendment) Act, 1958, the person from whom the dealer had actually realised the tax, whether as sales tax or otherwise, and not the dealer, might demand a refund of the tax for which the dealer was not liable.

There is no reason to rule out the right to declare that the only person who may claim a refund is the one from whom the dealer has realised the money, whether as sales tax or otherwise. The legislature was competent to legislate for the issuance of refunds of sales tax that was incorrectly collected. The requirement that the amount be claimable only by those who paid the amounts to the dealers as sales-tax under Section 9B, Clause 3 of the Act, if the amount realised by the judges exceeded the amount payable as tax, must be deposited in the Government Treasury despite the judges having no beneficial interest in such amount. This restriction is reasonable and serves the interests of the general public. Even if the people from whom the tax is collected were initially not liable to pay the tax, the same people cannot be subject to any claim for refund if they fulfil their legal obligation to deposit the money they have collected as sale tax in the Government treasury.