

Beharilal Shyamsunder vs Sales Tax Officer, Cui Circle, Cuttack ... on 8 November, 1965

Equivalent citations: [1966]60ITR260(SC), [1966]17STC508(SC)

Bench: J.C. Shah, K. Subba Rao, S.M. Sikri

JUDGMENT

Subba Rao, J.

1. These are appeals by special leave against orders of the High Court of Orissa dismissing the petitions filed by the appellant under article 226 of the constitution of India to quash the notification issued by the Government of Orissa on the ground that the petitioner has "not exhausted the internal remedies under the Orissa Sales Tax Act." Learned Attorney-General appearing for the Sales Tax Officer raised a preliminary objection on the ground that the special leave petitions filed out of time. Mr. A. V. Viswanatha Sastri appearing for the appellant contended that they were not barred. Without deciding whether they were barred or not, on that there is some dispute, we think, having regard to the circumstances of the case, that this is a fit case for excusing the delay, if any. We accordingly excuse the delay in filing the special leave petitions.

2. The appellant filed petitions under the article 226 of the constitution of India for issuance of a writ of mandamus or any other appropriate writ quashing the assessment orders on the ground that the imposition of tax was without authority of law or ultra vires the Sales Tax Act and the rules.

3. This court in *K. S. Venkataraman & Co. (P.) Ltd. v. State of Madras* (Civil Appeal No. 618 of 1963 decided on October 18, 1965) held that the Sales Tax Tribunal could only decide disputes between the assessee and the Commissioner in terms of the provisions of the Madras General Sales Tax Act, 1939, and the question of ultra vires was foreign to its jurisdiction. For the same reason, we must hold that the question raised by the appellant before the High Court could not be decided by the sales tax authorities under the Orissa Sales Tax Act, 1947. The High Court, therefore, went wrong in dismissing the applications on the ground that the appellant should exhaust his internal remedies under the said Act. The order of the High Court is set aside, the appeals are allowed and the matter is remanded to the High Court for disposal in accordance with law. Costs will abide the result.

4. Appeals allowed. Cases remanded.