(2013) 08 OHC CK 0084

In the Orissa High Court

Case No : Writ Petition (C) No. 16617 of 2013

Aditya Steel Ind. APPELLANT

Vs

Comnr. Sales Tax and Another RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Citation : (2013) 08 OHC CK 0084

Hon'ble Judges : C. Nagappan, C.J;I. Mahanty, J

Bench : Division Bench

Judgement

1. Heard Shri S.C. Lal, learned Senior Counsel for the petitioner and Mr R.P. Kar, learned Standing Counsel for the Revenue Department. Challenge in the present writ petition has been made to an ex parte assessment order dated 30th March, 2013 passed by the Assessing Officer raising demand of tax and penalty amounting to Rs. 71,24,202.00p. The essential contention of the petitioner is that on 16.2.2013 his counsel and representative appeared before the Assessing Officer along with the books of accounts for which reliance is placed on the Hazira at Annexure-3. The asserts that on 16.02.2013 the Assessing Officer was absent from his office and thereafter an ex parte order of assessment has come to be passed, without any notice to the assessee to be present for assessment.

2. On a perusal of the impugned assessment order, we find that the petitioner had sought for adjournment on 29.12.2012 and 19.1.2013. The assessment order indicates that the assessee was represented on 16.2.2012 but purportedly without books of account. On the other hand, the Hazira (Annexure-3) filed by the petitioner indicates that the petitioner had represented on 16.2.2013 along with the books of accounts, therefore it is not in consonance with the assessment order.

3. Shri Lal, learned Senior Counsel for the petitioner submits that the order sheet would itself indicate that no signature of the assessee or his representative was taken on the order sheet, which would justify the petitioner''s claim that there was no effective hearing on 16.2.2013. Further, for the next date also no notice

was issued to the assessee.

4. Shri Kar, learned Standing Counsel (Revenue) produced the assessment record before us. On a verification of the same, the order sheet dated 16.2.2013 indicates that the assessee through his representative was present but no signature of the representative was taken on the body of the order sheet. Further, on the next date, also no notice had been issued to the assessee.

5. Reliance is placed on the order dated 15.10.2009 passed by this Court in W.P.(C) No. 2180 of 2008 in the case of M/s. Geetanjali Cement Products v. Sales Tax Officer, Rourkela-II Circle, Rourkela., which resulted in a circular being issued by the Commissioner of Commercial Taxes, Orissa directing all the Assessing Officers that, the record shall be maintained up to date and when the dealer or his authorised representative appears before the Assessing Authority or any other Appellate Authority, his signature shall be taken on the body of the order sheet on the date of his appearance.

6. It appears that the aforesaid direction has not been carried out in the present case. Therefore, we hold that the impugned ex parte assessment order is passed without due notice to the petitioner or his representative in violation of the principles of natural justice as well as the circular dated 30.11.2009 and the judgment of this Court passed in writ petition W.P.(C) No. 2180 of 2008.

7. We, accordingly, quash the impugned order of assessment under Annexure-5 and the consequent notice of demand and direct the petitioner to appear before the Assessing Officer along with the books of account on 26th August, 2013, or on such other date that may be fixed by the Assessing Officer, and further direct concluding the assessment proceedings expeditiously. The petitioner shall co-operate with the proceedings by providing all necessary information as may be necessary. This Court has made no expression on the merits of the case and/or on the other contentions raised by either party. Free copy of this order be supplied to the learned Standing Counsel (Revenue).

Urgent certified copy of this order be supplied on proper application.