(1987) 10 OHC CK 0002

In the Orissa High Court

Case No : O.J.C. No. 446 of 1987

Elecon Engineering Co. Ltd. APPELLANT

Vs

Sales Tax Officer, In-Charge of Check Gate and Another RESPONDENT

Date of Decision : 20-10-1987

Acts Referred:

Citation : (1988) 69 STC 76

Hon'ble Judges : V. Gopalaswamy, J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : A. Pasayat, N. Paikray, B.C. Panda and K. Sahoo, for the Appellant; S. Mohapatra, Additional Standing Counsel (Commercial Taxes), for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra and V. Gopalaswamy, JJ.—The owner of goods, which were being transported in course of its business through the check gate established under the Orissa Sales Tax Act, 1947, is the petitioner in this writ application against a demand made by the officer-in-charge of the check gate at Sohella.

2. It is not in dispute that the goods were carried on the strength of way bills as prescribed under the Orissa Sales Tax Rules. When the goods reached Sohella check post, the vehicle was detained and notice in form VIJB (annexure-1 series) was issued to the petitioner on 4th December, 1986 requiring removal of defects in the way bills or payment of Rs. 36,241. Against the order demanding the aforesaid amount, a revision was filed before the Commissioner of Sales Tax.

3. Rule 94 of the Rules made under the Act authorises issue of notice in form VIB for removal of defects in the way bill. The Commissioner, therefore, should have examined if the way bills in form No. XXXII have any defect to be removed. On the finding that there is defect which requires rectification, the Commissioner ought to have considered whether the amount claimed is excessive or arbitrary or rational. This was the short scope of the revision. However, the Commissioner

examined the matter as if an assessment under the Act was sought to be revised. Thus, there is error of law apparent on the face of the order which is accordingly quashed. The Commissioner is directed to hear and decide the revision afresh when the petitioner may bring to the notice of the officer exercising the power of the Commissioner the decision in O.J.C. No. 1143 of 1985 decided on 24th September, 1986 [Bharat Process and Mechanical Engineers Limited v. State of Orissa [1987] 65 STC 273 (Ori)]. The officer hearing the revision shall consider the applicability of such decision.

4. In the result, the writ application is allowed, annexure-2 is quashed and the Commissioner of Sales Tax, Orissa (opposite party No. 2) is directed to hear the petitioner afresh and dispose of the revision in accordance with law. He may direct the officer exercising the power of the Commissioner having jurisdiction in the matter to hear and dispose of the same early. Petitioner shall appear before the Commissioner on 9th November, 1987, on which date the latter shall fix a date of hearing. No costs.