

(2015) 07 OHC CK 0003
In the Orissa High Court
Case No : S.T. Rev. No. 113 of 2009

Gayatri Brick Industries

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Citation : (2016) 1 ILR (Ori) 54 : (2015) 86 VST 421

Hon'ble Judges : I. Mahanty and Dr. Durga Prasanna Choudhury, JJ.

Bench : Division Bench

Advocate : Jagabandhu Sahoo, Senior Counsel, N.K. Rout and P. Mohapatra, for the Appellant

Judgement

Dr. Durga Prasanna Choudhury, J.—The petitioner has filed this revision under section 24(1) of the Orissa Sales Tax Act, 1947 (hereinafter for short, "the Act") challenging the finding of the Orissa Sales Tax Tribunal Division Bench-II), Cuttack vide order dated April 20, 2009 passed in S. A. Nos. 416 and 654 of 2006-2007 upholding the alleged suppression of tax amounting to Rs. 5,62,834.45 paise and also enhancement of tax demand in lieu of tax determined.

Facts of the case:

Succinctly, facts of the case of the petitioner are stated below:

The petitioner is a registered dealer under the Act engaged in manufacturing, selling of bricks and used to maintain the books of accounts as required under section 15 of the Act. For the year ending 2001-2002, he has maintained the books of accounts by disclosing the gross turnover and the taxable turnover at Rs. 2,93,328 and Rs. 2,61,900 respectively after deduction towards sales tax calculated at Rs. 31,428. It was reported by the I. S. T. (Intelligence), Berhampur that during the year 2001-02 the petitioner has transported 340 trucks of bricks through the Girisola check gate, Ganjam, Berhampur. On being asked he reported that some manufacturers might have utilized his name while

transporting their bricks. Moreover, the assessing authority found that the dealer-petitioner has claimed to have collected Rs. 3,500 per truck load of bricks although the books of accounts is maintained reflecting Rs. 1,008 per truck load of bricks. Therefore, the learned assessing authority demanded the tax of Rs. 3,33,950.

2. Against the above order, the petitioner preferred first appeal before the learned Assistant Commissioner of Sales Tax, Ganjam Range, Berhampur in F. A. Case No. AA 538/2004-05 who vide order dated April 24, 2006 rejected the plea of the petitioner to the effect that some other owner of the bricks might have utilized its name. On the other hand, learned first appellate authority held that the petitioner had sold 340 truck loads of bricks by using own way bills in order to evade the payment of tax of 340 Nos. of truck loads of bricks. Moreover, learned first appellate authority reduced the enhanced turnover by Rs. 6,29,200. Learned first appellate authority after deducting the tax of Rs. 32,778 already paid by the petitioner from the demand of Rs. 1,17,612, directed to pay tax of Rs. 84,834. The appeal was allowed in part and assessment of tax liability was reduced to Rs. 84,834.

3. Being aggrieved by such order of the learned first appellate authority, the petitioner and the State filed two second appeals, namely, S. A. Nos. 416 and 654 of 2006-07, respectively, before the Tribunal. In those appeals, learned Tribunal vide order dated April 20, 2009 held the petitioner guilty of under-invoicing sale price of bricks for 259 truck load of bricks. Learned Tribunal observed that the petitioner has suppressed the sale price of those truck load of bricks at the rate of Rs. 3,500 against Rs. 1,008 per truck load of bricks. Learned Tribunal further held that the petitioner is guilty of suppressing sale of 340 truck load of bricks and price in respect of entire 340 truck load of bricks was being computed at Rs. 11,90,000. Learned Tribunal found under-invoiced sale price of bricks and also sale suppression at the instance of the petitioner for which enhanced the tax from Rs. 84,834 to Rs. 2,45,310. Resultantly learned Tribunal dismissed the second appeal filed by the petitioner and allowed the appeal filed by the Revenue, in part.

Submissions:

4. The learned counsel for the petitioner submitted that due to violation of natural justice, the impugned order is liable to be set aside. According to him the petitioner has not got a notice of cross-objection or cross-appeal as the case may be before enhancement of tax. He further submitted that there is decision of our High Court in this regard in Sri Mayur Biscuits Co. (P) Ltd. Vs. Sales Tax Officer and Others, , wherein Their Lordships have observed that the Tribunal admittedly having not issued notice to the petitioner-dealer prior to the order making enhancement of tax passed by it, the order of the Tribunal is liable to be set aside. He submitted that as reasonable opportunity was not given to the petitioner to produce the books of accounts and the Tribunal grossly erred in law by not giving opportunity of hearing while enhancing the demand of tax, the

impugned order is illegal, improper and liable to be interfered with. He further submitted that the impugned order is void for the reason that the Tribunal has failed to award natural justice by not issuing notice to the petitioner of enhancement of tax demanded. Thus the petitioner prayed to set aside the entire order of the learned Tribunal and pass an order for reassessment of tax by remitting it to the assessing authority.

5. The learned Additional Standing Counsel for the Revenue submitted that there is no merit in the appeal because the revisional court being not a fact finding court, cannot entertain the petition even if there is gross mistake in finding of facts of the petitioner. He further submitted that the learned Tribunal instead of allowing the appeal of the State in part, should have allowed the appeal in toto. However, the learned standing counsel for the Revenue supported the order of the Tribunal and prayed to dismissed the revision filed by the petitioner.

Discussions:

6. We have heard the respective counsel, considered the documents filed by both the parties and also perused the decision, i.e., Sri Mayur Biscuits Co. (P) Ltd. Vs. Sales Tax Officer and Others, . It has been held in the aforesaid decision in the following manner (page 331 in 20 VST):

"In the aforesaid view of the matter, we follow the judgment of the Division Bench of this court in the case of Shyamsunder Sahoo v. State of Orissa reported in [1994] 92 STC 28 (Orissa). In that judgment also, the learned Judges were pleased to set aside the enhancement on the ground that no opportunity for showing cause against the proposed action for enhancement was given to the petitioner by the Tribunal. Following the ratio in the said judgment, we set aside the order of the Tribunal dated March 16, 2007 passed in S. A. No. 256 of 2002-03 ..."

7. With great respect it is found that in that case, no notice of enhancement of the demand of tax was issued and also no cross-appeal was filed before the Tribunal. But in the present case, cross-appeal is filed by the State before the learned Tribunal. Both the appeals, purportedly filed by the petitioner and the State have been heard together and disposed of by common impugned order. Thus the aforesaid decision is not applicable as the facts and circumstances of the above decision differs from the facts and circumstances of the present case. The petitioner-dealer got notice of enhancement of demand through cross-appeal filed by the State before the Tribunal. When there is already notice of enhancement of demand, the question of not giving reasonable opportunity of being heard on enhancement of demand is non est. Therefore, the contention of the learned counsel for the petitioner has no force in this regard.

8. Section 24(1) of the Act enshrines in the following manner:

"24. Revision by High Court.--(1) Within sixty days from the date of receipt of the copy of an order of the Tribunal under sub-section (3) of section 23 affecting

any liability of a dealer to pay tax under this Act, or within sixty days of coming into force of the Orissa Sales Tax (Amendment) Act, 2000 for the cases pending before Tribunal for reference to High Court as on the date of coming into force of the said Act, such dealer or, as the case may be, the State Government may prefer a petition to the High Court against the order on the ground that the Tribunal has either failed to decide or decided erroneously any question of law:

Provided that the High Court may admit a petition preferred after the period of sixty days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period."

9. The aforesaid provision clearly shows that only on question of law, the revision can be considered by the court. Any question of dispute with regard to the fact unconnected with question of law, cannot be gone into by the court. In the instant case, there is only allegation by the petitioner that some manufacturer of brick must have utilized its name while carrying the truck load of bricks to the Girisola check gate and the said plea has been rejected by the concerned authorities below including the Tribunal. Moreover, the plea of the petitioner that there is no sale suppression and under-invoicing which are the facts in issue, have not been accepted by the Tribunal. When there is already money receipt showing the collection of amount of Rs. 3,500 per truck load of bricks but the books of accounts show sale at Rs. 1,008 per truck load of bricks, the facts decided by the assessing authority, first appellate authority and the Tribunal have been set at rest. Such questions of fact being not question of law nor being connected with any question of fact and law, can be adjudicated in this revision. We, therefore, are not inclined to interfere with the findings of the learned Tribunal in this revision.

10. In the result, this revision stands dismissed.

I. Mahanty, J.

I agree.