(2009) 10 OHC CK 0063

In the Orissa High Court

Geetanjali Cement Products APPELLANT

Vs

Sales Tax Officer RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 12(4), 12(7)

Citation : (2010) 109 CLT 208 : (2010) 1 OLR 787 Supp : (2010) 36 VST 380

Hon'ble Judges : C.R. Dash, J;B.P. Das, J

Bench : Division Bench

Judgement

B.P. Das, J.—The Petitioner has filed this Writ Petition challenging the order of assessment dated 5.1.2007 passed by the O.P. Sales Tax Officer, Rourkela II Circle, u/s 12(4) of the Orissa Sales Tax Act, 1947 for the period 2003-2004 (Annexure-1) on the ground that the same having been passed beyond the period of limitation is illegal & not sustainable in the eye of law & therefore, liable to be quashed.

2. As it appears, the Petitioner is a partnership firm carrying on the business of manufacturing & production of RCC Hume Pipes in its factory located at Kalunga, Rourkela. In response to the notice issued u/s 12(4) of the OST Act for the year 2003-04, the Petitioner produced the books of accounts maintained by it in course of business as well as the declaration forms but the Sales Tax Officer passed the order of assessment making addition to the Gross Taxable Turnover (GTO) & Taxable Turnover (TTO) returned on account of transportation charges & further addition was made on account of alleged contravention of Form ID 92. In the aforesaid assessment order annexed as Annexure 1, the tax payable by the Petitioner was quantified at Rs. 81,139.

3. Mr. Pati submits that the assessment order served on the Petitioner reveals that the date of the assessment order was originally indicated, as 6.12.2006 & after scoring through the same, another date, i.e., 5.1.2007 has been written by hand. The assessment order further reveals that the same was dispatched on 15.10.2007 but it was served on the Petitioner on 8.1.2008.

According to Mr. Pati, since the second proviso to Section 12(7) of the OST Act provides that assessment is to be completed within a period of three years, the Sales Tax Officer was obliged to pass the order of assessment for the impugned period 2003-04 by 31.3.2007 & as the impugned assessment order has not been passed within the prescribed statutory period, the entire order is illegal & is liable to be quashed.

4. In absence of a counter affidavit from the Revenue, we called for the relevant records & the same were produced before this Court on 23.7.2009. In the order passed on 23.7.2009, on perusing the records, this Court observed that it was the laches on the part of the Assessing Officer & because of such laches, advantage is taken by the assessee, which may lead to quashing of the assessment order & causing loss of revenue to the State Exchequer. In the said order this Court also directed the Sales Tax Officer, who has passed the impugned order of assessment, i.e., Sri B.K. Panigrahi, to appear in person before this Court on 11th August, 2009.

Now on a bare perusal of the order-sheets of the case record, we find that the order-sheets were maintained on plain papers. The orders passed by the Assessing Officer are extracted hereunder:

12.7.2004 Issue notice Vis 12(4) of the OST Act 47 fixing to Dt 26.7.04

26.7.2004 Sd./STO Case is adjourned to Dt 13.8.04

13.8.2004 Sd./STO. Case is adjourned to Dt 31.8.2004

15.1.2005 Sd./STO. Issue intimation fixing Dt to Dt 31.1.2005

19.12.2005 Sd./STO. Issue intimation fixing Dt to Dt 23.12.2005

5.1.2007 Sd./STO. Seen the assessment record the dealer, Advocate

filed Hazira along with detail statement of the account on Dt 23.12.05 for assessed for the year 03-04 under the OST Act. It has been examined on 7.5.2007 & discussed details in A.O. Issue assessment order & demand notice for Rs. 81,139.00. As such it has also been on ET. The details have been made in order. Issue assessment demand notice for Rs. examined discussion assessment order & 17,762.00. Sd./STO

The above order-sheets prima facie show that the same were maintained in a most irregular manner. So far as the assessment order passed in Form IX is concerned, we find that the date "6.12.2006" indicated therein has been scored through & another date, i.e., 5.1.2007 has been written by hand.

5. The Sales Tax Officer, who passed the impugned order of assessment in Annexure-1, namely, Sri B.K. Panigrahi appeared in person on 11.8.2009 pursuant to this Court''s Order Dated 23.7.2009 & took a plea that the order of assessment was passed on 31.3.2007. Since the Department took a prevaricating stand at different points of time & the conduct of the Sales Tax

Officer was also suspicious because from the order of assessment (Annexure-1) it is evident that the same was dispatched to the Petitioner on 15.10.2007 & the assessee received the said order on 8.1.2008, by Order Dated 11.8.2009, we directed Sri Panigrahi to file an affidavit on the aforesaid statement. On 2.9.2009 when this matter was listed, Learned Counsel for the Revenue wanted time to file the affidavit as required by the Order Dated 11.8.2009 but Learned Counsel for the Petitioner made an allegation that the Petitioner had neither appeared before Sri Panigrahi nor had he produced the books of accounts before him. According to the Learned Counsel for the Petitioner, as the said books of accounts were examined by the predecessor of Sri Panigrahi, the order of assessment passed by Shri Panigrahi was illegal, as Shri Panigrahi has never perused the said books of Accounts. Therefore, we directed Sri Panigrahi, Sales Tax Officer, Rourkela-II Circle, & his predecessor, Sri D. Murmu, to appear in person before this Court on 14.9.2009 & in terms of that order, both the Officers appeared before this Court on 14.9.2009 & filed their affidavits. That apart, Shri Panigrahi also filed a reply to the additional affidavit filed by the Petitioner.

6. In paragraph 2 of the affidavit dated 13.9.2009 filed by Sri B.K. Panigrahi in reply to the additional affidavit filed by the Petitioner, it has been stated that he had issued notice to the Petitioner for production of books of accounts for the year 2003- 04 fixing the date to 6.12.2006 & the Petitioner had received the said notice on 1.12.2006. The notice & the receipt showing acknowledgment of notice have been annexed as Annexures-C/1 & C/2. Thereafter, the Petitioner appeared on 5.1.2007 for assessment for the years 2003-04 & 2004-05 along with Advocate Sri D. Pati & on that day the statement of the Petitioner for the year 2004-05 was recorded & the purchase register was verified. Mr. Pati, however, now submits that so far as the assessment for the year 2003-04 is concerned, the Petitioner had not produced any Books of Accounts. He further submits that no notice, as stated above, was received by the Petitioner for the year 2003-04 & the signature on the receipt of the notice does not belong to anyone of the Petitioner-firm. In the affidavit dated 1.9.2009 filed by Sri Panigrahi on 14.9.2009 the deponent has also taken a stand that due to bona fide official delay, the assessment order & demand notice were issued for service by the Bench Clerk through the Office Peon on 15.10.2007 & the same were served on the Petitioner on 8.1.2008. According to Sri Panigrahi, the order of assessment was passed on 5.1.2007.

If we accept the plea of the-Revenue that the order of assessment was passed on 5.1.2007, we find that the same was issued to the Petitioner on 15.10.2007, i.e., ten months after passing of the order & the order was served on the Petitioner on 8.1.2008, i.e., three months after it was issued. Learned Counsel for the Revenue relies upon the relevant entries of the Process Register annexed as Annexure-E to the reply affidavit of Sri Panigrahi.

We do not find any explanation by Sri B.K. Panigrahi as to why & under what circumstances, the assessment order was typed in the computer putting the date as 6.12.2006, which was scored through & the date, i.e., 5.1.2007 was mentioned by hand.

7. Today, in terms of the order of this Court dated 14.9.2009, Sri Dasmat Murmu, Predecessor-in-Office of Sri B.K. Panigrahi, appears & files, an affidavit before this Court. In paragraphs-1 & 3 of the said affidavit it is stated as follows:

1. That I was working as the Sales Tax Officer, Ward-B, Rourkela-II Circle from 18.8.2005 to 27.7.2006. I was the assessing Officer for the Petitioner for the year 2003-04. I had taken up the Assessment for that year & had verified the books of accounts of the dealer on 23.12.2005. But the assessment could not be completed during my tenure.

3. That I was maintaining the order sheets of all the assessment records in normal course. As such, I had also maintained the order sheet of the assessment of the Petitioner for the year 2003-04 as well up to date. But at present I could not find those order sheets in the assessment record. The assessment records are kept in the custody of the Assessment Clerk of the respective Wards.

So from the aforesaid affidavit, it appears that Sri Murmu had maintained all the order-sheets & the Books of Accounts produced before him, but he could not complete the assessment. We are startled to see that when one Officer says regularly the order-sheets have been maintained by him, in fact, there is no regular order-sheet in the record. As we have indicated in the foregoing paragraphs, the order sheet is maintained in a plain paper & most irregularly. The fact whether the assessment order was passed before expiry of the period of limitation is also shrouded with doubt, as it is observed that there is interpolation in the date of order & no reasonable plea has been taken regarding the delay in issuance of the order as well as the notice of demand.

Even though a plea has been taken by Sri Panigrahi that on the same date, i.e., 5.1.2007, the orders for the year 2003-04 as well as 2004-05 were passed, they were issued on 15.10.2007 & the assessee received the same on 8.1.2008. We find that there is no satisfactory explanation regarding the delay in service of the order of assessment upon the assess-Petitioner. This aspect is required to be probed by an Officer not below the rank of an Additional Commissioner of Sales Tax & accordingly, we so direct.

8. So our conclusion is that there is lack of regularity in maintaining the order-sheets, as the same have not been maintained in the prescribed form of the Government. The order sheets maintained in plain papers can be easily replaced. In this case, if we look at the averments made in paragraphs-2 & 3 of the affidavit filed by Sri Murmu as well as the records of the Revenue & accept the statement of Sri Murmu, then we have to believe that the order-sheets might have been replaced. Taking into account the entire factual matrix of the case, as there are disputed questions of fact, we are of the considered opinion that the Petitioner should approach the first Appellate authority. Accordingly, the Petitioner is at liberty to approach the First Appellate Authority in appeal. If the

Petitioner files the First Appeal before the First Appellate Authority within one month from today along with an application for condonation of delay, the First Appellate Authority after condoning the delay shall entertain the appeal & dispose of the same within a period of four months from the date of such filing. Till the First Appeal is concluded, realization of the demanded tax shall remain stayed.

9. Before parting with this case, we direct the State Government as well as the Commissioner of Commercial Taxes, Orissa, to issue a Notification to the following effect:

(1) Instructing all the Assessing Officers to use the Government printed order sheet forms from 1st December, 2009,

(2) the order of assessment & the demand notice shall be issued to the dealers by registered Post with A.D. &

(3) the record shall be maintained up-to-date & 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.

10. As we have pointed out in the earlier paragraphs, that the matter requires a thorough probe by an Officer not below the rank of an Additional Commissioner of Commercial Taxes & the persons responsible for replacing the order sheets & scoring through the date of the assessment order should be identified & appropriate action should be taken against them.

The records produced today be returned to the Learned Counsel for the Revenue. The original order of assessment be returned to the Petitioner on being substituted by attested photocopy thereof.

The Writ Petition is disposed of accordingly.

Let a free copy of this Judgment be supplied to the Learned Counsel for the Revenue.

C.R. Dash, J.

I agree