
(2008) 07 OHC CK 0032

In the Orissa High Court

Hero Soap and Chemicals and Another	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Citation : (2008) CLT 417 Supp : (2009) 26 VST 268

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This petition has been filed challenging the order of the General Manager, District Industries Centre, Ganjam, dated September 20, 2000 with regard to non-grant of sales tax concession as per Finance Department Notification Nos. SRO 140 and 141 dated February 17, 2000. The petitioner has submitted that in view of the policy decision taken by the State, tax exemption had to be granted to it, but its application for such exemption has been rejected without assigning any reason whatsoever. In fact, the petitioner sought exemption under the aforesaid notification dated February 17, 2000 which could be granted to a person fulfilling the following criteria as on January 1, 2000.

- (i) Industrial unit which is registered under the Orissa Sales Tax Act, 1947.
- (ii) Industrial unit which has been allotted land for the factory.
- (iii) Industrial unit which has applied for finance from regular financial institution.
- (iv) Industrial unit which will start commercial production before the January 1, 2002.

2. The learned Counsel for the petitioner submits" that the petitioner has fulfilled all the aforesaid conditions. It started its commercial production on May 22, 2000. However, its application for exemption was rejected without assigning any reason. Therefore, the order dated September 20, 2000 is liable to be quashed and the petitioner is entitled to the benefit of the said exemption. Undoubtedly

the order impugned dated September 20, 2000 is not a speaking order. It simply refers to certain notification but no specific reason has been assigned.

3. In Krishna Swami Vs. Union of India and another, the apex court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The court further observed that. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached, lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21.

4. Similar view has been taken by the Supreme Court in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, ; Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, Similar view has been taken by this Court in Rameshwari Devi Vs. State of Rajasthan and Others, . In Vasant D. Bhavsar Vs. Bar Council of India and Others, the apex court held that an authority must pass a speaking and reasoned order indicating the material on which its conclusions are based. Similar view has been reiterated in Indian Charge Chrome Ltd. v. Union of India AIR 2003 SCW 440 Secretary, Ministry of Chemicals and Fertilizers Government of India Vs. Cipla Ltd. and Others, and Union of India (UOI) and Another Vs. International Trading Co. and Another, .

5. It is settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, the apex court has observed as under:

... Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that "be you ever so high, the laws are above you". This is what men in power must remember, always.

(Emphasis Here italicised added).

6. In LIC of India and Another Vs. Consumer Education and Research center and Others, the apex court observed that the State or its instrumentality must not take any irrelevant or irrational factors into consideration or appears arbitrary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. Same view has been reiterated by the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, and Union of India (UOI) Vs. Mohan Lal Capoor and Others, .

7. In *State of West Bengal v. Atul Krishna Shaw* [1991] Suppl 1 SCC 414 the Supreme Court observed that "giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review".

8. In *S.N. Mukherjee Vs. Union of India*, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

9. Therefore, the order impugned suffers from want of reasons and in fact while deciding the case of the petitioner reasons should have been recorded.

10. At this juncture, the learned Counsel for the petitioner submits that the authorities under the statute should reconsider the case of the petitioner. In fact the notification had been issued providing for exemption of purchase tax on raw materials. There is no pleading in the petition to the effect that the liability so incurred had been passed to the subsequent purchasers/consumers. In case the liability has been passed on, refund would amount to unjust enrichment. We are not inclined to exercise our discretion at such a belated stage as the benefit of such exemption was granted for a particular period. More so, the petitioner filed the certificate dated May 22, 2000 to show that its commercial production had been started. There is a letter dated August 21, 2000 on the record as annexure 6 to show that production had been stopped meaning thereby that there is nothing on record to show that on the date when the application was considered the unit of the petitioner was having commercial production. In such fact situation, no relief can be granted to the petitioner.

11. The petition is accordingly dismissed.

B.N. Mahapatra, J.

12. I agree.