

(2015) 07 OHC CK 0010
In the Orissa High Court
Case No : STREV No. 112 of 2009

Kalanauria Trading Co.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Citation : (2015) 85 VST 342

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

Bench : Division Bench

Advocate : Subash Ch. Lal, Sumit Lal and Sujit Lal, for the Appellant; S.P. Dalei, Additional Standing Counsel, for the Respondent

Judgement

Dr. Durga Prasanna Choudhury , J.—In the captioned revision the petitioner assails the order dated December 23, 2008 passed by the Orissa Sales Tax Tribunal in Second Appeal Nos. 817 and 736 of 1999-2000, whereby dismissed the appeal filed by the petitioner and allowed the appeal in part filed by the State.

Facts

The factual matrix leading to the case of the petitioner is that the petitioner is a dealer in grocery articles at Sambalpur under Circle-Sambalpur. He deals with edible oil, ghee, sugar, rice, peas, etc., on wholesale basis. It is alleged, inter alia, that the learned assessing authority got the establishment of the petitioner assessed for the year 1995-96. The I.S.T. (Intelligence Wing) of Sambalpur made visit to the establishment of the petitioner and found the stock of the materials goods with reference to the books of accounts of the dealer were not in order. Similarly another visit was made by the Intelligence Sales Tax Circle on September 13, 1995 and found 40 quintals of rice was carried from Gosala by the petitioner without any document. As the books of accounts, stock register and physical verification do not tally each other showing some items excess and deficit of some items, the learned assessing authority computed the gross turnover at Rs. 3,91,92,861.35 paise. After making deduction under different

heads the taxable turnover became Rs. 1,93,64,867.11 paise. So the assessing authority after discussion found total amount of Rs. 77,527.50 paise has to be paid by the petitioner as tax after deducting the tax already paid by the petitioner under rule 36 of the Orissa Sales Tax Rules.

2. The petitioner challenged the order of the learned assessing authority before the first appellate authority. The learned first appellate authority observed that the calculation of the assessing authority about suppression of the amount for 26 times is excessive and contrary to the decision of the court. When he found that the enhancement of turnover by 26 times of alleged suppression of Rs. 47,805 is excessive, he limited the enhancement of turnover to Rs. 7,64,881 of which Rs. 6,64,881 is added to the four per cent, tax rate of group, Rs. 1,00,000 is added to the eight per cent, tax rate group of the taxable turnover. On the whole he allowed the appeal in part and assessed the tax demand by reducing the same by Rs. 61,302 only.

3. The petitioner preferred the second appeal before the learned Tribunal, whereas the Revenue also preferred a second appeal against the reduction of the turnover by the first appellate authority. Both the appeals were heard together and learned Tribunal passed a common order. After discussion at length learned Tribunal found suppression of turnover. It observed that the learned assessing authority estimated suppression for the whole year at 26 times of the occasional suppression, whereas the first appellate authority reduced the demands to 16 times. It further stated that the suppression having been estimated on two occasions the suppression per occasion for Rs. 23,902.50 paise, for which it should be 40 times of the suppression following the decision reported in [1994] 93 STC 362 (Orissa) (State of Orissa v. Ranital Rice Mill). So the learned Tribunal dismissed the appeal filed by the petitioner and allowed the appeal filed by the State in part. It remitted the case on remand to the learned assessing authority for re-computation of the tax dues within three months.

Submissions:

4. The learned counsel for the petitioner submitted that the order of the Tribunal is perverse, illegal and absolute non-application of mind. According to him, without any basis the learned Tribunal has computed suppression 40 times when learned assessing authority computed the suppression 26 times and the first appellate authority computed the same to 16 times. The case of the petitioner should have been accepted as it is a grocery shop and during the visit, the concerned officers have not checked up the grocery items properly about its variety and quantity. He further stated that this is as clear violation of natural justice by the authorities below, for which the order of the Tribunal should be struck down by allowing the revision.

5. The learned standing counsel for the Revenue submitted that the learned assessing authority has gone through the details of the report of intelligence and also has verified the books of accounts, for which the order is legal and proper.

He rather stated that the order of the learned first appellate authority even if gone detailed, but it has no basis to relax the number of times of suppression as determined by the assessing authority. He further submitted that the order of the learned Tribunal is justified for enhancing the suppression by 40 times, since many items of the grocery shop have not been taken into consideration, where the tax must have been suppressed by the petitioner. Be that as it may, learned standing counsel for the Revenue supports the order of the Tribunal and submitted to dismiss the revision.

6. We have heard the respective counsel and considered the documents filed before us. Perused the impugned order and all orders passed by the authorities below. No doubt the petitioner is a dealer in grocery items. Learned assessing authority basing on the report of the Intelligence of Sales Tax on two occasions has found the suppression of gross turnover by the petitioner. With reasoning it has computed the gross turnover 26 times. Similarly, the first appellate authority has considered the order and reduced it to 16 times. Learned Tribunal while enhancing the suppression of the turnover to 40 times has observed in the following manner:

"... The dates of inspection of two different inspecting agencies were April 25, 1995 and August 2, 1995 and on both the occasions suppressions were unearthed. From this it is implied that the suppressions have a pattern. The learned STO estimated the suppression for the whole year at 26 times of the occasional suppression whereas the learned ACST reduced the times to 16. The suppressions having been estimated on 2 (two) occasions the suppression per occasion was for Rs. 23,902.50. Applying the ratio of the decision of the honourable High Court of Orissa in case of State of Orissa v. Ranital Rice Mill [1994] 93 STC 362 (Orissa) 40 times of Rs. 23,902.50, i.e., Rs. 9,56,100 is determined as the suppression for the whole year and the same meets the ends of justice...."

7. It appears from the above order of the Tribunal that following the case of Ranital Rice Mill [1994] 93 STC 362 (Orissa) it has increased the suppression by 40 times. There is no any reason assigned in the order except applying the ratio of such decision. In the case of State of Orissa v. Ranital Rice Mill [1994] 93 STC 362 (Orissa). Their Lordships have been pleased to observe at page 364 as follows:

"... Though the Tribunal has not indicated the nexus in so many words yet it cannot be said that the Tribunal did not consider relevant aspects while fixing the quantum. It took note of the quantum of suppression involved and came to hold that enhancement of Rs. 6 lakhs would be adequate. The conclusion has been arrived at after making elaborate analysis of the fact-situation. What would be the quantum of enhancement does not in all cases involve a question of law. Where there is absolutely no material to support the conclusion, a question of law arises. But where the Tribunal after dealing with relevant aspects fixes up the enhancement at a particular figure, it is a conclusion on facts, giving rise to no

question of law...."

8. With due respect to the said decision, we find that the view was taken by Their Lordships finding the conclusion arrived at after the Tribunal considered the relevant aspect while fixing the quantum: In that case this court found the enhancement of the figure by the Tribunal on the conclusion of facts for which refrained from reference on question of law. In the instant case there is no discussion of any fact showing nexus of enhancement of 40 times to the facts of the case. Had there been the discussion to prove the enhancement of the turnover 40 times correcting the finding of the assessing authority, the conclusion of the Tribunal by following the decision of Ranital Rice Mill [1994] 93 STC 362 (Orissa) could have been appropriate. So the conclusion of the learned Tribunal following the authority is based on no evidence. On the other hand the learned Tribunal has not followed the aforesaid authority properly, but under the veil of such decision has decided the case arbitrarily against the petitioner. So the conclusion arrived at by the learned Tribunal about suppression of the turnover and multiplying it 40 times is based on no factual aspects. Hence the order of the Tribunal is vulnerable, illegal and perverse. We, therefore, set aside the order of the Tribunal and remit back the matter to the learned Tribunal with a hope and trust that the learned Tribunal will look into the facts and law of the case and dispose of the case on merit after affording reasonable opportunity to the parties of being heard within a period of two months from today. Any observation made by us in this revision should not influence the Tribunal in reaching the conclusion.

9. The revision petition is disposed of accordingly.

I. Mahanty, J.

I agree.