(2009) 05 OHC CK 0012

In the Orissa High Court

Kedar Gouri Rice Mill APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:
Orissa Value Added Tax Act, 2004 — Section 2(4)

Citation : (2010) 27 VST 387

Hon'ble Judges : I.M. Quddusi, Acting C.J.;Sanju Panda, J

Bench : Division Bench

Judgement

1. Heard Mr. J. Sahu, learned Counsel for the petitioner and Mr. Dalai, learned Additional Standing Counsel for the Revenue.

2. The petitioner, who is a registered dealer under the Orissa Value Added Tax Act, 2004 and has been granted a TIN number, challenged the order of assessment dated April 21, 2007 passed by the Sales Tax Officer, Bhanjanagar Circle, Bhanjanagar, Ward A, opposite party No. 2, under the Orissa Value Added Tax Act, 2004 vide annexure 2 on the following grounds:

That the provisions of Section 2(4) of the OVAT Act defining the expression ''assessing authority'' being relevant the same are reproduced below:

Section 2. (4) ''assessing authority'' means any officer appointed under Sub-section (2) of Section 3 who is authorized by the Commissioner to make assessment under this Act.

The provisions of Rule 34(8) and Rule 34(12) of the OVAT Rules, 2005 being relevant the same are reproduced below:

Rule 34. (8) The return under Sub-rule (1) shall be filed in the range and the return under Sub-rule (6) shall be filed in the circle, where the dealer is registered:

Provided that for the convenience of the dealer a return under Sub-rule (1) may be furnished to assessment unit or circle under whose jurisdiction the place of business of the dealer is situated, and the concerned assessment unit or circle, on receipt of such return, and after preliminary processing shall submit it to the range.

(12) For the purpose of this rule, the assessing authority shall mean:

(a) the assessing authority of the circle in respect of the dealers, who have been granted registration under Sub-rule (1) of Rule 18 and assigned with SRIN under Sub-rule (4) of Rule 19.

(b) the assessing authority of the range in respect of dealers who have been granted registration under Sub-rule (1) of Rule 18 and assigned with TIN under Sub-rule (1) of Rule 19.

A cumulative reading of the aforesaid provisions therefore speaks in no uncertain term that the assessment in respect of the present petitioner can only be done by the assessing authority of the range as per Rule 34(12)(b) of the OVAT Rules and not by the Sales Tax Officer, Cuttack II Circle, Sriram Nagar, Badambadi, Cuttack (o. p. 2). Therefore, the order dated January 5, 2007 passed by the said opposite party No. 2 is without jurisdiction and is accordingly liable to be quashed.

3. It would be most relevant to take note of Rule 34(12)(b) of the Orissa Value Added Tax Rules, 2005 which is reproduced as under:

(12) For the purpose of this rule, the assessing authority shall mean:

(a) ...

(b) the assessing authority of the range in respect of dealers, who have been granted registration under Sub-rule (1) of Rule 18 and assigned with TIN under Sub-rule (1) of Rule 19.

4. In view of Rule 34(12)(b) of the OVAT Rules, 2005 as noted hereinabove it is clear that the dealers who have been granted registration under the OVAT Act/ Rules and have been assigned with TIN numbers, in terms of the aforesaid rule, can only be assessed by the "assessing authority of the range". Annexure 2 is the impugned order of assessment, which has been admittedly passed by the Sales Tax Officer, Bhanjanagar Circle, Bhanjanagar, Ward A opposite party No. 2. It has been admitted by the learned Counsel for the Revenue that the Sales Tax Officer is not "the assessing authority of the range" as required under Rule 34(12)(b). We are satisfied on a scrutiny of the impugned order of assessment under annexure 2, that since it has been passed by the Sales Tax Officer and not by the assessing authority of the range, the order of assessment cannot withstand judicial scrutiny and is held to be without jurisdiction not being in conformity with Rule 34(12)(b). Accordingly, the order impugned, i.e., the assessment order vide annexure 2 is set aside.

5. Let the petitioner appear before the Assistant Commissioner of Sales Tax, Cuttack II Range, Sriram Nagar, Badambadi, Cuttack, opposite party No. 3 on

June 10, 2009. On this appearance, opposite party No. 3 may serve a statutory notice on him and proceed with the matter in accordance with law. The Sales Tax Officer, Bhanjanagar Circle, Bhanjanagar, Ward A, opposite party No. 2 is directed to transmit the records of the assessee to opposite party No. 3.

6. The writ petition is accordingly disposed of.

7. A free copy of this order be handed over to the learned Counsel for the Revenue for due compliance.

8. Issue urgent certified copy as per rules.