(2007) 05 OHC CK 0067

In the Orissa High Court

Lajwanti Traders APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 10-05-2007

Acts Referred:
Orissa Value Added Tax Act, 2004 — Section 74(2)

Citation : (2007) 9 VST 488

Hon'ble Judges : A.K. Ganguly, C.J;I. Mahanty, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the parties.

2. This writ petition has been filed challenging the procedure which is followed at the check-post for realisation of tax. Three annexures, namely, annexures 3, 4, and 5 have been annexed to show the procedure which is being followed in the matter of realisation of tax. It is not in dispute that the petitioner has paid the tax and the goods have been allowed to pass the check-post. But the petitioner challenging the said procedure of realisation of tax as unfair has filed this writ petition.

3. The petitioner claims to be a registered dealer under the Orissa Value Added Tax Act, 2004 and also under the Central Sales Tax Act, 1956. The impugned annexures would show that the petitioner was transporting goods to M/s. Anand Solvex Ltd., Hyderabad, and the value of the goods has been mentioned in the way-bill which is in a statutory form. It is not in dispute that all the particulars required to be furnished in the way-bill have not been furnished.

4. Learned Counsel for the Revenue has pointed out this fact to the court and this court is of the opinion that the learned Counsel for the Revenue is right. The invoice is also not an approved TIN form. Therefore, there is no denial of the fact that the papers and the documents were not in order.

5. Under this situation, the details of their lapses are to be intimated in view of the provisions contained in Section 74(2) of the Orissa Value Added Tax Act,

2004 and the Revenue is at liberty to detain the vehicle and give notice of the same.

6. In the instant case, that has not been done and the goods have been allowed to pass on the basis of payment of tax at the check-post. It appears from the record that such tax has been computed on the basis of higher valuation of the goods at the check-post. Learned Counsel for the petitioner submits that the said amount has been paid by the petitioner under coercion and threat. This court finds that no such clear case has been made out in the writ petition. The case which has been made out in the writ petition is that such tax has been collected at the behest of the Revenue. The expression used is that the "driver of the vehicle in order to prevent undue detention of vehicle helplessly at the behest of the said opposite party No. 1 pays the tax under protest". There is nothing on record either contemporaneously or even thereafter to the aforesaid effect.

7. The learned Counsel for the Revenue submits that in all such cases tax is paid by the carrier without raising any protest or dispute. This court is not in a position to say that the aforesaid contention of the Revenue is without any substance.

8. In this context, learned Counsel for the petitioner, has relied on a judgment of this court in the case of Sri Vinayak Store v. Sales Tax Officer reported in [1992] 86 STC 423 (ORI), where in somewhat similar circumstances a Division Bench of this court held that some kind of adjudication is required and some notice is liable to be given unless there are compelling reasons to hold otherwise. There is some distinction between the said judgment and the instant case as some distinguishing facts exist in the present case. When the judgment in Sri Vinayak Store''s case [1992] 86 STC 423 (ORI)was rendered by a Division Bench of this court on November 11, 1991, neither the Orissa Value Added Tax Act nor the Rules made thereunder existed. The requirement of furnishing TIN form was not there at that time. Undisputedly under the present legal dispensation under VAT regime these are necessary.

9. This court finds that both the invoice and the way-bill raised by the petitioner are totally devoid of compliance with the aforesaid requirements. Despite that, this court finds that the ratio which emanates from the judgment in Sri Vinayak Store''s case [1992] 86 STC 423 (MP) is that some kind of adjudication is necessary. We respectfully subscribe to the same view. We, therefore, dispose of this writ petition with the following directions:

(1) If on examination of the consignment it is found that the waybill and the invoice are not in order and are not in compliance with the statutory requirement, a notice under Rule 80, Sub-rule (12) should be issued at the check-post itself.

This court is conscious of the provision of making payment of tax on the basis of the way-bill and the invoice. In the case of a person carrying the consignment, the same procedure may be followed and if the person waives notice and pays the tax, that may be recorded in the notice itself.

(2) If the check gate officer finds that the consignment under the invoice has to be assessed at a higher value, he has to indicate the reason for the higher valuation in the said form under Rule 80(12) of the Orissa Value Added Tax Rules, 2005. There should be something on record to show that there is at least a minimum application of mind by the authority. This court of course is not suggesting about a detailed examination at this stage.

(3) If tax is paid at the check-post, the same can be considered at the time of detailed assessment by the taxing authority.

10. With these directions, this writ petition is disposed of.

11. Misc. Case No. 5082 of 2007 is also disposed of.

