(2021) 08 OHC CK 0076

In the Orissa High Court

Case No : Writ Petition (Civil) No. 413 Of 2008

Larsen & Toubro Limited — APPELLANT

Vs

State Of Odisha And Others — RESPONDENT

Date of Decision : 18-08-2021

Acts Referred:

Constitution of India, 1950 — Article 265
Odisha Sales Tax Act, 1947 — Section 5(2)(AA)(i), 29
Orissa Sales Tax (Amendment) Rules, 2010 — Rule 4B

Citation : (2021) 08 OHC CK 0076

Hon'ble Judges : Dr. S. Muralidhar, CJ;B. P. Routray, J

Bench : Division Bench

Advocate : Satyajit Mohanty, Sunil Mishra

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, CJ

1. This is the second round of litigation concerning the Petitionerâ??s assessment under the Orissa Sales Tax Act, 1947 (OST Act) for the period

2004-2005.

2. In the first round of litigation the Petitioner had filed writ petition i.e. W.P.(C) No.94 of 2007 and 2774 of 2007. A common judgment was passed in

both the writ petitions setting aside the assessment on the short ground that the law on works contract has undergone change and that unless there is a

specific rule framed under Section 29 of the OST Act for assessment of works contract under the OST Act, there should be no assessment of liability

of sales tax on works contract in terms of Section 5(2)(AA)(i) of the OST Act. Accordingly, the said writ petition was disposed of with the following

directions:

Â â??18. It is well settled principle that in matters of taxation either the Statute or the Rules framed under the Statute must cover the entire filed. Taxation by way of

administrative instructions which are not backed by any authority or law is unreasonable and is contrary to Articles 265 of the Constitution of India. Therefore, the

impugned Circulars are set aside as also the impugned orders of assessment. The assesseeâ??s liability to pay tax remains but in order to assess that State has to act

in accordance with the statutory prescription by framing Rules under its rule making power under Section 29 of the Act and the assessing authority can pass fresh

orders of assessment on the basis of such statutory rules.â??

3. It transpires that within a month of the said judgment on 20th November, 2007 the following impugned notice was issued to the Petitioner by the

Sales Tax Officer, Bhadrak Circle, Bhadrak:

â??Sub: Production of books of accounts for the period 2004-05 under O.S.T. Act for reassessment as per judgment of the Honâ??ble High Court of Orissa, Cuttack.

The Honâ??ble High Court of Orissa, Cuttack in W.P.(C) No.94 of 2007 and No.2774 of 2007 has directed to reassess the case. You are therefore required to appear in

person or through authorized agent with accounts and documents for 2004-05 in my Office at Bhadrak on dt. 30.11.2007 at about 11 AM for reassessment, failing

which action will be taken as per provisions of law.â??

4. Since the above notice was issued even without rules being framed as directed by this Court, the Petitioner has filed the present petition in which

we directed notice to be issued to the Opposite Parties. This Court on 5th February, 2008 directed that no further steps shall be taken against the

Petitioner pursuant to the aforementioned letter dated 20th November, 2007. Thereafter the petition was adjourned on several occasions awaiting

framing of Rules by the Opposite Parties.

5. The following order was passed by this Court on 10th November, 2009:

â??Heard learned counsel for the petitioner and learned counsel for the State.

Learned State Counsel is directed to obtain instruction from the Finance Department in terms of our earlier dated 8.10.2009 regarding the decision taken in pursuance of the letter dated 22.5.2008 on the next date, failing which this Court will be constrained to direct for personal appearance of the Secretary to Government in Finance

Department, as despite several adjournments of this case, he failed to provide instruction to the State Counsel.

Put up this matter on 24th November, 2009. Interim order passed earlier shall continue till the next date.â??

6. Today, when the matter was called out, Mr. Sunil Mishra, learned Additional Standing Counsel for the Opposite Party produced a copy of the

notification dated 6th February, 2010 issued by the Finance Department, Government of Odisha publishing the Orissa Sales Tax (Amendment) Rules,

2010. It purports to make Rule 4-B effective retrospectively from 30th July, 1999 and the remaining rules from 25th February, 2009.

7. Mr. S. Mohanty, learned counsel for the Petitioner states that since the Rules have been made only subsequent to the impugned notice the latter is

not sustainable in law. Further he reserves the right of the Petitioner to challenge the aforementioned Rules in accordance with law.

8. Mr. Mishra, learned Additional Standing Counsel for the Opposite Parties states that since the Rules have now been made, the Opposite Parties

should be permitted to proceed with the assessment in terms of the judgment of the Supreme Court.

9. Having heard the submissions of learned counsel for the parties, the Court is of the view that the impugned notice dated 20th November, 2007 is

unsustainable in law since it could have been issued only after complying with the specific directions issued in para 18 of the judgment dated 11th

October, 2007. In other words, without framing the Rules as directed by the Court no fresh notice of hearing could have been issued.

10. Accordingly, while setting aside the impugned notice dated 20th November, 2007 and permitting the Opposite Parties to issue a fresh notice of

hearing in light of the Rules notified on 6th February, 2010, the Court permits the Petitioner to raise all defences it has both in relation to such

reassessment as well as validity of the Rules. It is clarified that it will be open to the Petitioner to raise the issue of limitation for making such

assessment as well. This Court clarifies that it has not expressed any opinion on the case of either party on merits.

11. The impugned notification is accordingly set aside and the writ petition is

disposed of in the above terms.

12. An urgent certified copy of this order be issued as per rules.

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