(2015) 02 OHC CK 0039

In the Orissa High Court

Case No : O.J.C. Nos. 13383, 13382 and 7206 of 1999, 5327, 5316 and 3620 of 1996, 9650 of 1998 and STREV Nos. 80, 81, 82, 83, 84 and 85 of 2010

Manisha Enterprises and Others APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Citation : (2015) 120 CLT 37 : (2015) 1 ILR Ori 637 : (2015) 1 OLR 737 : (2015) 81 VST 432

Hon'ble Judges : Akshaya Kumar Rath, J.;C.R. Dash, J.;Amitava Roy, J.

Bench : Full Bench

Advocate : J.M. Pattnaik, L.K. Nayak and D. Mohanty, for the Appellant; R.P. Kar, SC (Commercial Taxes), Advocates for the Respondent

Judgement

C.R. Dash, J.—In M/s. Manisha Enterprises vrs. State of Orissa and others (O.J.C. No. 13383 of 1999), one Division Bench of this Court had the occasion to consider two earlier decisions rendered by this Court in the case of State of Orissa vrs. M/s. Sahoo Traders (S.J.C. No. 27 of 1990 disposed of on 22.12.1994) and Tilakraj Mediratta vrs. State of Orissa, (1992) 86 STC 453. Said Division Bench, vide order dated 02.11.2000 has referred the matter for decision by the Larger Bench with the following observation:--

"We have carefully perused the decisions rendered in both the cases and there appears to be conflict in opinion. It is therefore necessary to resolve the controversy by a Larger Bench in the interest of justice." The Reference therefore centers round the basic premise that there is conflict of opinion in the decisions rendered in both the aforesaid cases.

2. The background fact, which requires reproduction for resolving the dispute is as follows:--

"Pending Second Appeal before the Sales Tax Tribunal, the petitioner in O.J.C.

No. 13383 of 1999, i.e. M/s. Manisha Enterprises moved the Additional Commissioner of Commercial Taxes, Northern Zone, Orissa, Sambalpur for grant of stay against the demand in Revision Case No. II AST - 132/98-99. The Revision having been dismissed vide order dated 10.05.1999, the petitioner came up with the aforesaid writ petition, i.e. O.J.C. No. 13383 of 1999 challenging the validity of the aforesaid order." 3. The petitioner M/s. Manisha Enterprises is a proprietorship concern carrying on business in salt, rice-bran, edible oil, oil-cake, etc. Originally assessment of the year 1994-95 was completed under Section 12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as ''the Act'' for short) as per the assessment order dated 22.02.1996. On the allegation that some portion of the turnover of the petitioner escaped assessment, the Sales Tax Officer started proceeding under Section 12 (8) of the Act. Despite notice, the petitioner did not appear. Consequently, the Sales Tax Officer proceeded ex parte on the basis of the materials available on record, and by order dated 30.08.1997 raised an extra demand of Rs. 41,635/-. According to the Sales Tax Officer, during the material period the petitioner effected purchase of rice-bran worth Rs. 8,91,164.97p. from the registered dealers free of tax on the strength of Declaration Form XXXIV with clear stipulation in the declaration for resale thereof inside the State of Orissa in a manner so that such resale would be subject to tax under the Act. The petitioner, however, in alleged contravention of Section 5(2)(A)(a)(ii) of the Act sold the same to S.S.I. Units free of tax against the Declaration Form 1-D thereby attracting the tax liability as envisaged in the second proviso prescribed therein. Against the aforesaid order made under Section 12 (8) of the Act, the petitioner M/s. Manisha Enterprises filed Sales Tax Appeal Case No. AA 47(SA-II) of 1997-98 before the Assistant Commissioner of Commercial Tax, Sambalpur Range, Sambalpur, who, vide order dated 17.12.1998 dismissed the appeal. The petitioner thereafter filed Second Appeal before the Sales Tax Tribunal, Orissa and moved the revisional authority for stay. Stay having been refused, as already indicated, the petitioner moved this Court in O.J.C. No. 13383 of 1999.

The contention of the petitioner is that, rice-bran were sold to the tax exempted units, for which no sales tax was collected and, therefore, there was no justification for extra demand in assessment under Section 12 (8) of the Act. The revisional authority rejected the aforesaid contention relying on the judgment of this Court in State of Orissa vrs. M/s. Sahoo Traders, S.J.C. No. 27 of 1990 disposed of on 22.12.1994, wherein it is held as follows:--

"The question that arises for consideration is when the selling dealer purchases goods by giving declaration in form XXXIV and then sells the same to another registered dealer but that purchasing dealer is entitled to certain tax concession for certain period and produces the declaration form in Form 1-A, whether the selling dealer contravenes the declaration given by it. Xx. But in interpreting a particular provision, when the language of the provisions is clear and unambiguous, it is not for the Court to search for any hidden intention. Xx. Bearing in mind the aforesaid well settled principles of interpretation of statute and on examining the facts and circumstances of the present case, we answer the question posed by holding that the assessee violated and contravened the provision of section 5(2)(A)(a)(ii) of the Act and there has been a contravention of the declaration given by him. The question is answered in favour of the revenue and against the assessee." Learned counsel for the petitioner in the aforesaid O.J.C. (O.J.C. No. 13383 of 1999) submitted that the decision of this Court in the case of M/s. Sahoo Traders (supra) runs counter to another decision of this Court rendered in Tilakraj Mediratta vrs. State of Orissa, (1992) 86 STC 453, wherein it is held as follows:--

"Under Section 5(2)(A)(a)(i) the sale of any goods notified from time to time as tax-free under Section 6 is deducted from the gross turnover of a selling dealer for the purpose of computation of taxable turnover. In other words, a selling dealer who produces evidence to show that it has sold goods covered by notification issued under section 6 and the conditions and exceptions are complied with, is entitled to a deductions while its taxable turnover is computed. The selling dealer in order to be entitled to the deduction has to produce at the time of assessment the declaration Form 1-A which it has obtained from the purchasing dealer. In the instant case, there is no dispute that the purchasing dealer had issued Form 1-A to the petitioner. It is also not disputed that the certification of the Unit is in terms of the requirement of entry 26-A of the list of exempted goods. According to the department, if the goods have not been utilized for the purpose indicated in the declarations, deduction to the selling dealer is not to be allowed. In our view, the stand is fallacious. It is not for the selling dealer to go after the purchasing dealer to find out as to in what manner he utilized the goods which it has purchased on the strength of the declaration forms in order to be entitled to the deduction. Such a requirement would fasten an impossible burden on the selling dealer. The question, however, has rightly been posed by the learned counsel for the department that if there is misuse, on whom the department shall lay its hands. It is the purchasing dealer who is getting exemption on fulfillment of certain conditions. Therefore, if goods purchased on the basis of the declaration are put to a different use the benefit of exemption is to be denied to it. The selling dealer cannot be faulted if there is any diversion or change of user. In this connection, the fifth proviso to subsection (1) of section 5 of the Act is relevant, and has application.

Therefore, in our view the authorities were not correct in taxing the petitioner for any alleged change in user of the goods purchased by issue of Form 1-A by the purchasing dealer. It is open to the department to appropriately levy tax on opposite party No. 7 if it is established that the goods purchased by it on the strength of Form 1-A was put to a different use or that there has been any contravention of the declaration."

On perusal of the aforesaid decisions, the Division Bench of this Court held that there appears to be conflict of opinion and referred the matter to the Larger Bench. Twelve other cases involving similar questions have been tagged subsequently and some of the cases have been referred subsequently for resolution of the same conflict of opinion.

4. We have heard Mr. J.B. Sahoo and other learned counsels for the petitioners in all the cases and Mr. R.P. Kar, learned Standing Counsel, Commercial Tax Department.

5. Perusal of the decisions in the case of State of Orissa vrs. M/s. Sahoo Traders (supra) and the decision in the case of Tilakraj Mediratta vrs. State of Orissa (supra) show that both the decisions relate to two different provisions of the Orissa Sales Tax Act, 1947. While the former relates to provision contained in Section 5(2)(A)(a)(ii) of the Act, the latter relates to Section 5(2)(A)(a)(i) of the Act. Section 5 of the Act deals with rate of tax and Section 5(2) of the Act specifies the meaning of the expression "taxable turnover". It is worthwhile to reproduce the provision of Section 5(2) for better understanding of the issue.

"5. Rate of tax -

(1) xx xx xx xx

(2)

(A) In this Act, the expression "taxable turnover" means that part of a dealer''s gross turnover during any period which remains after deducting therefrom:--

(a) his turnover during that period on -

(i) The sale of any goods notified from time to time as tax free under Section 6 and of the packing materials, if any, in respect of such goods.

(ii) sales to a registered dealer of goods specified in the purchasing dealer''s Certificate of Registration for resale by him in Orissa in a manner that such resale shall be subject to levy of tax under this Act; and on sales to a registered dealer of containers or other materials for the packing of such goods:

xx xx xx xx"

6. A cursory reading of the aforesaid provisions shows that, under Section 5(2)(A)(a)(i) of the Act the sale of any goods notified from time to time as tax free under Section 6 is deducted from the gross turnover of a selling dealer for the purpose of computation of a taxable turnover. In other words, a selling dealer, who produced evidence to show that it has sold goods covered by notification issued under Section 6 and the conditions and exceptions are complied with, is entitled to a deduction while its taxable turnover is computed. So far as Section 5(2)(A)(a)(ii) is concerned, it is found that when a selling dealer otherwise entitled to tax free purchase by giving declaration in Form XXXIV has to resell the goods in Orissa in a manner that such resell shall be subject to levy of tax under the Act. In other words, if the selling dealer in a series of sale purchases goods by giving declaration in Form XXXIV, he has to sell the same to another registered dealer in the State of Orissa in a manner that would be subject to levy

of tax under the Act.

7. In the case of Tilakraj Mediratta vrs. State of Orissa (supra) there was no dispute that the purchasing dealer had issued Form 1-A to the petitioner. It is beneficial to note here that declaration in Form 1-A is issued in respect of purchase or sale of raw materials in terms of serial No. 26-A of the Notification No. 20206-CTA-14/76-F dated the 23rd April, 1976 notifying sale of certain goods specified in the notification to be exempted from tax subject to conditions and exceptions mentioned in the notification itself. It was also not disputed that the certification of the unit is in terms of the requirement of entry 26-A of the list of exempted goods. The Commercial Tax Department raised the issue, if the goods have not been utilized for the purpose indicated in the declarations, deduction to the selling dealer is not to be allowed. Such a stand by the Department was negatived as fallacious by this Court. It was held that, it is not for the selling dealer to go after the purchasing dealer to find out as to in what manner he utilized the goods, which it has purchased on the strength of the Declaration Forms in order to be entitled to the deduction. Such a requirement would fasten an impossible burden on the selling dealer. It is the purchasing dealer, who is getting exemption on fulfillment of certain conditions. Therefore, if goods purchased on the basis of the declaration are put to a different use, the benefit of exemption is to be denied to it, i.e. the purchasing dealer. The selling dealer cannot be faulted if there is any diversion or change of user.

8. In the case of State of Orissa vrs. M/s. Sahoo Traders (supra), the question that arose for consideration is, when the selling dealer has purchased goods by giving declaration in Form XXXIV and then sells the same to another registered dealer, but that purchasing dealer is entitled to certain tax exemption for certain period and produces the declaration in Form 1-A, whether the selling dealer contravenes the declaration given by it. Adverting to the literal interpretation of the provision of Section 5(2)(A)(a)(ii) of the Act, this Court held that, in interpreting a particular provision when the language of the provision is clear and unambiguous, it is not for the Court to search for any hidden intention. It was further held that, if the selling dealer has purchased the goods in a series of sale by giving declaration in Form XXXIV and has sold the same to another registered dealer, that purchasing dealer is entitled to certain tax exemption and produces declaration in Form 1-A, then the selling dealer, who had purchased goods by giving declaration in Form XXXIV, has contravened the declaration given by it and he has violated the provision in Section 5(2)(A)(a)(ii) of the Act.

9. Both the decisions have dealt with different subjects, different texts and different provisions of the Act. The consequence that followed so far as the assessee is concerned in both the cases are different. Contextually also both the cases are different.

10. It is found that in State of Orissa vrs. M/s. Sahoo Traders (supra) this Court noticed the case of Tilakraj Mediratta vrs. State of Orissa (supra) and distinguished. In the case of State of Orissa vrs. M/s. Sahoo Traders while

distinguishing Tilakraj Mediratta vrs. State of Orissa (supra), it was held thus:--

".........The learned counsel appearing for the assessee, on the other hand, contended that if the purchasing dealer is entitled to exemption for a specified period under the provisions of the Orissa Sales Tax Act, then the sale to him tantamounts to the fact that the sale has been subject to levy of tax under the Act and, therefore, there is no contravention of the declaration given by the selling dealer. In support of this contention, reliance is placed on the bench decision of this Court in the case of Tilakraj Mediratta vrs. State of Orissa, (1992) 86 STC 453. On going through the aforesaid decision, we are of the considered opinion that the said decision is of no assistance to the present case. In the aforesaid case the question for consideration before the Court was whether the selling dealer was entitled to the deduction from his taxable turnover, if he produced evidence to show that he had sold goods in accordance with Section 5(2)(A)(a)(i) of the Orissa Sales Tax Act, or he would be held liable if the purchasing dealer made a contravention after purchasing the goods and the answer had been in favour of the assessees, who was the selling dealer. But, in the case in hand, the said question really does not arise for consideration. On a plain literal and grammatical meaning being given to the provisions contained in Section 5(2)(A)(a)(ii), the conclusion is irresistible that if the dealer purchases goods by using declaration in Form XXXIV and then resells the same to another registered dealer, but that transaction is not leviable to tax because of tax concession being enjoyed by the said purchasing dealer, it would be a contravention of the declaration given in Form XXXIV as well as the provisions of Section 5(2)(A)(a)(ii) of the Act.........". It is clear from the aforesaid observation that the case of Tilakraj Mediratta vrs. State of Orissa (supra) was placed before this Court in the case of State of Orissa vrs. M/s. Sahoo Traders (supra) to substantiate the contention that if the purchasing dealer from a seller, who has given declaration in Form XXXIV, is entitled to exemption for a specific period under the provisions of the Act, then the sale to him tantamounts to a sale that has been subject to levy of tax under the Act and, therefore, there is no contravention of the declaration given by the selling dealer in Form XXXIV. Same is the contention raised by Mr. J.B. Sahoo and other learned counsels appearing for the petitioners in the present cases, and relying on a catena of decisions, which we do not feel inclined to reproduce here for the sake of brevity, have contended that this Court in State of Orissa vrs. M/s. Sahoo Traders (supra) has not correctly decided the issue.

Whether the case State of Orissa vrs. M/s. Sahoo Traders (supra) has been correctly decided, is a question beyond the reference. The reference has been made on the supposition that there is conflict of opinion in State of Orissa vrs. M/s. Sahoo Traders (supra) and Tilakraj Mediratta vrs. State of Orissa (supra). We have to see whether there is any conflict of opinion and find out if there is conflict of opinion, which of the decisions holds the field. We have already held in paragraph-9 of the judgment that both the decisions have dealt with different subjects, different texts and different provisions of the Act and they are contextually different. In view of such fact, we do not feel inclined to delve into the question, for the time being, beyond the reference to resolve as to whether State of Orissa vrs. M/s. Sahoo Traders (supra) has been correctly decided.

11. In 1996 a Division Bench of this Court, in the case of M/s. Anand Steels vrs. State of Orissa and others, (O.J.C. No. 44393 of 1995, disposed of on 05.07.1996) had the occasion to be confronted with the issue that there is conflict in the view expressed in State of Orissa vrs. M/s. Sahoo Traders (supra) and Tilakraj Mediratta vrs. State of Orissa (supra).

In paragraph-5 of the judgment in M/s. Anand Steels vrs. State of Orissa and others (supra), after thorough discussion of the two decisions, both in State of Orissa vrs. M/s. Sahoo Traders (supra) and Tilakraj Mediratta vrs. State of Orissa (supra) and the relevant provisions of the Act, this Court held that the disputes involved in the two cases were contextually different and there was no conflict in the view expressed.

Further it was urged before this Court in M/s. Anand Steels vrs. State of Orissa and others (supra) that certain observations were made in the case of Tilakraj Mediratta (supra) about true import of Section 5 (2)(A)(a)(ii), which was not considered in the case of M/s. Sahoo Traders (supra) and, therefore, a fresh look is necessary. This Court relying on various English decisions held thus:--

".........Judgments cannot be construed as statues. To interpret the words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statute........." 12. We find that the judgment of this Court in the case of M/s. Anand Steels vrs. State of Orissa and others (supra) was not brought to the notice of the Referring Bench at the time of consideration for making the reference.

13. Taking into consideration the provisions of the Act, as contained in Section 5 (2)(A)(a)(i) and Section 5(2)(A)(a)(ii) and decisions in the case of State of Orissa vrs. M/s. Sahoo Traders (supra) and Tilakraj Mediratta vrs. State of Orissa (supra), we are of the considered view that there is no conflict of opinion in the decisions rendered by this Court in both the aforesaid cases, i.e. State of Orissa vrs. M/s. Sahoo Traders (S.J.C. No. 27 of 1990, disposed of on 22.12.1994) and Tilakraj Mediratta vrs. State of Orissa, (1992) 86 STC 453 (Ori).

The Reference is answered accordingly.

Amitava Roy, C.J.

I agree.

Dr. Akshaya Kumar Rath, J.

I agree.

