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(2011) 09 OHC CK 0029

In the Orissa High Court

Case No : Writ Petition (C) No. 23389 of 2011

M/s. Bateman Engineering (India) Pvt. Ltd. APPELLANT

Vs

State of Orissa and others RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Central Sales Tax (Orissa) Rules, 1957 — Rule 12, 12(1), 12(7), 7, 7A
Central Sales Tax Act, 1956 — Section 3, 5, 6(2), 6A, 7A
Orissa Value Added Tax Act, 2004 — Section 51

Citation : (2011) 09 OHC CK 0029

Hon'ble Judges : V. Gopala Gowda, J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : S.C. Lal and M/s. S. Lal, D. Das, S. Lal and M. Agrawal, for the Appellant; R.P. Kar for Revenue, for the Respondent

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—In the present writ petition though several reliefs have been prayed for, Mr. S.C. Lal, learned Senior Advocate appearing on behalf of the Petitioner has confined his argument to the following three reliefs:

(i) To quash the impugned orders of provisional assessment dated 20.04.2011 passed under Rule 12(1)(b) of the Central Sales Tax (Orissa) Rules, 1957, [for short, "CST(O) Rules"] under Annexure-3 series for the quarters March, June and September, 2010 and the demand raised thereunder;

(ii) To quash the notice dated 27.07.2011 issued under Annexure-5 in terms of Section 51 of the Orissa Value Added Tax Act, 2004 (for short, ''OVAT Act"), for special mode of recovery of the tax demanded under Annexure-3 series; and

(iii) To issue a writ of mandamus directing opposite party No. 3-Deputy Commissioner of Sales Tax, Barbil Circle, Barbil to consider the effect of filing of the wanting ''C Forms under Rule 12(1)(a) and (b) of the CST (O) Rules.

2. The Petitioner''s case in a nutshell is that the Petitioner company is a

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registered dealer under the OVAT Act carrying on the business of works contract at Joda. It has entered into an agreement with M/s. TATA Steel Ltd., (for short, ''TATA'') for carrying out the works contract of material handling system for handling iron ore dispatch for 6.8 and 10 MTPA expansion at Joda Iron Ore Mines. The Petitioner company as per agreement in certification of TATA had procured plants and machinery by way of purchase in course of interstate trade and commerce from outside States on payment of Central Sales Tax. While the said goods were in course of transit, the Petitioner sold the said goods to TATA on the basis of transfer of documents u/s 6(2) of the Central Sales Tax Act, 1956 (for short, ''CST Act''). As per the requirement of Section 6(2) of the CST Act, the purchasing dealer i.e. TATA is obliged to furnish the declaration forms ''C to the Petitioner so that the Petitioner can avail the tax exemption for the said subsequent sale effected by it to TATA. As per Rule 7 of the CST (O) Rules, the Petitioner is mandatorily required to submit its quarterly return in Form-I showing the tax payable for the sales effected in course of inter-state trade and commerce and transactions done under Sections 3, 5, 6A and 8 of the CST Act during such quarter. As per Rule 7A, the Petitioner is supposed to enclose the declaration forms along with the return. The Petitioner had submitted its quarterly returns for the Quarters March, June and September 2010 on 16.11.2010 before opposite party No. 3, but while submitting the returns, the Petitioner could not submit the declaration form ''C as the purchaser i.e. TATA had not handed over the said declarations form to the Petitioner. On receiving the returns, opposite party No. 3 sent three notices in Form II-B dated 11.03.2011 for the aforesaid three quarters calling upon the Petitioner to furnish the wanting declaration forms/certificates by 11.04.2011. On 11.04.2011, the Petitioner sought for an adjournment for submitting the wanting declaration forms. The case was fixed to 17.04.2011 by opposite party No. 3. Subsequently, time was granted till 20.04.2011. On 20.04.2011, the representative of the Petitioner submitted a reply to the show cause notice stating therein that ''C forms had not been collected and the same would be produced before the audit assessment is taken up. Opposite party No. 3 had rejected the petition dated 20.04.2011 and passed provisional assessment orders on the same day, i.e., 20.04.2011 under Rule 12(1)(b) of the said Rules under Annexure-3 series raising a tax demand of Rs. 1,29,59,491/- for the quarters of the year 2010-2011. Subsequent to the demand raised on the basis of the provisional assessment orders, opposite party No. 3 has issued notice (Annexure-5) u/s 51 of the OVAT Act for realization of the tax demanded under Annexure-3 series. Hence, the present writ petition.

3. Mr. S.C. Lal, learned Senior Advocate appearing on behalf of the Petitioner submits that due to non-supply of ''C declaration forms by opposite party No. 3 to TATA, who in turn was to give the same to the Petitioner, the Petitioner could not furnish the ''C Forms. Thus, opposite party No. 3 was fully aware of the fact that he had not supplied ''C'' forms to TATA, as a result of which TATA was not able to supply the said forms to the Petitioner. It is submitted that without giving

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sufficient opportunity to the Petitioner in terms of language and spirit of proviso to Rule 12(1)(b) of CST (O) Rules opposite party No. 3 has rejected the Petitioner''s application dated 20.04.2011 filed before him seeking time till taking up the audit assessment for production of ''C forms. The aforesaid conduct of opposite party No. 3 smacks of mala fides. The Assessing Authority arbitrarily completed the provisional assessment and raised huge tax demand hurriedly even though no time limit is provided in the Statute for passing provisional order of assessment. After completion of the provisional assessment, opposite party No. 3 had issued ''C declaration forms to TATA on 02.07.2011 and in turn TATA had handed over the ''C'' forms covering the transactions of subsequent sale u/s 6(2) to the Petitioner. The Petitioner, thereafter, submitted the said ''C forms before opposite party No. 3 on 16.07.2011. Thus, the Petitioner has submitted all the ''C'' forms as pointed out by opposite party No. 3 in the Notice in Form II-B under Annexure-1 series. Thus, there was sufficient cause which prevented the Petitioner from producing the ''C forms along with the return. Opposite party No. 3 has acted in a most arbitrary manner and in haste. The action of the Assessing Officer is against the rules of fair play and principles of natural justice. In the meantime, the required ''C'' forms having been filed for the quarters March, June and September, 2010 before the Assessing Authority, there would not be any liability to pay central sales tax and therefore, the provisional orders of assessment passed under Annexure-3 series are liable to be quashed.

4. Per contra, Mr. R.P. Kar, learned Standing Counsel appearing on the behalf of the Revenue, submits that sufficient opportunity is provided under Rule 12(7) of the CST (R and T) Rules and under Rule 7(A) and Rule 12(1)(b) of the CST (O) Rules to a dealer to submit declaration forms/certificates. Despite the same, the Petitioner-dealer having failed to file the declaration forms, opposite party No. 3 has rightly passed the provisional order of assessment under Annexure-3 series after granting some further time. There is no infirmity or illegality in passing the impugned orders of provisional assessment. Therefore, Mr. Kar, prays for dismissal of the writ petition.

5. On the rival contentions of the parties, the question that falls for consideration by this Court is as to whether there was sufficient cause for permitting further time to the Petitioner-dealer for furnishing the required declaration forms/ certificates and opposite party No. 3 is not justified in passing the provisional orders of assessment dated 20.04.2011 under Annexure-3 series.

6. To deal with the above question, it is necessary to know what is contemplated in Sub-rule (7) of Rule 12 of the CST (R and T) Rules, 1957 and Rule 7-A(1) and Rule 12(1)(b) of the CST (O) Rules, 1957. The relevant portions of the above provisions are quoted below:

CST (R and T) Rules. 1957

Rule 12.(7)- The declaration in Form ''C'' or Form ''F'' or the certificate in Form ''E-1'' or Form ''E-II'' shall be furnished to the prescribed authority within three

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months after the end of the period to which the declaration or the certificate relates:

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit.

CST(O) Rules. 1957

Rule 7.A Statements and declaration forms/ certificates.-

(1) Every registered dealer, while filing return under Rule 7, for the month/ quarter ending on 30th of June, 30th of September, 31st of December and 31st of March every year, shall furnish to the Assessing Authority, the declaration and/ or certificates as referred to in Sub-rule (7) of the Rule 12 of the CST (R and T) Rules, received from the purchasing dealers/transferees for the transactions made in the quarter preceding to the quarter for which the return is filed as above showing the particulars of transactions in the statement of Form C, E-I/E-II, F, H, I and J as applicable.

Rule 12. Assessment.-

(1)(a) xx xx xxx

(b) In cases where any or more of the conditions as mentioned in Clause (a) above is not fulfilled, the assessing authority shall proceed to asses the tax due provisionally, giving due opportunity to the dealer, on account of -

(i) declaration forms/certificates not furnished in support of claim for exemption, deduction and/or concession claimed in the return(s); or the declaration(s) and/ or certificate (s) so furnished being not in order/incomplete/defective;

(ii) arithmetical mistake apparent on the face of such return (s) resulting in less payment of tax, and/ or

(iii) the return(s) so furnished being not in order/incomplete/incorrect:

Provided that, in case of failure to furnish the declaration and certificates as required under Sub-section (4) of Section 8 of the Act, the Assessing Authority may, for sufficient cause, permit such further time to the dealer for furnishing the required declaration forms/certificates.

7. Though specific time has been provided under Rule 12(7) of the CST (R and T) Rules, as well as in Rule 7A of the CST (O) Rules, under proviso to Rule 12(7) of the CST (R and T) Rules and proviso to Rule 12(1)(b), power is vested with the Prescribed/Assessing Authority to allow such declaration forms/certificates to be furnished within such further time as that authority may permit on being satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration forms/certificates within the time prescribed in the said Rules.

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8. The facts which are not in dispute are that the Petitioner has submitted its quarterly return for the quarters of March, June, September, 2010 on 16.11.2010 before opposite party No. 3. The Petitioner did not submit the declaration Form ''C'' within the time stipulated in Rule 12(7) of CST (R&T) Rules and Rule 7A of the CST(O) Rules. On receiving three returns, opposite party No. 3 sent three notices in Form II-B dated 11.03.2011 for the said three quarters, calling upon the Petitioner to furnish the wanting declaration forms/certificates by 11.04.2011. On 11.04.2011, the Petitioner sought for an adjournment for submitting the wanting declaration forms and time was allowed till 17.04.2011. Again the time was allowed till 20.04.2011. On 20.04.2011, the representative of the Petitioner submitted a reply to the show cause notice along with a time petition. In the said show cause reply, the representative of the Petitioner specifically stated that the ''C forms had not been collected and the same will be produced before him without fail prior to taking up the audit assessment. The said petition dated 20.04.2011 was rejected by opposite party No. 3. According to the Petitioner, though there were sufficient cause for not furnishing the declaration forms/certificates within the time provided under Rule 12(7) of the CST (R and T) Rules, 1957 and Rule 7A of the CST (O) Rules, without permitting further time to the Petitioner to furnish the required declaration forms/ certificates, the Assessing Authority passed the provisional orders of assessment hurriedly under Rule 12(1)(b) of CST(O) Rules.

9. In our view, opposite party No. 3 is justified in rejecting the petition dated 20.04.2011 wherein a prayer had been made to allow time for furnishing declaration form till audit assessment is taken up. Under the OVAT Act, CST Act and OET Act and Rules made thereunder, there is no provision for making the audit assessment for every tax period in respect of all the registered dealers. Therefore, if the contention of Mr. Lal, learned Senior Advocate would be accepted then in many cases where no audit assessment is made, tax due to the Government on account of non-furnishing of declaration forms by the registered dealer cannot be collected/realized.

10. Further contention of Mr. Lal is that since no limitation has been prescribed to complete the provisional assessment, opposite party No. 3-Assessing Authority should not have hurriedly completed the provisional assessment and for that purpose he also should have not insisted production of declaration forms. Such a proposition of Mr. Lal is not tenable for acceptance by this Court.

11. If statute does not provide period of limitation for completing provisional assessment under Rule 12(1)(b) of the CST(O) Rules, that does not mean that the assessment should not be made for indefinite period. The provisional assessment must be completed within reasonable time.

The Hon''ble Supreme Court in the case of Corporation Bank and Another Vs. Navin J. Shah, held as under:

12. We may further notice that there is another strong reason as to why the

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claim made by the Respondent should not have been granted. The transactions in question took place in the years 1979 and 1981. The difficulties in realisation of the amounts due from the consignee also became clear at the time when the claim was made before the Corporation and the claim had been made as early as on December 19, 1982. The petition before the Commission was filed on September 25, 1992 that is clearly a decade after a claim had been made before the Corporation. A claim could not have been filed by the Respondent at this instance of time. Indeed at the relevant time there was no period of limitation under the Consumer Protection Act to prefer a claim before the Commission but that does not mean that the claim could be made even after unreasonably long delay. The Commission has rejected this contention by a wholly wrong approach in taking into consideration that foreign exchange payable to Reserve Bank of India was still due and, therefore, the claim is alive. The claim of the Respondent is from the bank. At any rate, as stated earlier, when the claim was made for indemnifying the losses suffered from the Corporation, it was clear to the parties about the futility of awaiting any longer for collecting such amounts from the foreign bank. In those circumstances, the claim, if at all was to be made, ought to have been made within a reasonable time thereafter. What is reasonable time to lay a claim depends upon facts of each case. In the legislative wisdom, three years period has been prescribed as the reasonable time under the Limitation Act to lay a claim for money. We think, that period should be the appropriate standard adopted for computing reasonable time to raise a claim in a matter of this nature. For this reason also we find the claim made by the Respondent ought to have been rejected by the Commission.

12. As stated above, the provisional assessment ought to have been made within a reasonable time and therefore, the assessing authority is fully justified to insist the dealer-Petitioner to furnish declaration forms on the basis of periodical return filed when the declaration forms were not filed within the time allowed under the Rule 12(7) of CST (R&T) Rules and Rule 7A of CST (O) Rules.

13. The above contention of Mr. Lal also can be looked at from another angle. Under Rule 12(7) of the CST (R and T) Rules, 1957 and Rule 7A of the CST (O) Rules, time is specified for furnishing declaration forms. It is only Rule 12(7) of the CST (R and T) Rules, provides that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause for furnishing such declaration forms/certificates within the time provided, such authority may allow further time to furnish the declaration forms. Similarly, proviso to Rule 12(1)(b) of the CST (O) Rules, 1957, provides that before making provisional assessment the Assessing Authority may permit such further time to the dealer to furnish the said declaration forms/certificates. Therefore, merely because no time is provided for passing the provisional assessment order under Rule 12(1)(b), on that ground time cannot be allowed indefinitely to a dealer to file required declaration forms/certificates. It is only where there is sufficient cause for not filing the declaration forms within the prescribed time, further time shall be allowed by the Assessing Authority to furnish declaration forms/certificates.

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14. Now, the other contention of Mr. Lal for not furnishing the statutory declaration forms/certificates within the time allowed under Rule 12(7) of CST (R and T) Rules, Rule 7A and under proviso to Rule 12(1)(b) of CST (O) Rules before the assessing authority is to be examined to find out as to whether the Petitioner was prevented by sufficient cause from furnishing required declaration forms/certificates before the Assessing Authority.

15. The other reason given by Mr. S. Lal for not furnishing ''C'' declaration forms within the time stipulated under the above relevant Rules is that the Petitioner had to get the declaration forms from TATA and TATA was a dealer under the jurisdiction of opposite party No. 3. Opposite party No. 3 was fully aware of the fact that he had not supplied ''C'' declaration forms to TATA. Therefore, TATA was not able to supply the declaration forms to the Petitioner till the provisional assessment order was made. Opposite party No. 3 had issued ''C'' forms to TATA on 02.07.2011 and in turn TATA had handed over the said ''C'' forms to the Petitioner covering the transactions of subsequent sale u/s 6(2) for which returns were filed by the Petitioner. The Petitioner in turn had submitted the said ''C'' forms before opposite party No. 3 on 16.07.2011. The said fact has not been disputed by Mr. Kar, learned Standing Counsel appearing on behalf of the Revenue. Thus, the Petitioner has submitted all the ''C'' forms as pointed out by opposite party No. 3 in the Notice in Form II-B under Annexure-1 series after receiving the declaration ''C'' Forms from TATA.

16. In the above peculiar circumstances, it cannot be said that there was no sufficient cause for the Petitioner for not furnishing the declaration forms within the time provided under Rule 12(7) of CST (R and T) Rules and Rule 7A of CST (O) Rules and by the time the provisional assessment was passed under Annexure-3 series.

17. It may be noted that non-furnishing of declaration forms by the purchasing dealer to the selling dealer cannot always constitute a sufficient cause to permit the selling dealer further time for furnishing the required declaration forms/ certificates. What is sufficient cause to permit further time to the selling dealer for furnishing the required declaration forms/certificates depends upon facts of each case.

18. Under proviso to Rule 12(7) of the CST (R and T) Rules as well as proviso to Rule 12(1)(b) of the CST (O) Rules discretion is vested with the Prescribed/ Assessing Authority to permit further time to a dealer to file declaration forms/ certificates. Needless to say that any discretion vested with the Quasi Judicial, Judicial and Administrative Authorities should be exercised judiciously. The discretion vested with the Prescribed/Assessing Authority to permit further time to the dealer for furnishing the required declaration forms/certificates for sufficient cause, must be exercised fairly and bona fide and must answer the test of reasonableness.

19. The Hon''ble Supreme Court in Clariant International Ltd. and Another Vs.

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Securities and Exchange Board of India, , held as under:

26. The Board, further, having a discretionary jurisdiction must exercise the same strictly in accordance with law and judiciously. Such discretion must be a sound exercise in law. The discretionary jurisdiction, it is well known, although may be of wide amplitude as the expression "as it deems fit" has been used but in view of the fact that civil consequences would ensue by reason thereof, the same must be exercised fairly and bona fide. The discretion so exercised is subject to appeal as also judicial review, and, thus, must also answer the test of reasonableness.

20. The Hon''ble Supreme Court in Narendra Singh Vs. Chhotey Singh and Another, , held that discretionary jurisdiction has to be exercised keeping in view the purpose for which it is conferred, the object sought to be achieved and the reasons for granting such wide discretion.

21. In the instant case, opposite party No. 3 being aware of the fact that he himself had not issued the declaration forms to TATA from whom the Petitioner is to obtain the said forms to furnish before him, he should not have rejected the Petitioner''s application dated 20.04.2011 and passed the provisional order of assessment on the very same day. This action of opposite party No. 3 is not certainly fair and reasonable and in consonance with the provisions of Rule 12(7) of the CST (R and T) Rules and 12(1)(b) of the CST (O) Rules.

22. In view of the above, the provisional assessment orders passed under Annexure-3 series and notice issued in terms of Section 51 of OVAT Act under Annexure-5 are quashed. Opposite party No. 3 is directed to examine the Petitioner''s claim of sale u/s 6(2) of the CST Act in accordance with law taking into consideration the declaration forms/certificates produced by the dealer-Petitioner and pass appropriate orders.

23. With the aforesaid observation/direction, the writ petition is allowed.

No order as to costs.

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