

(2000) 08 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Review Petition No. 18 of 1999

M/s. Durga Eenterprises

APPELLANT

Vs

A.C.T.O., Ward III, Jodhpur

RESPONDENT

Date of Decision : 07-08-2000

Acts Referred:

Citation : (2001) 1 RLW 586 : (2000) 4 WLC 645 : (2001) 1 WLN 104

Hon'ble Judges : Sunil Kumar Garg, J;B.J. Shethna, J

Bench : Division Bench

Advocate : O.P. Sawhney, for the Appellant;

Judgement

Shethna, J.—Sales Tax Revision No. 281/96 filed by the petitioner M/s. Durga Enterprises was dismissed by the Taxation Tribunal, Jodhpur on 5.8.98. The said order was challenged before this court by way of writ petition no. 3214/98 on the ground that without giving an opportunity of hearing to the learned counsel for the petitioner, the matter was decided by the Tribunal.

(2). The said writ petition was dismissed by the learned Single Judge of this Court on 9.10.98 by observing that the petitioner may approach the learned Tribunal for its grievance. Instead of approaching the learned Tribunal by way of review, the petitioner approached the Division Bench of this Court by way of D.B. Special Appeal No. 1058/98 which was also dismissed by the Division Bench of this Court on 19.11 .98 by observing that the petitioner may approach !he Tribunal to reconsider the case after hearing as the Tribunal is the only competent authority to know whether the petitioner was afforded proper opportunity of hearing or not. Thereafter, the petitioner approached the Tribunal for reviewing its own order but before the said review petition was decided, the Tribunal itself was abolished. Therefore, we are called upon to review the said order passed by the Tribunal dismissing the revision petition of the petitioner.

(3). If, according to the petitioner, the Tribunal made a wrong mention in its order dated 5.8.98, then instead of challenging the same by way of writ petition

before this Court, the petitioner should have immediately approached the Tribunal by way of review and point out that without affording proper opportunity of hearing, the matter was dismissed. Instead of that, the petitioner thought it fit to challenge the said order before the learned Single Judge by way of writ petition which was dismissed on 19.10.98 with the observation that the petitioner should approach the learned Tribunal. Unfortunately, the petitioner did not rest there, instead of approaching the Tribunal by way of review immediately, it preferred to challenge the order passed by the learned Single Judge by way of special appeal before this Court and it is only after the division bench dismissed its appeal that it preferred the review petition before the Tribunal. As stated earlier, during the pendency of the review petition, the Tribunal came to be abolished. Thus, the peculiar facts are prevailing in this matter.

(4). The argument advanced by learned counsel Mr. Sawhney is that without affording an opportunity of hearing to the counsel, the matter was decided and a wrong statement was made by the learned Tribunal in its order. "We have heard the arguments and examined the material on the record."

(5). Ordinarily, when the Judge or the Judges of the Tribunal or Court makes a statement in the order that the arguments were heard and the record was examined, then in ordinary circumstances, it has to be accepted. If according to the counsel, he was not heard or the record was not examined, then it was his duty to immediately move the concerned Tribunal or Court by way of review.

(6). In the case of State of Maharashtra vs. Ramdas Shrinivas Nayak and another (1), the Hon"ble Supreme Court has observed that, "whatsoever is recorded in the judgment, it is always taken to be gospel truth. The higher courts will not allow the statement of Judges to be contradicted by statement at the Bar or by affidavit or by other evidence."

(7). In view of the above, we express our inability to agree with the submission of the learned counsel Mr. Sawhney that the Tribunal has wrongly mentioned in the order that they heard the arguments and after examining the material on the record, the matter was decided.

(8). We have carefully gone through the order dated 5.8.98 passed by the then Taxation Tribunal in Sales Tax Revision No. 281/96 and we are fully satisfied that the learned members of the Tribunal have not committed any error in making, the aforesaid statement in their order.

(9). Before parting, we must state that it would be highly improper on our part not to accept the statement made by the learned members of the Tribunal in the order dated 5.8.98 to the effect that after hearing the learned counsel for the petitioner and on perusal of the material on record, the order was passed. If we take any other view, then we would be condemning the learned members of the Tribunal behind their back which would not be proper at all.

(10). We don't find any substance or merits in this review petition. Accordingly,

it fails and is dismissed.