(1998) 11 OHC CK 0039

In the Orissa High Court

Case No : O.J.C. No''s. 13128, 13191 and 13192 of 1998

National Trading Co. APPELLANT

Vs

Sales-tax Officer and Others RESPONDENT

Date of Decision : 09-11-1998

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 14D

Citation : (1999) 1 OLR 587

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : Saroj Kumar Das, M.K. Das, K.A. Matten and A. Mohanty, for the Appellant; J. Pradhan, A.S.C. (C.T.), for the Respondent

Judgement

A. Pasayat, J.—These three writ applications are inter-linked and are disposed of by this common order.

2. The dispute relates to non-grant of refund flowing out of the appellate order passed by the Assistant Commissioner of Sales-tax, Cuttack I Range, Cuttack for three periods, i.e., assessment years 1991-92, 1992-93 and 1993-94. Grant of refund was refused purportedly in exercise of power u/s 14-D of the Orissa Sales-tax Act. 1947 (in short, the ''Act'').

3. The undisputed position is that the refund of Rs. 1,65,821/-, Rs. 36,513/- and Rs. 14,721/- for the three years respectively flows from the first appellate order. The Sales-tax Officer, Cuttack I East Circle informed the petitioner vide letter dated 22.8.1998 in respect of first two years and vide letter dated 31.7.1996 in respect of the third year (annexed as Annexure-1 to each case) that the Commissioner of Sales-tax had been pleased to withhold the refund till disposal of the second appeals filed by the State u/s 14-D of the Act.

4. According to learned counsel for petitioner, the order is indefensible as the requirements of Section 14-D of the Act have not been complied with. It is submitted by learned counsel for Revenue that mention of withholding u/s 14-D

of the Act is sufficient.

5. Orders passed by the Commissioner in respect of three years are contained in Annexure-9 to the writ application in each case. They read as follows :

OJC No. 13128 of 1998 (Assessment Year 1991-92)

"Preceding notes.

On the basis of proposal of the A.C.C.T., Cuttack-I Range in his letter at page 2/C refund of Rs. 1,65,821/- under the O.S.T. Act for the year 1991-92 may be withheld u/s 14-D of the O.S.T. Act till the disposal of 2nd appeal filed by the State.

Sd. A.C.C.T. (TRS) The 23rd Sept., 1995

Addl. Commissioner (Central Zone) Notes preceding. The refund in question may be withheld

Sd. 23.9.1995

Addl. A.C.C.T. (C.Z.) Addl. A.C.C.T. (C.Z.) Commissioner Sd. A.K. Samantray

27.9.1995 C.C.T. (O)"

O.J.C.No. 13191 of 1998 (Assessment Year 1992-93)

"Preceding notes.

Refund of Rs. 36,513/- under the O.S.T. Act for the year 1992-93 in case of M/s. National Trading Co., Malgodown, Cuttack may be withdrawn u/s 14-D of the O.S.T. Act till the disposal of 2nd appeal filed by the State as proposed by the A.C.C.T., Cuttack I Range, Cuttack in his letter at page 2/C.

Sd. A.C.C.T. (TRS) The 23rd Sept., 1995

Addl. Commissioner (Central Zone) Notes preceding. The refund in question may be withheld.

Sd. 23.9.1995 Addl. C.C.T. (C.Z.)

Commissioner Sd. A. K. Samantray

27.9.1995 C.C.T. (O), Cuttack."

OJC No. 13192 of 1998 (Assessment Year 1993-94)

"Preceding notes for kind perusal.

Grant of refund in this case may adversely affect the revenue for the reasons indicated in the notes of Spl. P.A. (marked ''A'') in the event the State eventually wins in the 2nd appeal. Hence we may withhold the refund in question till disposal of 2nd appeal filed by the State.

Sd./ 16.7.1996

I agree.

Sd. A. K. Samantray 22.7.1996 C.C.T. (O), Cuttack."

6. For bringing in operation of Section 14-D of the Act, condition precedent is that the Commissioner should be of the opinion that grant of refund is likely to adversely affect the revenue. The provision reads as follows :

"14-D. Power to withhold refund in certain cases - Where an order giving rise to a refund is the subject-matter of an appeal or further proceeding under this Act, the Commissioner may, if he is of the opinion that the grant of refund is likely to adversely affect the revenue, withhold the refund till such time as he deems proper."

Opinion has to be formed and recorded before refund is directed to be withheld. On verification of record, we find that no such opinion has been recorded by the Commissioner. Mere reference to Section 14-D of the Act would not suffice because statutory mandate is that the Commissioner must be of the ''opinion'' that grant of refund is likely to adversely affect the revenue. Opinion cannot be in vacuum, it has to form part of records.

7. ''Opinion'' means something more than mere retaining of gossip or of hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question (See Dolgobinda Paricha Vs. Nimai Charan Misra and Others,). It means ''judgment or belief based on grounds short of proof. (Concise Oxford English Dictionary). ''Opinion'' is the formal decision of Judge, an Umpire or an authority officially or statutorily called upon to consider and decide upon a difficulty or dispute. Reason or basis must exist for the opinion. It cannot be a pure subjective satisfaction on the part of the authority concerned. It cannot be a mere pretence. Reason presupposes logic. Reasons are links between materials on which the conclusion or opinion is based and the actual conclusion or opinion. Giving of reason is one of the fundamentals of good administration (Per Lord Denning, J. in Breen v. Amalgamated Engineering Union : (1971) 1 All E.R. 1148. It is the visible safeguard against possible injustice and arbitrariness. Reasons if given substitute objectivity for subjectivity. If a man is to form an opinion, and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him. (Per Lord Bramwell in Allcroft v. London (Bishom): (1891) AC 666). Mere filing of appeal or pendency of further proceeding under the Act cannot per se be a ground for withholding refund. Additionally, the Commissioner has to be of the opinion that grant of refund is likely to adversely affect the revenue. Material for such opinion must exist:, otherwise it shall be without a foundation. It has been fairly conceded by the learned counsel for the Revenue that such opinion has not been recorded by the Commissioner. Orders of the Commissioner of Sales-tax cannot be maintained on that score alone.

8. We set aside the impugned orders, i.e., Annexures-1 and 9 to each of the writ applications. The learned counsel for Revenue submitted that the Commissioner

shall deal with the matter afresh and pass appropriate orders. Let necessary action be taken within two weeks from today. A copy of our order be handed over to the learned counsel for Revenue for compliance.

The writ applications are allowed to the extent indicated above. No costs.

P.C. Naik, J.

9. I agree.

