(2001) 04 OHC CK 0019

In the Orissa High Court

Case No : O.J.C. No. 3610 of 2001

Rubbani Trading Co. APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 06-04-2001

Acts Referred:

Central Sales Tax (Orissa) Rules, 1957 — Rule 12(3), 7
Orissa Sales Tax Act, 1947 — Section 3(3)
Orissa Sales Tax Rules, 1947 — Rule 3(4), 47

Citation : (2001) 123 STC 609

Hon'ble Judges : N.Y. Hanumanthappa, C.J;L. Mohapatra, J

Bench : Division Bench

Advocate : S.K. Das, M.K. Das and A. Mohanty, for the Appellant; S.D. Das, Senior Standing Counsel (Commercial Taxes), for the Respondent

Final Decision : Dismissed

Judgement

N.Y. Hanumanthappa, C.J.—The petitioner is a registered dealer under the Orissa Sales Tax Act, 1947 and also under the Central Sales Tax Act, 1956. As the petitioner-company did not furnish the return under Rule 7 of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as "the Rules"), the Assistant Commissioner of Sales Tax, Cuttack-1 Range, Cuttack, issued a notice dated November 2, 2000 under the Rule 12(5) of the Central Sales Tax (Orissa) Rules, 1957 in form No. IV as per annexure 1 followed by annexure 7. The same is extracted hereunder :

Annexure 1

"FORM IV Schedule V--Form No. 96

Notice under Rule 12(5) of the Central Sales Tax (Orissa) Rules, 1957.

To

Rubbani Trading Co., (Dealer) Malgodown, Cuttack (Address) CUCIE 2007

(Registration number) In order to enable me to satisfy myself whether the return filed by you under Rule 7 of the Central Sales Tax (Orissa) Rules, 1957, for the quarter ending 1997-98 is correct and complete ;

Whereas you, a registered dealer under the Central Sales Tax Act, 1956, have not furnished a return under Rule 7 of the Central Sales Tax (Orissa) Rules, 1957 for the quarter ending.......................by the due date ;

You are hereby directed to attend in person or by agent at my office on February 15, 2001 at 11.00 a.m. at Bharatia Tower, Badambadi, Cuttack, and thereto produce or cause to be produced the accounts and documents specified in the below relating to your turnover for the aforesaid period (and any other evidence on which you may rely in support of the said return).

In the event of your failure to comply with all the terms of this notice I shall proceed to assess you under Rule 12(3) of the Central Sales Tax (Orissa) Rules, 1957 to the best of my judgment.

Place : Cuttack Signature : Date : 2-11-2000 Designation : Asst. Commissioner of Sales Tax, Cuttack-I Range, Cuttack. *To be omitted where a return has not been furnished."

Particulars of accounts and documents required :

(a) Books of account for the period mentioned overleaf in general and records of sales in particular.

(b) A statement showing particulars of break-up of turnover as required to be furnished in form No. I under Rule 7 if such classification has not been made in the sales register and the documents in support thereof.

(c) Accounts and documents relating to the financial transactions of your business including bank pass books for the relevant period.

(d) Proof in support of any deductions claimed."

2. Reading of the notice clearly suggests that on a failure to comply with the notice, the assessee will be made liable to assessment. Challenge is made to the same on the ground that the notice is without jurisdiction. Similar notices were issued u/s 13(5) of the Orissa Sales Tax Act, 1947 for the years 1997-98 and 1998-99 to which the petitioner filed objections and demanded for inspection of record. He requested the opposite party No. 1, Sales Tax Officer, Cuttack-I East Circle, Cuttack, for supply of the certified copy of the order. The opposite party No. 1 without disposing of the objections issued an intimation in No. 3897/CT dated November 24, 2000 fixing the date to February 22, 2001 asking the petitioner to deposit a sum of Rs. 53,54,307 for the years 1997-98 and 1998-99 (annexure 6). The petitioner received notice under Rule 12(5) of the Central Sales Tax (Orissa) Rules, 1957 for the year 1997-98 from the A.C.S.T., Cuttack-I Range, Cuttack, proposing to complete the assessment for the said year fixing the date to February 15, 2001. On February 15, 2001, the petitioner filed an

application before the opposite party No, 3 for adjournment of the case of hearing of the aforesaid assessment proceedings. Accordingly, the case was adjourned to March 21, 2001. On March 21, 2001 the petitioner filed an application for adjournment of the case before the opposite party No. 3 which is still pending. According to the petitioner, by order dated December 16, 1998, Commissioner of Sales Tax, Orissa, has delegated his power of assessment to the A.C.S.T., Cuttack-I East Circle, Cuttack. It is stated in the writ petition that the power of assessment has been given to the Sales Tax Officer and also to A.C.S.T., Cuttack-I East Circle, Cuttack. According to the petitioner, the notification dated December 16, 1998, issued by the Commissioner of Sales Tax, Orissa, Cuttack, is in conflict with the scheme of Orissa Sales Tax Act and Rules, 1947 as well as (Central Sales Tax (Registration and Turnover) Rules and Central Sales Tax (Orissa) Rules, 1957. It is found that though the Commissioner of Sales Tax, Orissa, has delegated his powers of assessment and other powers to the Assistant Commissioner of Sales Tax, Cuttack-I, East Circle, Cuttack, but the name of the authority does not appear. The delegation of powers by the Commissioner to the A.C.S.T., Cuttack-I (East Circle) not authorised either under the Act or under the Rules.

3. Shri S.K. Das, the learned counsel appearing for the petitioner has urged several points to quash the notification under annexures 1 and 7. It was also submitted that challenging similar notices writ petitions have been filed by the said petitioner which has been entertained and stay has been granted, as such interim stay be granted in this case also.

4. Shri S.D. Das, learned Standing Counsel for Revenue, submitted that there is no illegality or irregularity in issuing the notice contained at annexures 1 and 7 by the opposite parties concerned. It is not in dispute that the petitioner is aware of the procedure and also about the jurisdiction of the authorities who are to make assessment every year both under the State Act and the Central Act, in view of Section 3(3) of the Act and Rules 3(4) and 47 of the Rules, which are extracted hereunder :

Section 3(3) of the Orissa Sales Tax Act :

(3) The State Government may appoint such other persons under any prescribed designation including an Additional Commissioner and a Deputy Commissioner to assist the Commissioner and they shall exercise such powers and perform such duties as may be conferred or imposed by or under the provisions of this Act within such local area as may be assigned to them by the Commissioner."

Rule 3(4) of the Orissa Sales Tax Rules :

"3. (1) to (3) ....

(4) The State Government may, by notification in the Gazette, constitute areas into Circles over which an Assistant Commissioner of Sales Tax, a Sales Tax Officer or an Assistant Sales Tax Officer, as the Commissioner may specify, by

notification, shall exercise jurisdiction, provided that, a Sales Tax Officer exercising jurisdiction over any Circle may also exercise concurrent jurisdiction in another Circle, if so directed by the Commissioner in the notification. Provided further that such Circles may likewise be reconstituted at any time by notification in the Gazette."

Rule 47 of the Orissa Sales Tax Rules :

"47. Appeal.--(1) An appeal against an order of assessment with or without penalty u/s 12, 12-A or 12-B or an order imposing penalty under Sub-section (3) of Section 9-B or under Sub-section (3) of Section 11 or an order directing payment of interest under Subsection (4-a) of Section 12 shall lie to the following authorities :

(1) If the order is passed by an Assis- To the Assistant Com- tant Sales Tax Officer or Sales Tax missioner of Sales Officer. Tax.

(2) If the order is passed by the Assis- To the Additional Com- tant Commissioner of Sales Tax. missioner of Sales Tax.

(2) Notwithstanding anything contained in Sub-rule (1) of the rule and Sub-rule (5) of Rule 3, if the order is passed by the Assistant Commissioner of Sales Tax, Intelligence Circle (or any other Circle), the appeal shall He to the Additional Commissioner of Sales Tax."

5. As empowered u/s 3(3) of the Act a notification was issued by the Government conferring on the Assistant Commissioner of Sales Tax, Cuttack I East Circle, power to make assessment. The said notification is extracted hereunder (sic) :

Annexure 7

"Office of the Assistant Commissioner of Commercial Taxes, Cuttack I Range, Cuttack.

No. 1214/CT Dated 8-3-2001. To

Rubbani Trading Co., Malgodown, Cuttack, CUCIE - 2007.

Sub : Production of books of accounts for the year 1997-98 under the C.S.T. Act.

Your are hereby directed to produce the books of account for the year mentioned above before the undersigned in his office located at Bharatia Tower, Badambadi, Cuttack on 21-3-01 at 11 a.m. failing which the assessment for the year 1997-98 will be completed ex parts as per the provisions of law.

Sd/- Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack."

6. In view of powers conferred under Rule 3(4) of the Sales Tax Rules, powers were also delegated to other officers under annexure 8. From this, it is clear that on the date of issue of notice and notification under annexures 1 and 7 the

petitioner was aware of the delegation of power as done by the Government in the notification and also its legal position. Whether the authority has passed the order either in original capacity or in exercise of delegated powers as per Rule 47 an appeal lies to the Commissioner. The petitioner though aware of the above legal position has filed the present writ petition with a view to drag on the proceedings on the one hand and to postpone the payment of tax for a considerable period. If stay has been granted in the similar circumstances that cannot be a ground to entertain this application and grant stay. In our view, the present writ petition is misconceived.

The writ petition is without any merit and is dismissed.

L. Mohapatra, J.

7. I agree.

