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(2003) 08 OHC CK 0058

In the Orissa High Court

Case No : Writ Petition (C) No. 4717 of 2002

S. Chandra APPELLANT

Vs

Orissa Sales Tax Tribunal and Others RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:
Orissa Sales Tax Rules, 1947 — Rule 60, 60(1)

Citation : (2003) OLR 615 Supp : (2006) 143 STC 452

Hon'ble Judges : Pradip Mohanty, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : J.B. Sohoo, S. Burma, J. Mohanty, R. Sahoo and N.K. Rout, for the Appellant; M.R.T.K. Satpathy, Additional Standing Counsel (Commercial Tax), for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The petitioner filed Second Appeal Nos. 626 and 627 of 1992-93 before the Sales Tax Tribunal, Cuttack against the order dated March 30, 1991 passed by the Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur for the year 1987-88. The State of Orissa also filed Second Appeals Nos. 2054 and 2055 of 1992-93 against the said order dated March 30, 1991 of the Assistant Commissioner of Sales Tax, Sambalpur Range, for the year 1987-88. Notice of hearing of the aforesaid second appeals filed by both the petitioner and the State of Orissa were sent to the petitioner at his address at Sambalpur fixing the date of hearing to April 24, 2000. The case of the petitioner is that the business of the petitioner at Sambalpur was closed and the petitioner was at Bhubaneswar when the said notice was sent to his address at Sambalpur and his father received the same and sent the same to the petitioner at Bhubaneswar, but by the time the petitioner received the notice, the hearing of the appeals were over. Consequently, when the two appeals were heard on April 26, 2000 the representative of State was present, but the appellant was not present before the Tribunal. By order dated May 23, 2000 the Tribunal allowed the appeals of the State, but dismissed the appeals of the petitioner. The petitioner thereafter filed an application dated August 23, 2000 before the Tribunal for setting aside the said ex parte order passed by the Tribunal in Second Appeals Nos. 626 and 627 of 1992-93 on May 23, 2000 and for restoring the appeals to file. The Tribunal, however, declined to restore the appeals and dismissed the petition for restoration by order dated August 15/22, 2002. Aggrieved, the petitioner has filed this writ petition with a prayer to quash the orders dated May 23, 2000 and August 22, 2002 of the Tribunal and to direct the Tribunal to grant opportunity of hearing to the petitioner in the aforesaid Second Appeals Nos. 626 and 627 of 1992-93 and Nos. 2054 and 2055 of 1992-93.

2. Although several contentions were raised by Mr. Sahoo, learned Counsel for the petitioner, it is not necessary to go into all such contentions, as in our opinion, this writ petition can be disposed of on a consideration of the provisions of Rule 60 of the Orissa Sales Tax Rules, 1947. The said rule 60 is quoted herein below :

60. Hearing in the absence of parties.--(1) If, on the date fixed for hearing or any other date to which the hearing may be adjourned the appellant ... does not appear either in person or by his agent when the appeal .... is called for hearing, the Tribunal may decide it on merits, after hearing the respondent ... or his agent, if present.

(2) If on the date fixed for hearing or on any other date to which the hearing may be adjourned the respondent...does not appear either in person or by his agent when the appeal...is called for hearing, the Tribunal may decide the same on merits after hearing the appellant...or his agent, if present.

It will be clear from a plain reading of the said sub-rule (1) of Rule 60 that if on a date fixed for hearing the appellant does not appear either in person or by his agent when the appeal is called for hearing, the Tribunal may decide it on its own merits after hearing the respondent or his agent, if present. Thus, if the petitioner did not appear either in person or through his agent when his Second Appeals Nos. 626 and 627 of 1992-93 were called out for hearing, the Tribunal should have decided the said appeals filed by the petitioner on merits after hearing the State of Orissa or its agent. The appeals of the petitioner in Second Appeals Nos. 626 and 627 of 1992-93 were against the enhanced gross turnover and taxable turnover by Rs. 8,49,832.96 towards suppression of sale and purchase. The said appeals of the petitioner against the enhanced gross turnover and taxable turnover have not been considered by the Tribunal on merits in the impugned order dated May 23, 2000 and it is stated in paragraph 3 of the said order dated May 23, 2000 that the petitioner did not appear to pursue his appeals by production of vital evidence and books of account and this betrayed his lack of interest in the appeals filed by him.

3. Mr. Satpathy, learned Additional Standing Counsel, submitted that in paragraphs 4 and 5 of the order, the Tribunal considered the appeals of the

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petitioner on merits. We have perused paragraph 4 of the order of the Tribunal and we find that the said paragraph of the order is devoted to the contentions raised by the State in its appeals before the Tribunal that the Assistant Commissioner of Sales Tax, Sambalpur Range, had committed serious error by deleting the enhancement on account of inclusion of transportation charges collected by one C.P. Singhal. The said paragraph 4, therefore, does not relate to the appeals filed by the petitioner, but relates to the appeals filed by the State. In paragraph 5 of the said order dated May 23, 2000 the Tribunal only has held that as regards suppression, the Assistant Commissioner of Sales Tax after detailed scrutiny of all relevant materials and books of account came to a clear finding that the suppression has been committed and there is no overriding evidence in the Tribunal to find fault in the inference and confirmations of the enhancement. In our view, the order of the Tribunal in paragraph 4 is mechanical and cryptic in nature and cannot be held to be a consideration of the appeals of the petitioner against the enhancement of gross turnover and taxable turnover by Rs. 8,49,832.96 on merits. On account of the aforesaid enhancement of gross turnover and taxable turnover the petitioner is stated to have suffered Orissa sales tax of Rs. 1,87,828 and Orissa additional sales tax of Rs. 12,101. In our view, the Tribunal should have considered the appeals of the petitioner by examining at length the materials in support of the findings of suppression in the order of the assessing officer and the Assistant Commissioner. Hence, the rejection of the appeals of the petitioner by the impugned order dated May 23, 2000 of the Tribunal is not in accordance with the provisions of Rule 60(1) of the Orissa Sales Tax Rules, 1947. The Tribunal will re-hear now not only the Second Appeals Nos. 626 and 627 of 1992-93, but also Second Appeals Nos. 2054 and 2055 of 1992-93 filed by the State of Orissa and pass fresh orders after giving due opportunity of hearing to the parties.

4. For the aforesaid reasons, the impugned orders dated May 23, 2000 and August 22, 2002 passed by the Tribunal are quashed and the matter is remanded back to the Tribunal for re-hearing of the matter afresh.

5. Considering the aforesaid facts and circumstances of the case, the parties are to bear their costs.

Pradip Mohanty, J.

6. I agree.

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