(2003) 11 OHC CK 0017

In the Orissa High Court

Case No : Writ Petition (C) No. 10795 of 2003

Santosh Kumar Modi and Others APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Sales Tax Act, 1947 — Section 16(1), 16B, 16D, 16D(5)
Orissa Sales Tax Rules, 1947 — Rule 94, 94(4), 94(5), 94A

Citation : (2005) 141 STC 178

Hon'ble Judges : P.K. Misra, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : J.B. Sahoo, for the Appellant; R.P. Kar, Additional Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. J.B. Sahoo, learned counsel for the petitioners and Mr. R.P. Kar, learned Additional Standing Counsel (C.T.).

2. The case of the petitioner is that petitioner No. 1 is a registered dealer and the petitioner Nos. 2 to 9 are unregistered dealers carrying on business of sale of clothes and ready-made garments in Angul. For the said business they have purchased different goods from Kolkata which were transported to Talcher. Thereafter, while the said goods were being transported from Talcher to Angul by a mini truck bearing registration No. ORW-393, the said mini truck was intercepted by the authorities of the Sales Tax Department. The Sales Tax Officer, Dhenkanal Circle, Angul issued a notice dated August 11, 2003 to the petitioner No. 10, namely, driver of the said mini truck in form VI-B prescribed under Rule 94 of the Orissa Sales Tax Rules, 1947 stating therein that no Government way bills were being carried with the goods in the said mini truck and there were no documents in support of the goods loaded in the truck. By the said notice the petitioner No. 10 was also given opportunity to rectify the aforesaid defects and

an option to pay the Orissa sales tax, surcharge, Orissa entry tax and penalty u/s 16(1) of the Orissa Sales Tax Act, 1947 (hereinafter referred as "the Act") failing which action will be taken under Clause (b) of Sub-rule (4) of Rule 94 of the Orissa Sales Tax Rules, 1947. The aforesaid notice in form VI-B, dated August 11, 2003 was followed up by another notice dated August 15, 2003 of the Sales Tax Officer, Dhenkanal Circle, Angul asking the petitioner to pay tax, surcharge and penalty as stated herein below :

"13 Pkts of ready-made garments Tax SC & Penalty valued Per Pkt. Rs. 50,000 x 13=6,50,000OST @ 4% Rs. 26,000.00 SC Rs. 2,600.00 Penalty u/s 16-D of OST Act Rs. 1,30,000.00 Entry tax @ 2% Rs. 13,000,00 Double penalty Rs. 26,000.00 Pickles one pkt. (6 kg) valued 500.00 OST @ 12% Rs. 60.00 SC Rs. 6.00 16-D penalty Rs. 100.00 Entry tax @ 2% Rs. 10.00 Double penalty Rs. 20.00 _______________ Rs. 1,97,796.00 _______________ In words one lakh ninety seven thousand seven hundred and ninety-six."

Aggrieved by the said notices the petitioners have filed this writ petition under Article 226 of the Constitution praying for appropriate relief.

3. Mr. Sahoo, learned counsel for the petitioners, submitted that the aforesaid calculation of tax and penalty demanded from the petitioners would show that the penalty of Rs. 1,30,000 u/s 16-D of the Act, double penalty of Rs. 26,000, penalty of Rs. 100 u/s 16-B of the Act and double penalty of Rs. 20 have been demanded from the petitioner No. 10. He submitted that petitioners Nos. 1 to 9 are prepared to pay tax on the goods purchased by then on the basis of their valuation. But they cannot be forced to pay the penalty and double penalty calculated by the Sales Tax Officer at a huge amount.

4. Mr. Kar, learned Additional Standing Counsel (C.T.), on the other hand, submitted that admittedly no way bill was being carried along with the goods and no supporting documents were also produced by the driver of the aforesaid vehicle and in the circumstances, the Sales Tax Officer had no option but to demand the tax and penalty from the petitioners.

5. Sub-section (5) of Section 16-D of the Orissa Sales Tax Act, 1947 is quoted hereinbelow :

"16-D. Production and inspection of accounts and documents in certain cases.--(1) to (4)...

(5) The Commissioner shall have the power to seize any goods vehicle or seize and confiscate any goods of any transporter, bailee or the owner or lessee of a warehouse, which are found in any office, shop, godown, vehicle or vessel or any other place while on transit but not accounted for by the transporter, bailee or the owner or lessee of the warehouse, as the case may be, in his accounts, registers and other documents maintained in respect of such goods :

Provided that before taking action for the confiscation of goods under this sub-section, the Commissioner shall give the person affected an opportunity of being heard and make an enquiry in the prescribed manner :

Provided further that where the person affected makes payment to the Commissioner the amount of tax at the appropriate rate payable in respect of such goods to be assessed in the prescribed manner with a penalty equivalent to twenty per centum of the value of the goods seized, the goods and the vehicle seized as aforesaid shall be released."

It is clear from the language of the aforesaid Sub-section (5) of Section 16-D of the Act that the Commissioner shall have power to seize the goods vehicle or seize and confiscate any goods which are found in the vehicle while on transit but not accounted for by the transporter, bailee or the owner, as the case may be, in his accounts, registers and other documents maintained in respect of such goods. Second proviso to Sub-section (5) further provides that where person affected makes payment to the Commissioner, the amount of tax at the appropriate rate payable in respect of such goods to be assessed in the prescribed manner with a penalty equivalent to 20 per centum of the value of the goods seized, the goods and the vehicle seized as aforesaid shall be released. Thus, the pre-condition of exercise of power of seizure and confiscation under Sub-section (5) of Section 16-D of the Act is that the goods are not accounted for by the transporter, bailee or the owner, as the case may be, in his accounts, registers, and other documents maintained in respect of such goods. Accordingly, even in a case where the goods are not supported by the documents at the time of transit in a vehicle, if subsequently the goods are accounted for by the transporter, bailee or the owner of the goods, in his accounts, registers and other documents maintained in respect of such goods, the Commissioner will have no further power to seize and confiscate the goods. Thus, where the person affected accounts for the goods, in his accounts, registers and other documents maintained in respect of such goods and the Commissioner cannot seize and confiscate the goods, the question of release of goods on payment of tax and penalty under the second proviso to Sub-section (5) of Section 16-D will not arise.

6. Sub-rule (5) of Rule 94 of the Orissa Sales Tax Rules, 1947 provides for an opportunity of being heard to be given to the owner of the goods before confiscation of goods and the said Sub-rule (5) applies in respect of goods detained at the check-post under Rule 94 and in respect of goods detained while in transit at any place other than a check-post or barrier under Rule 94-A. The said Sub-rule (5) of Rule 94 is quoted hereinbelow :

"94. Check-post.--(1) to (4)...

(5) The officer-in-charge of the check-post or barrier shall before ordering confiscation of the goods give the owner of the goods, if present in the vehicle or boat, as the case may be, an opportunity of being heard. If such person is not present the officer shall make such enquiries as he deems fit, ascertain the name and address of such person and if the name and address of such person are

ascertainable give him an opportunity of being heard before ordering confiscation. In the case of non-perishable goods, at least 7 days time shall be given for the owner of the goods, to state his case before the officer-in-charge of the check-gate."

7. In our considered opinion, therefore, the petitioner Nos. 1 to 9 who claim to be the owners of the goods should have been given opportunity in terms of the aforesaid Sub-section (5) of Section 16-D of the Act to account in his accounts, registers and other documents maintained in respect of such goods and an opportunity of hearing in terms of Sub-rule (5) of Rule 94 of the Orissa Sales Tax Rules, 1947 before issuing the impugned notice dated August 15, 2003.

8. For the aforesaid reasons, we quash the impugned notice dated August 15, 2003 of the Sales Tax Officer, Dhenkanal Circle, Angul demanding the tax, surcharge and penalty in respect of the goods in question and direct the Sales Tax Officer, Dhenkanal Circle, Angul to give an opportunity to the petitioners in terms of Sub-section (5) of Section 16-D of the Act and of Sub-rule (5) of Rule 94 of the Orissa Sales Tax Rules, 1947. For the aforesaid purpose, the petitioners will appear before the Sales Tax Officer, Dhenkanal Circle, Angul on November 13, 2003 with all their relevant documents and accounts other than those already produced before him and the Sales Tax Officer will hear the petitioners or fix another date of hearing and pass orders in accordance with law.

9. The writ petition is accordingly allowed.

