
(2008) 08 OHC CK 0078
In the Orissa High Court

Satyam Construction

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 42

Orissa Value Added Tax Act, 2004 — Section 25, 25, 9, 9(a), 9(b)

Citation : (2008) 106 CLT 652 : (2008) 2 OLR 905 Supp : (2008) 17 VST 42

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.N. Mahapatra, J.—All these petitions have been filed by the petitioner, Satyam Construction, a proprietary concern. The petitioner in W.P. (C) No. 9032 of 2008 challenges the order of assessment dated May 9, 2007 passed by the Sales Tax Officer, Cuttack-1, West Circle, Cuttack (for short, "the STO") u/s 42 of the Orissa Sales Tax Act for the tax period from April 1, 2005 to December 31, 2006 vide annexure A and the demand notice of even date (annexure 2) on the ground that the action of the STO in passing the impugned assessment order and issuing the demand notice is without jurisdiction.

2. In W.P. (C) No. 15401 of 2005, W.P. (C) Nos. 10337 and 10338 of 2006 and W.P. (C) No. 10578 of 2006, the common grievance of the petitioner is that even though he is a dealer registered under the Orissa Value Added Tax Act, 2004 (hereinafter referred to as "the Act") bearing TIN No. 21251203437 and under the Central Sales Tax Act, 1956 bearing registration No. CUICW-2678, the border check-gate officers have collected tax under the Act and entry tax under the Orissa Entry Tax Act, 1999 on the goods purchased from outside the State illegally on an estimated prevailing market price.

3. The petitioner is the same in these five writ petitions. In W.P. (C) No. 9032 of 2008, the petitioner has made a reference to the other four writ petitions. Since the issues involved in all the five writ petitions are interconnected, they are disposed of by this common judgment.

4. The case of the petitioner, in a nutshell, is that he carries on business in purchase and sale of mosaic chips, white cement, limestone powder, colour oxide, oxalic acid, turpentine oil, coloured stone polish, granite stone, ceramic tiles, sanitaryware, cement glass strip, marbles on wholesale as well as on retail basis under the trade name of "Satyam Construction" at Purighat, Cuttack. He is a registered dealer under the Act as well as under the Central Sales Tax Act and he has been filing regularly the return from the date when the value added tax came into force, i.e., from April 1, 2005. For the purpose of business he regularly purchases marble and glazed tiles from the registered dealer outside the State.

5. Statutory way-bills, as obtained from the STO, were used in transporting the goods from Rajasthan to Orissa. In spite of that, the officer-in-charge of the check-gate collected value added tax and entry tax from the petitioner on the estimated prevailing market price of the goods carried in the vehicle ignoring the sale price mentioned in the sale bill issued by a registered dealer of outside State. According to the petitioner, such collection of tax at the check-gate is not sustainable in law.

6. The further case of the petitioner is that the STO, who completed assessment u/s 42 of the Act, has no jurisdiction to assess him and in the said assessment order credit has not been given to the tax paid at the check-gate.

7. Mr. A.K. Mohanty, learned Counsel appearing for the petitioner, while pressing W.P. (C) No. 9032 of 2008, vehemently argued that the impugned assessment order and demand notice as issued by the STO are not sustainable on two grounds.

8. His first ground of challenge is that the STO, who passed the impugned assessment order and issued the demand notice, is not the assessing authority as has been prescribed under Sub-rule (12) (b) of Rule 34 of the Orissa Value Added Tax Rules, 2005 (for short, "the Rules").

9. The second ground of challenge of the learned Counsel is that since till the assessment order was passed the petitioner was not granted the certificate of registration under the Act as has been prescribed in Sub-section (5) of Section 25 of the Act read with Sub-rule (1) of Rule 18 of the Rules, and no TIN number has been assigned under Sub-rule (1) of Rule 19 of the Rules, neither the STO, Cuttack-I, West Circle, Cuttack nor the assessing authority of the range has jurisdiction to initiate and complete audit assessment for the aforesaid tax period of the petitioner.

10. Mr. Dalai, learned Counsel appearing for the Revenue, submitted that TIN number has been allotted to the petitioner and he has been assessed as a registered dealer u/s 42 of the Act by the STO. He fairly conceded that the STO has no jurisdiction to assess a TIN dealer. A TIN dealer is assessable by the assessing authority of the range and accordingly opposite party No. 2 has jurisdiction to assess the petitioner. He strongly opposed the contention of the petitioner that he is neither assessable by the STO nor by the assessing authority

of the range.

11. For the purpose of convenience, it is necessary to first deal with the petitioner's second ground of challenge. According to him, till the order of assessment was passed since he was not granted the certificate of registration under the Act as has been prescribed under Sub-section (5) of Section 25 of the Act read with Sub-rule (1) of Rule 19 of the Rules and no TIN number was assigned neither the assessing authority of the range nor the S.T.O. has jurisdiction to initiate and complete the audit assessment of the petitioner.

12. For better appreciation of the fact, the averments made in paragraph 1.1 of the writ petition are quoted below:

That besides, the petitioner humbly submits that the impugned order of assessment vide annexure 1 to this writ application is also liable to be quashed as the petitioner has not yet been granted the certificate of registration under the OVAT Act as has been prescribed in Sub-section (5) of Section 25 of the OVAT Act, 2004 read with Sub-rule (1) of Rule 18 of the OVAT Rules and therefore the initiation and completion of the assessment u/s 42 of the OVAT Act, 2004 for the aforesaid tax period by the STO, Cuttack-I, West Circle, Cuttack, opposite party No. 1, is without jurisdiction as no certificate of registration has been granted under Sub-rule (1) of Rule 18 of the OVAT Rules, 2005 and no TIN number has been assigned under Sub-rule (1) of Rule 19 of the OVAT Rules and therefore neither the Sales Tax Officer, Cuttack-I, West circle, Cuttack nor the assessing authority of the range, has jurisdiction to initiate and complete the audit assessment for the aforesaid tax period of the petitioner and on this count also the impugned order vide annexure 1 is liable to be quashed.

13. Interestingly, contrary to this averment made in W.P. (C) No. 9032 of 2008, in the other four writ petitions being W.P. (C) No. 15401 of 2005, W.P. (C) Nos. 10337 and 10338 of 2006 and W.P. (C) No. 10578 of 2006, the petitioner averred that he is a registered dealer under the OVAT Act as well as the Central Sales Tax Act, 1956 having TIN No. 21251203437 and the certificate of registration has been granted to him vide annexure 2. In all these four writ petitions this averment has been made in paragraph 4.2. For ready reference, paragraph No. 4.2 is reproduced below:

That the petitioner is registered as a dealer under the Orissa Value Added Tax Act, 2004 as well as under the Central Sales Tax Act, 1956. Its registration numbers are TIN 21251203437 and CUICW-2678, respectively. Copy of the certificate of registration is enclosed and marked as annexures 2 and 2/A to this writ application.

14. W.P. (C) No. 9032 of 2008 has been filed subsequent to filing of the remaining four writ petitions, wherein the petitioner averred that he is a registered dealer under the Act during the relevant tax period and has been assigned a TIN number and enclosed the copy of certificate of registration under the Act as annexure 2. Thus, the averments made in paragraph 1.1 of W.P. (C)

No. 9032 of 2008 and in the other four writ petitions are self-contradictory. As it appears, the petitioner in order to get his desired relief while in one writ petition describes himself as a dealer registered under OVAT Act having TIN number, in other writ petitions describes himself as an unregistered dealer under the Act as no TIN number has been assigned to him. This is unfair and undesirable. This practice is not permissible and should be deprecated. It is more so that while invoking the writ jurisdiction of the court seeking discretionary relief where the petitioner should always come with clean hands, clean mind and clean objective.

15. In that view of the matter, the second limb of argument of the learned Counsel for the petitioner that neither the Sales Tax Officer, Cuttack-I Circle, Cuttack nor the assessing authority of the range has jurisdiction to initiate and complete the audit assessment for the tax period from April 1, 2005 to March 31, 2006 of the petitioner does not merit consideration and hence fails.

16. Now the question which survives for consideration by this court is whether the STO, Cuttack-I Circle, Cuttack has jurisdiction to assess the petitioner for the impugned tax period. According to the first ground taken by the learned Counsel for the petitioner, the STO who has completed the impugned assessment order is not the assessing authority as has been prescribed under Sub-rule 12(b) of Rule 34 of the Rules. As per the petitioner's own averment made in other four writ petitions, i.e., [W.P. (C) No. 15401 of 2005, W.P. (C) No. 10337 and 10338 of 2006 and W.P. (C) No. 10578 of 2006], he is a registered dealer under the Act having the above TIN number. Now the question is, who is the appropriate assessing officer in respect of a registered dealer having TIN number under the Act. For this purpose, it is necessary to refer to some of the relevant provisions of the Act and Rules. The said provisions are Section 2(4) of the Act and Rule 34(8), (12) of the Rules. The provisions are reproduced below:

Section 2. (4) "assessing authority" means any officer appointed under Sub-section (2) of Section 3 who is authorised by the Commissioner to make assessment under this Act.

Rule 34. (8) The return under Sub-rule (1) shall be filed in the range and the return under Sub-rule (6) shall be filed in the circle, where the dealer is registered:

Provided that for the convenience of the dealer, a return under Sub-rule (1) may be furnished to the assessment unit or circle under whose jurisdiction the place of business of the dealer is situated, and the concerned assessment unit or circle, on receipt of such return, and after preliminary processing shall submit it to the range.

Rule 34. (12) For the purpose of this rule, the assessing authority shall mean-

(a) the assessing authority of the circle in respect of dealers, who have been granted registration under Sub-rule (1) of Rule 18 and assigned with SRIN under Sub-rule (4) of Rule 19.

(b) the assessing authority of the range in respect of dealers, who have been granted registration under Sub-rule (1) of Rule 18 and assigned with TIN under Sub-rule (1) of Rule 19.

17. A conjoint reading of the aforesaid provisions makes it clear that the dealer, who has been granted registration under Sub-rule (1) of Rule 18 and assigned TIN number under Sub-rule (1) of Rule 19 of the Rules, can only be assessed by the assessing authority of the range. Here the petitioner's own admission in the above four writ petitions is that he is a registered dealer under the Act and TIN number has also been allotted to him. The petitioner has annexed the copy of the certificate of registration under the Act to those writ petitions as annexure 2. In paragraph 4.3, he has stated that he is regularly filing the returns from the date when the Act has come into force, i.e., from April 1, 2005 till date. In that view of the matter, it is apparent that the assessing authority of the range is the competent authority to assess the petitioner, and the STO, who has passed the impugned assessment order, has no jurisdiction to pass the impugned order. A similar view has also been taken by this court in the case of *Dash Agency v. Sales Tax Officer* [2007] 9 VST 482.

18. In course of hearing, learned Counsel for the petitioner further submitted that a certificate of registration in form VAT-103 has not been issued to the petitioner even though he is treated to be a registered dealer and assigned a TIN number by the opposite parties.

19. On the other hand, learned Counsel for the Revenue submitted that non-issuance of certificate of registration does not create any bar for the petitioner to pay the tax. Issuance of certificate may be withheld due to non-furnishing of information by the petitioner as required by the statute. Therefore, unless the petitioner furnishes the information as required under the statute, the certificate cannot be issued.

20. We have heard rival submissions made by the learned Counsel for the parties.

21. Rule 15(8) of the Rules requires that every dealer, who is deemed to be a registered dealer under Sub-section (5) of Section 25 of the Act, has to furnish information and declaration in form VAT-1 to the appropriate registering authority as specified under Sub-rule (6) of Rule 15 within thirty days from the appointed date. Rule 18(3) provides that the certificate of registration in respect of a dealer liable to pay tax under Clause (a) of Section 9 of the Act shall be in form VAT-103 and a certificate of registration in respect of dealer liable to pay tax under Clause (b) of Section 9 of the Act shall be in form VAT-001. Since in the present case the petitioner is liable to pay tax under Clause (a) of Section 9, certificate of registration in his case is to be in form VAT-103, which can be issued provided the petitioner furnishes information and declaration in form VAT-1 to the appropriate registering authority as required under Rule 15(8) of the Rules.

22. Learned Counsel appearing for the petitioner and Revenue are not in a position to say whether the petitioner has filed any information and declaration in

form VAT-1 to the appropriate registering authority as provided under Rule 15(8) of the Rules. Therefore, unless the petitioner furnishes the required information as required under the statutory provisions, the certificate in form VAT-103 cannot be issued even if there is a deeming provision and issuance of the certificate is automatic.

23. In view of the above, the petitioner is directed to file information and declaration in form VAT-1 along with copy of this judgment before the registering authority within four weeks from today. After consideration of the same, the Revenue shall issue the certificate of registration to the petitioner within two weeks thereafter.

24. In all the remaining four writ petitions, the grievance of the petitioner is that though he is a dealer registered under the OVAT Act having TIN No. 21251203437 as well as under the Central Sales Tax Act, 1956 bearing registration No. CUICW-2678 the border check-gate officers are illegally collecting value added tax and entry tax on the goods purchased from outside the State. Even though several grounds have been taken challenging collection of tax under the impugned orders and issue of receipts in support of collection of such tax, learned Counsel for the petitioner confined his submission to the effect that the petitioner being a registered dealer the amount of the tax collected under the OVAT Act and the Entry Tax Act at the check-gate should either be refunded to him or adjusted against his tax liability in regular assessment. In support of his submission, the learned Counsel relied upon the following decisions Mohammed Habib Ummar v. Commissioner of Sales Tax [1995] 99 STC 166 , Sri Vinayak Store v. Sales Tax Officer [1992] 86 STC 423 directed for Jagannath Shiwdottray Officer, Unified check-gates, Girisola OJC Nos. 1904, 1905 1909 1995 decided June 21, 1995. above cases this court Sales Tax Officer while making regular relevant assessment year shall credit amounts collected check-gate respective dealers. 25. Learned Counsel for the Revenue has no objection to this submission of the learned Counsel for the petitioner.

26. For the reasons stated in paragraph 8, the impugned assessment order (annexure 1) and the notice of demand (annexure 2) are set aside with a request to the assessing authority of Cuttack I Range, Cuttack, to serve a fresh statutory notice on the petitioner and proceed with the matter for fresh assessment in accordance with law.

27. Since we have set aside the assessment order for the year 2005-06 in W.P. (C) No. 9032 of 2008 and directed fresh assessment, the payments made at the check-gate shall be taken into account in the fresh assessment in accordance with law. Accordingly, all the five writ petitions are disposed of.

B.S. Chauhan, C.J.

28. I agree.