

(2002) 02 OHC CK 0049
In the Orissa High Court
Case No : Tax Revision No. 69 of 2001

Shankar Rice and Oil Mill

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1)
Orissa Sales Tax Rules, 1947 — Rule 60

Citation : (2002) 1 OLR 396 : (2003) 131 STC 19

Hon'ble Judges : P.K. Patra, J; P.C. Naik, J

Bench : Division Bench

Advocate : B. Agrawal, M.L. Agarwalla and S.P. Dalai, for the Appellant; S. Panda, Additional Standing Counsel (CT), for the Respondent

Judgement

P.C. Naik, J.—On an application of the dealer u/s 24(1) of the Orissa Sales Tax Act, 1947 (in short, "the Act"), the Orissa Sales Tax Tribunal (in short, "the Tribunal") has referred to the High Court for its opinion the following question of law :

"Whether, on the facts and circumstances of the case, there is no merit disposal of the second appeal as required under Rule 60(2) of the Orissa Sales Tax Rules by the Sales Tax Tribunal ?"

2. The facts giving rise to this reference as reflected in the order of reference are :

".,..... that the dealer-applicant was assessed by the S.T.O., Bolangir-I Circle, Bolangir u/s 12(4) of the Act raising extra tax demand of Rs. 83,023 against applicant mainly on the ground of excess stock of paddy of Q. 285.70 kgs. less stock of rice of Q. 137.50 kgs. non-accountal of 400 to 500 bags of mahua flower found from his godown, non-entry of Q. 50.00 kgs. of paddy purchased in the books of account, non-accountal of sale of husk in regular course of business, non-accountal of transactions disclosed from slip of paper recovered from his

business premises and non-production of relevant stock account for verification of stock in broken rice and bran after discarding the explanations offered as after thought. In the first appeal, the learned Assistant Commissioner of Sales Tax after considering the evidences adduced and explanations offered retained the suppressions on account of stock of paddy of Q. 285.70 kgs. and scrapped charges of suppression on other counts. In the result, he reduced the assessment of tax by Rs. 55,200 under the Act. Aggrieved by such order, the State preferred appeals before this forum. No memorandum of cross-objection was filed by the dealer-applicant. The division Bench after hearing the State in absence of the dealer-applicant, vacated the order of the learned Assistant Commissioner of Sales Tax, Bolangir Range, Bolangir and restored the assessment order of the learned assessing officer."

This led to filing of the reference application by the dealer,

3. It is the case of the dealer that the Tribunal has failed to take into consideration the evidence adduced and has passed the order on surmises and conjectures and accordingly it is submitted that the conclusion reached is contrary to law. It is submitted that in fact there has been no consideration of the appeal on merit and, on the contrary, the appeal has been disposed of in an arbitrary and irrational manner. Per contra, it is the contention of the learned counsel for the State that merely because the judgment of the Tribunal is not as elaborate as that of the first appellate court or because some of the reasons given by the first appellate court have not been expressly reversed by the Tribunal, this cannot be a ground to interfere with the impugned order more so, when no question of law is involved.

4. Before proceeding further a reference may be made to Rule 60 of the Orissa Sales Tax Rules, 1947 which lays down that if on the date fixed for hearing or any other date of which the hearing may be adjourned the appellant or applicant does not appear either in person or by his agent when the appeal or application for reference is called for hearing, the Tribunal may decide it on merits, after hearing the respondent or opponent or his agent, if present. In like manner, Sub-rule (2) of Rule 60 lays down that if on the date fixed for hearing or on any other date to which the hearing may be adjourned the respondent or opponent does not appear either in person or by his agent when the appeal or application for reference is called for hearing, the Tribunal may decide the same on merits after hearing the appellant or applicant or his agent, if present. In substance, Rule 60 lays down that notwithstanding the non-appearance of the appellant/applicant or respondent or non-applicant or their representative, the Tribunal can proceed to dispose of the appeal or reference on merit. In the like manner is Clause 10 of the Orissa Sales Tax Tribunal Regulations, 1992. Thus, the said provisions may make it incumbent upon the Tribunal to adjudicate or dispose of an appeal on merits in accordance with law notwithstanding the non-appearance of a party. In other words, the rule does not contemplate a dismissal for default. Thus, the Tribunal being the final fact-finding authority is bound to discuss in its judgment

all necessary facts before arriving at its conclusion, Thus, the question whether or not there has been a merit disposal of the appeal by the Tribunal in the case at hand is to be considered in the light of what has been observed above which we proceed to do.

5. The order in question consists of three paragraphs : Paragraphs 1 and 2 relate to the facts and contention raised on behalf of the appellant-State. Paragraph 3 of the judgment contains the findings/reasonings of the Tribunal which, for better appreciation, is quoted hereunder :

"We have considered the basis on which the assessments were made. On June 25, 1987, sales tax authorities visited the place of business of the dealer and found discrepancies in paddy and rice stock. They also found on verification that the books of accounts did not indicate procurement of paddy as per vendor receipts. From the slip of paper, there is sufficient evidence to infer that the quantity of goods transported was by the dealer as evidenced from the "mulia" charge paid. Learned ACST was wrong in accepting the contention, which has no justification as made by the learned STO. With regard to the out of account transaction of purchase of "mahua flower" also, it is apparent that evidence built up bringing in a third party to whom the stock belongs is out and out manipulations in connivance with corrupt individuals. In spite of overwhelming substantiated evidence, learned ACST unjustifiedly led himself into make believe by accepting whatever explanation that was put forth by the dealer. Learned ACST lacked the insight to come into the plausibility of the explanation. The unjustified order of the learned ACST is vacated and the assessments as made by the learned STO are restored."

This clearly indicates that the appeal has been decided merely on the basis of the submission made by the Revenue and this we state, because there is no discussion whatsoever of the stand/case of the dealer as is available on record.

6. It is now well-settled that even if an appellate authority affirms the order of the subordinate forum, it has to give brief reasons for doing so. But, if it is to reverse the order of the subordinate forum, it becomes necessary for the superior or appellate forum to give cogent reasons for arriving at a particular conclusion. In the case at hand, the order of the Tribunal is an order of reversion. The subordinate forum had held in favour of the dealer. This order has been reversed by the Tribunal which has held the dealer liable to tax. In the circumstances it was all the more necessary for the Tribunal to have given cogent reasons for arriving at the conclusion it did. While allowing the State's appeal the Tribunal has observed that "in spite of overwhelming substantiated evidence, learned ACST unjustifiedly led himself into make believe by accepting whatever explanation that was put forth by the dealer". But what was the stand of the dealer or the explanation offered by him (the dealer), why it could not be accepted has not been mentioned. When two opposing parties present their respective case before an authority the case of one is to be accepted and that of the other rejected. It is for this reason that cogent reasons have to be assigned

by the concerned authority as to why it has accepted, the stand of one party and not that of the other. Merely saying that it accepts the stand of one party and not that of the other, is not sufficient. The order in question sadly, does not reflect, the case of the dealer as made out from the available material on record. To us, the disposal of appeal does not appear to be a disposal on merits, and we may observe, the decision of the Tribunal is more moral than legal.

7. With respect to the contention raised on behalf of the Revenue that the question referred is not one of law, we may refer to a decision of the apex Court in the case of *Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay*, wherein it has been held thus :

".....if the court of fact, whose decision on a question of fact is final, arrives at this decision by considering material which is irrelevant to the enquiry, or by considering material which is partly relevant and partly irrelevant, or bases its decision partly on conjectures, surmises and suspicions, and partly on evidence, then in such a situation clearly an issue of law arises."

Again, in the case of *Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax, Bihar and Orissa*, it was observed that :

"The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice..... On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures and surmises and if it does anything of the sort, its findings even though on questions of fact, will be liable to be set aside by the court."

We have already quoted the relevant paragraph of the Tribunal's order and it does not require much effort to state that conjectures, surmises and suspicions have played heavily in the mind of the Tribunal while disposing of the appeal. In the facts and circumstances of the case, therefore, we overrule the contention that a question of law as stated does not arise in this case.

8. In view of what has been stated above, we answer the question in favour of the dealer and against the Revenue. Consequently, the appeal will be required to be heard and disposed of afresh by the Tribunal in accordance with law. We order accordingly.

P.K. Patra, J.

I agree