
(1998) 07 PAT CK 0079

In the Patna High Court

Case No : C.W.J.C. No's. 2716, 2726, 2731 2769 and 2771 of 1997 (R)

Sri Durga Cement Company, Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Bihar Finance Act, 1981 — Section 47

Citation : (1998) 3 BLJR 1888 : (1999) 1 PLJR 617

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.A. Sharma and A.K. Prasad, JJ.—The petitioner has filed four writ petitions being C.W.J.C. No. 2769 of 1997 (R), C.W.J.C. No. 2716 of 1997 (R), C.W.J.C.No. 2731 of 1997 (R) and C.W.J.C.No. 2771 of 1997 (R), challenging the notice to review dated 23.7.1997, the order dated 25.7.1997 reviewing the assessment orders dated 1.11.1991 28.4.1993, 26.11.1993 and 4.11.1993 for the assessment years 1990-91, 1991-92, 1992-93 and 1993-94 respectively and the notice of demand issued pursuant thereto. The writ petition, being C.W.J.C. No. 2726 of 1997 (R), has been filed by the petitioner challenging the order of review dated 25.7.1997 reviewing the assessment order dated 29.9.1995 for the assessment year 1994-95 and the notice of demand issued pursuant thereto. The notice to review is not being challenged in this case, because according to the petitioner no such notice was issued before reviewing the assessment order.

2. The learned counsel for the petitioner has raised several contentions in support of the writ petitions, but it is not necessary to mention all of them in this judgment because we propose to allow the writ petitions only on the following three submissions raised by him; (I) the impugned notice to review is vague lacking relevant particulars/information, (II) no reasonable opportunity of being heard was given to the petitioner before passing the impugned order dated 25.7.1997 and (III) no notice was issued by the respondents to the petitioner

before reviewing the assessment order dated 29.9.1995 for the assessment years 1994-95.

3. The English translation of the notice to review dated 23.7.1997 is reproduced here:

From perusal of your records for the year 1990-91 to 1993-94 it appears that (i) rate of tax on sale of Rs. 1,19, 45, 381-80 has been under levied, (ii) Rs.--/ taxable receipt imposing of penalty has been left out (iii) Calculation of tax has been wrongly made.

So you are given opportunity of hearing on 25.7.1997, failing which revised order will be passed ex-parte.

4. The above notice has been given to the petitioner several years after passing of the assessment orders. The notice is absolutely vague, lacking necessary particulars/information, due to which it is not possible to submit an effective reply.

5. Section 47 of the Bihar Finance Act (hereinafter referred to as the "Act") gives power to the authority concerned to correct "a mistake which is apparent from the record". Section 47 of the Act is reproduced below:

47.-Reviews- Subject to such rules as may be made by the State Government under this part any authority appointed u/s 9 or the Tribunal may review any order passed by it, if such review is, in the opinion of the said authority or Tribunal as the case may be, necessary on account of a mistake which is apparent from the record. Provided that no such review, if it has the effect of enhancing the tax or penalty or both, or of reducing a refund shall be made unless the said authority or the Tribunal, as the case may be has given the dealer, or the person concerned a reasonable opportunity of being heard.

6. Rule 32 of the Bihar Sales Tax Rules 1983 (hereinafter referred to as the "Rules") being relevant in this connection is also reproduced below;

Rule 32. Review.-(1) When any authority appointed u/s 9 reviews u/s 47 any order passed under the Act it shall record reasons for doing so.

(2) Save with the previous sanction of the commissioner or an authority specifically authorised u/s 9, other than the Commissioner, shall review any such order except before the expiry of twelve months from the date of passing of the order which is sought to be reviewed.

(3) Save with the previous sanction of the Commissioner or an authority specifically authorised by him in this behalf no authority appointed u/s 9, other than the Commissioner, shall review any order which has been passed by any of its predecessors in office.

7. Proviso to Section 47 of the Act has laid down that no order of review/ correction of mistake, if it has the effect of enhancing the tax or penalty or both,

or of reducing a refund shall be made unless the authority concerned has given to the assessee reasonable opportunity of being heard. The minimum requirement of reasonable opportunity of hearing are; (i) notice of the case to be met, and (ii) opportunity to explain. Therefore, it is necessary that the notice to review an order must contain such information/particulars which could indicate the point/matter with respect to which the assessee has to show cause.

8. It is true that such a notice need not contain reasons but it must contain such relevant information/particulars which would enable the assessee to file an effective reply. The notice to review is not an idle ritual. Its object is to inform the assessee the case, he has to meet. If the notice does not contain the relevant information/points/particulars etc. to which the assessee can file his reply, very purpose of the notice is frustrated. Such a notice is liable to be declared on the ground of vagueness and on the basis of such a notice it is not open to the authority to initiate any proceedings to correct/review the order. In the instant case, as mentioned before, the notice does not contain any material information/particulars/points on the basis of which the assessee could submit its explanation.

9. The notice contains the vague allegations about under levying and of wrong calculation of tax. The impugned order of review dated 25.7.1997 mentions that the aforementioned notice was issued to the petitioner on account of the audit objection against assessing the cement and the bags to sales tax at different rates, but there is no mention about it in the notice. The petitioner, as such, could not have shown cause against the said audit objection because the notice, did not contain any such indication.

10. The learned Standing Counsel in this connection submits that the petitioner must be presumed to have known that a notice has been issued on account of the assessment of the bags and the cement at different rates because in the earlier assessment orders cement and bags were assessed to tax at the different rates. This contention has to be rejected.

11. Proviso to Section 47 contemplates giving of a reasonable opportunity of being heard to the assessee. Therefore, it is the duty of the department to give a notice containing such information/particulars, which could enable the assessee to submit an effective reply. The assessee is not supposed to speculate as to on what ground the notice has been given.

12. That apart, even such a speculation, in view of the facts and circumstances of the case, cannot be contemplated. During the assessment proceedings relating to the assessment years 1990-91, 1991-92, 1992-93 and 1994-95, in each assessment years notice asking the petitioner to show cause as to why cement and the bags be not assessed to tax at the rate of which the cement is assessed was issued to the petitioner. The petitioner filed its reply in response thereto, which was accepted by the Assessing Officer and both the cement and bags were, thereafter, assessed at the different rates. When this very question

was finally determined in the original assessment proceedings, it is too much to expect from the assessee that he could visualise/speculate the reason/ground on account of which the notice has been issued. The first submission of the learned counsel for the petitioner has to be accepted.

13. The second submission of the learned counsel for the petitioner also deserves acceptance. The assessment orders were passed on 1.11.1991, 28.4.1993, 26.11.1993, and 4.11.1993 for the assessment years 1990-91, 1991-92, 1992-93 and 1993-94. The notice to review is dated 23.7.1997 and the petitioner was required to explain and to show cause within less than two days i.e., on 25.7.1997. In such a short time it is humanly not possible to collect even the relevant papers so as to submit an explanation. There was hardly any time given to the petitioner to submit his show cause. It was a clear case of passing of the impugned order arbitrarily and in violation of the principle of natural justice.

14. In this connection, it may be mentioned that on 25.7.1997 the petitioner's representative appeared before the officer concerned and made a representation/application mentioning therein about the vagueness of the notice and requesting for a fresh notice containing relevant information/ material particulars so as to enable him to give the reply. In the said representation it was further mentioned that he is making a separate application for getting copies of the assessment proceedings of the years in question and other relevant papers so as to enable him to submit his effective reply. On the same date (25.7.1997), to Officer concerned rejected the petitioner's representation/application and on that very date he reviewed the assessment orders passed several years ago and passed the re-assessment orders enhancing the tax liability of the petitioner considerably. 25.7.1997 was the first date on which the application was made by the petitioner. It was not a case where the assessee wanted to prolong the proceedings. There was, thus, no justification for the assessing officer to reject the petition/representation.

15. The third submission of the learned counsel for the petitioner is also liable to be accepted. The case of the petitioner is that the assessment order dated 29.9.1995 for the assessment year 1994-95 was reviewed and a fresh order of re-assessment was passed without giving any notice to it. This fact has been stated by the petitioner in paragraph 16 of his writ petition, which has not been denied by the respondents in their counter affidavit. Here there is a complete absence of notice before order of review/rectification of the assessment order was passed. The order, therefore, cannot be sustained being illegal and without jurisdiction.

16. The writ petitions are allowed. The impugned notice dated 23.7.1997, the order dated 25.7.1997 and the notice of demand issued pursuant thereto are quashed. No costs.

17. The respondents will have the liberty to issue fresh notice in accordance with law, if they so desire and pass appropriate order after giving reasonable

opportunity of being heard to the petitioner.