(2007) 09 OHC CK 0070

In the Orissa High Court

Sri Mayur Biscuits Co. (P) Ltd. — APPELLANT

Vs

Sales Tax Officer and Others — RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 12(4)

Citation : (2009) 20 VST 330

Hon'ble Judges : A.K. Ganguly, C.J;I. Mahanty, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.

2. Pursuant to our previous order, records have been produced today by the learned Counsel for the Revenue.

3. On a perusal of the records, we find that the Tribunal admittedly has not issued any notice to the assessee prior to making an enhancement in the impugned order passed by it on March 16, 2007. The order of the Tribunal, reveals that no notice was issued relating to appeal of the previous order which is indicated at paragraph 8 of the said order. The said paragraph 8 is set out below:

8. In the aforesaid perspective we are of the firm finding that the assessment order of the learned STO and the appeal order of the learned ACST confirming the assessment order were not correctly/properly framed because the appellant had availed more exemption for a sum of Rs. 2,56,461 but not exhibited in the admitted figure on this count for the year 1995-96 against total eligible amount of Rs. 75,15,750 for the period from October 19, 1994 to October 18, 1999 and the same could not be unearthed, either at the assessment stage or at the stage of first appeal. Explicitly, the benefit of exemption of tax on purchases and sales had been calculated to Rs. 26,07,048 for the year 1995-96 in the assessment order passed by the learned STO u/s 12(4) of the OST Act and confirmed by the

learned ACST in appeal but it should have been calculated to Rs. 28,63,509. In the result the present appeal filed by the appellant fails and the appeal order as well as the assessment order is enhanced by Rs. 2,56,461 detailed above on account of computation mistake. The learned STO is directed to issue demand notice for the extra demand of Rs. 2,56,461 as per the provision of rule 81 of the Orissa Sales Tax Rules.

4. No notice appears to have been given to the assessee asking it to show 4 cause regarding enhancement.

5. The learned Counsel for the petitioner submits that the Tribunal has no 5 power to enhance the assessment in the absence of an appeal inasmuch as no appeal has been filed by the Revenue against the order of the appellate authority. In the instant case, cross-objection has been filed by the Revenue. However, we are not dealing the cross-objection as the Revenue has accepted the judgment of the first appellate forum in the cross-objection.

6. In the aforesaid view of the matter, we follow the judgment of the Division Bench of this Court in the case of Shyamsunder Sahoo v. State of Orissa reported in tation[1994] 92 STC 28 (ORI). In that judgment also, the learned judges were pleased to set aside the enhancement on the ground that no opportunity for showing cause against the proposed action for enhancement was given to the petitioner by the Tribunal. Following the ratio in the said judgment, we set aside the order of the Tribunal dated March 16, 2007 passed in S.A. No. 256 of 2002-03. We directed the Tribunal to give notice to the petitioner on the question of enhancement if any, and upon such notice to the petitioner, the petitioner should be given an opportunity of hearing. Thereafter, the Tribunal may pass a fresh order in accordance with law.

7. The writ petition thus succeeds, but there shall be no order as to cost.

Urgent certified copy of this order be given on proper application.

