(2006) 04 OHC CK 0054

In the Orissa High Court

Case No : Writ Petition (C) No. 9964 of 2004

Yerra Fabrics APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Orissa Entry Tax Act, 1999 — Section 11, 7(4)

Citation : (2007) 104 CLT 245 : (2007) 1 OLR 276 : (2006) 148 STC 450

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.

2. The petitioner is aggrieved by the assessment order which is purported to have been issued on July 30, 2004 though the date of the order does not appear in the impugned order, annexure 1. The order appears to be a printed one and the blanks have been filled up. Learned Counsel for the petitioner submits that the said assessment order which is purported to have been passed in clear violation of the provisions contained u/s 7(4) of the Orissa Entry Tax Act, 1999 cannot be sustained. The provisions of Section 7(4) of the Entry Tax Act reads as follows:

Section 7(4) of the Orissa Entry Tax Act, 1999.

(4) If no return is submitted by the dealer under Sub-section (1) within the period prescribed or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, he shall assess the dealer to the best of his judgment recording the reasons for such assessment:

Provided that before taking action under this sub-section the dealer shall be given reasonable opportunity of proving the correctness and completeness of the return submitted by him.

3. From a perusal of the aforesaid provision of law and of the impugned order it appears that there was a clear violation of the principle of natural justice. The impugned order of assessment vide annexure 1 reads as follows:

In course of examination of books of account of the instant dealer for the above period, it is held that the dealer had purchased scheduled goods under the Orissa Entry Tax Act, 1999 of Rs. 7,83,438.92 which includes purchases from the local registered dealers to the tune of Rs. 2,40,177.72 only. Accordingly, the gross turnover and the taxable turnover under the Act is determined at Rs. 7,83,438.92 and Rs. 5,43,261.20.

Entry tax at two per cent on the T. T. O. is due at Rs. 10,865.22. The dealer having already paid a sum of Rs. 1,607 while filing of monthly statements and Rs. nil at different check-gates is now required to pay the balance due of Rs. 9,258 as per enclosed notice in form E-8.

The impugned notice vide annexure 1-A reads as follows:

Please take notice that for the period 2001-02 a sum of Rs. 9,258 (rupees nine thousand two hundred and fifty eight only) has been determined as the dues payable by you under the Orissa Entry Tax Act, 1999 as per the detail below:

You are required to pay the above amount into Government Treasury/Account by 30 days from the date of receipt by you of this notice and produce the proof of payment failing which the said amount of Rs. 9,258 will be recoverable from you as an arrear of public demand, or in accordance with the provision contained in the schedule to the Orissa Sales Tax Act, 1947 in addition to the penalty as laid down u/s 11 of the Orissa Entry Tax Act, 1999.

5. Though the assessment order is a printed form, the learned Counsel for the Revenue, however, submits that the assessment order is an ex parte order since the petitioner did not participate in the assessment proceeding nor produced his books of account. This is the stand taken in the counter-affidavit. Therefore the stand taken in the counter-affidavit and the recital in the assessment order contradicts each other.

6. Learned Counsel for the petitioner submits that only a notice being Notice No. 3982 dated May 25, 2004, annexure 3 to the writ petition, was issued to him. This is a notice under the Orissa Sales Tax Act, 1947. In pursuance of the said notice, the petitioner entered appearance which is annexure A1 of the counter. Unfortunately, the said memo of appearance was sought to be converted by the entry tax authorities into a notice under the Entry Tax Act and on that memo of appearance, the petitioner was directed to furnish the detail list of cloth purchased from local registered dealers by June 30, 2004.

7. For the purpose of an assessment under the Entry Tax Act, this Court does not accept this kind of ad hoc manner of notice/assessment and the same is in clear violation of the provisions of the Act. This Court also deprecates the manner in which the assessment order was passed on a printed form and without any

application of mind. Thus the assessment order vide annexure 1 is quashed. The appropriate authority is given liberty to initiate assessment proceeding and pass appropriate order under the Entry Tax Act strictly in consonance with law.

8. In view of the above observation, the writ petition is allowed. The impugned assessment order at annexure 1 and annexure 1-A, which is the demand notice on the basis of annexure 1, are quashed.

9. A free copy of this order be supplied to the learned Counsel for the State for necessary communication.

