

M/s. patra Electronics - - - - - petitioners

- V/s -

Sales Tax Officer and another - - - - - opp. parties.

Received
07-07-2014
ASL (CT)

04.

03.07.2014

Heard Mr. S.Mohanty, learned Senior Advocate appearing for the petitioner and Mr. R.P.Kar, learned Standing Counsel for the Commercial Taxes.

In this writ application, the petitioner has sought to challenge the order of assessment dated 30.01.2014 for the period from 01.04.2009 to 31.03.2012 under Section 43(1) of Orissa Value Added Tax Act, 2004, inter alia, on the ground that the said order was an ex-parte order and passed without giving adequate notice to the petitioner.

Mr. Mohanty, learned Sr. Advocate appearing for the petitioner asserts that on 13.01.2014, the father of the Advocate of the petitioner (who was conducting the case of assessment proceeding) expired and for such cause, he was compelled to act through his junior to file a time petition on 13.01.2014. It is stated that no further date was communicated to the petitioner and the order of assessment came to be passed purportedly on 30.01.2014 but the said order was received by the petitioner only on 18.02.2014. He further asserts that the order sheet of the assessment proceeding would indicate that the petitioner's lawyer had appeared before the officer concerned on 31.01.2014 and also filed a written note of submission but, it is asserted that an ex-parte assessment order was essentially anti dated to 31.01.2014 in order to deprive the petitioner of his

right to participate in course of the assessment proceeding.

Reliance is also placed by the learned counsel for the petitioner on a circular issued by the Commissioner of Commercial Taxes, Orissa dated 30.11.2009 pursuant to the direction of this Court in W.P.(C) No.2180 of 2008 which directed as follows:

“Before parting with this case, we direct the State Government as well as the Commissioner of Commercial Taxes, Orissa, to issue a notification to the following effect:

(1) Instructing all the Assessing Officers to use the Government printed order sheet forms from 1st December, 2009,

(2) the order of assessment and the demand notice shall be issued to the dealers by registered Post with A.D. and

(3) the record shall be maintained up to date and when the dealer or his authorized representative appears before the Assessing Authority or any other Appellate Authority, his signature shall be taken on the body of the order sheet on the date of his appearance.”

On a perusal of the impugned order sheet, it appears that the circular issued by the Commissioner has not been complied with by the Assessing Officer inasmuch as on none of the dates, the order have been passed, has the counter signature of the Advocate/representative of the assessee ever been recorded on the order sheet. On

the other hand, the order sheet dated 13.01.2014 reads as under:

"The advocate for the dealer Mr. A.Mishra today filed a time petition mentioning that his father of the advocate has died. So time is allowed. The hearing is refixed on 24.01.2014. But the advocate did not wait to take/note time."

It is an admitted fact that there is no endorsement by any representative of the assessee to the aforesaid order.

Mr. R.P.Kar, learned Standing Counsel for the Commercial Taxes, on the other hand, submits that it has become a practice now a days for counsels not to file petition before the quasi judicial authority directly and instead to merely handover time petition to the Clerks and/or Sr. Section Officers working in the department and without awaiting any order being passed by the quasi judicial authorities, the counsel normally leave the premises, which he claims, is the circumstance in the present case as would be apparent from the order dated 13.01.2014.

While this Court cannot condone such acts of any counsel, who do not respect the statutory authority while discharging their statutory duties, yet on perusal of Anenxure-4 which is the entire order sheet of the Section 43 assessment proceeding, we find that right from the time of commencement of the proceeding on 17.07.2013 till 31.01.2014 while final orders were passed, in none of the orders have the counter signature of the representative/lawyer of the

assessee been taken. This is clearly in violation of the guidelines issued by the Commissioner under Anenxure-3. Apart from the same, while this Court cannot ever countenance inaction or excessive action on the part of a representative of an assessee, yet it remains the obligation of the Assessing Officer to keep the assessee and/or his counsel, informed of the next date of assessment. This obligation is sine qua non for compliance of the rules of natural justice.

In the case at hand, there is no evidence on record to indicate that order dated 13.01.2014 was ever communicated to the assessee in any manner. Therefore, we deem, it unnecessary to enter into the merits of the order of assessment and without in any manner commenting on the same, we feel that the ends of justice would be best met, if the impugned order of assessment and, consequently, the demand notice are set aside. This Court orders accordingly and the matter stands remitted back to the Assessing Officer with a further direction to the assessee-petitioner to appear before him on 21st July, 2014 and also be permitted to participate on the dates fixed for hearing, file any such documentary evidence in support of the rival stands. The petitioner-assessee is also directed to co-operate with the Assessing Officer and not take any unnecessary adjournments for early conclusion of the assessment proceeding. It is reiterated herein that nothing stated in this order shall be determination of any right of

either party that may arise for consideration in course of the assessment proceeding. The Assessing Officer shall be free to conclude the assessment proceeding strictly in accordance with law.

A free copy of this order be handed over to the learned standing counsel for the Commercial Taxes for necessary communication and compliance.

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

sd/.....
I. Mahanty, J.

sd/.....
S.K.Sahoo, J.

05. 03.07.2014

Misc. Case No.5398 of 2014

In view of the order passed today in W.P.(C) No.5805 of 2014, this Misc. Case is also disposed of.

sd/.....
I. Mahanty, J.

sd/.....
S.K.Sahoo, J.

True copy

Bm
(C.M)

IN THE HON'BLE HIGH COURT OF ORISSA, CUTTACK

ORIGINAL CIVIL JURISDICTION CASE

W.P. (C) No. 9180/2008

In the matter of

Code No. 170499

An application under Article 226 and 227 of the Constitution of India

And

In the matter of

An application under the provisions of Orissa Sales Tax Act, 1947 and the rules framed thereunder.

And

In the matter of

An application challenging the order dated 5.1.2007, passed by the Sales Tax Officer, Rourkela II Circle, Rourkela in terms of the section 12(4) of the Orissa Sales Tax Act.

And

In the matter of

M/s Geetanjali Cement Products

A partnership firm, having its office

at :Gutidhara, Kalunga, P.S. Brahamanitaranga,

Dist. Sundargarh, Orissa.

Represented by its Managing Partner

Sri Shiba Prasad Sahu, aged about 41 years,

S/o Raju Charan Sahu

Petitioner

Versus

1. The Sales Tax officer, Rourkela-II Circle,

AT/PO/PS. Uditnagar, Rourkela,

Dist. Sundargarh

Opp. Party



Mr. Mishra



ad in Court B.O.

[Signature]
2.02.08

[Signature]
12-02-08
R.C. MISHRA
ADVOCATE & NOTARY
CUTTACK TOWN (ORISSA)
Regn. No. 21/05

[Signature]

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ORISSA HIGH COURT : C U T T A C K

W.P.(C) NOS.2180 OF 2008

In the matter of an application under Articles 226 and 227 of the Constitution of India.

M/s.Geetanjali Cement Products : Petitioner

-Versus-

Sales Tax Officer, Rourkela-II Circle, Rourkela : Opp. Party

For petitioner : M/s.D.Pati & Mr.S.K.Mishra

For O.P. : Mr.R.P.Kar & Mr.S.P.Dalei,
Addl. Standing Counsel

PRESENT:-

**THE HONOURABLE MR. JUSTICE B.P.DAS
AND
THE HONOURABLE MR. JUSTICE C.R.DASH**

Date of Judgment : 15.10.2009

B.P.Das, J. The petitioner has filed this writ petition challenging the order of assessment dated 5.1.2007 passed by the O.P.-Sales Tax Officer, Rourkela II Circle, under Section 12(4) of the Orissa Sales Tax Act, 1947 for the period 2003-2004 (Annexure-1) on the ground that the same having been passed beyond the period of limitation is illegal and not sustainable in the eye of law and, therefore, liable to be quashed.

2. As it appears, the petitioner is a partnership firm carrying on the business of manufacturing and production of RCC Hume Pipes in its factory located at Kalunga, Rourkela. In

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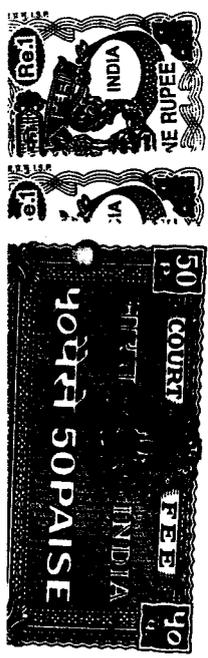
response to the notice issued under Section 12(4) of the OST Act for the year 2003-04, the petitioner produced the books of accounts maintained by it in course of business as well as the declaration forms but the Sales Tax Officer passed the order of assessment making addition to the Gross Taxable Turnover (GTO) and Taxable Turnover (TTO) returned on account of transportation charges and further addition was made on account of alleged contravention of Form ID 92. In the aforesaid assessment order annexed as Annexure-1, the tax payable by the petitioner was quantified at Rs.81,139/-.

3. Mr. Pati submits that the assessment order served on the petitioner reveals that the date of the assessment order was originally indicated, as 6.12.2006 and after scoring through the same, another date, i.e., 5.1.2007 has been written by hand. The assessment order further reveals that the same was dispatched on 15.10.2007 but it was served on the petitioner on 8.1.2008. According to Mr. Pati, since the second proviso to Section 12(7) of the OST Act provides that assessment is to be completed within a period of three years, the Sales Tax Officer was obliged to pass the order of assessment for the impugned period 2003-04 by 31.3.2007 and as the impugned assessment order has not been passed within the prescribed statutory period, the entire order is illegal and is liable to be quashed.



4. In absence of a counter affidavit from the Revenue, we called for the relevant records and the same were produced before this Court on 23.7.2009. In the order passed on 23.7.2009, on perusing the records, this Court observed that it was the laches on the part of the Assessing Officer and because of such laches, advantage is taken by the assessee, which may lead to quashing of the assessment order and causing loss of revenue to the State Exchequer. In the said order this Court also directed the Sales Tax Officer, who has passed the impugned order of assessment, i.e., Sri B.K.Panigrahi, to appear in person before this Court on 11th August, 2009.

Now on a bare perusal of the order-sheets of the case record, we find that the order-sheets were maintained on plain papers. The orders passed by the Assessing Officer are extracted hereunder :-



- “12.7.2004 Issue notice U/s 12(4) of the OST Act'47 fixing to Dt 26.7.04
Sd./-STO
- 26.7.2004 Case is adjourned to Dt 13.8.04
Sd./STO
- 13.8.2004 Case is adjourned to Dt 31.8.2004
Sd./-STO
- 15.1.2005 Issue intimation fixing Dt to Dt 31.1.2005
Sd./-STO
- 19.12.2005 Issue intimation fixing Dt to Dt 23.12.2005
Sd./-STO

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5.1.2007

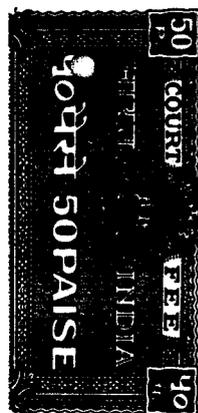
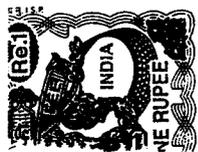
Seen the assessment record the dealer, Advocate filed Hazira along with detail statement of the account on Dt 23.12.05 for assessed for the year 03-04 under the OST Act. It has been examined on 7.5.2007 and discussed details in A.O. Issue assessment order and demand notice for Rs 81,139.00

As such it has also been examined on ET. The details discussion have been made in assessment order. Issue assessment order and demand notice for Rs 17,762.00

Sd./-STO"

The above order-sheets prima facie show that the same were maintained in a most irregular manner. So far as the assessment order passed in Form IX is concerned, we find that the date "6.12.2006" indicated therein has been scored through and another date, i.e., 5.1.2007 has been written by hand.

5. The Sales Tax Officer, who passed the impugned order of assessment in Annexure-1, namely, Sri B.K.Panigrahi appeared in person on 11.8.2009 pursuant to this Court's order dated 23.7.2009 and took a plea that the order of assessment was passed on 31.3.2007. Since the Department took a prevaricating stand at different points of time and the conduct of the Sales Tax Officer was also suspicious because from the order of assessment (Annexure-1) it is evident that the same was dispatched to the petitioner on 15.10.2007 and the assessee received the said order on 8.1.2008, by order dated 11.8.2009, we directed Sri Panigrahi



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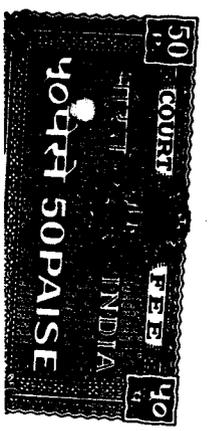
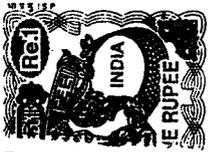
to file an affidavit on the aforesaid statement. On 2.9.2009 when this matter was listed, learned counsel for the Revenue wanted time to file the affidavit as required by the order dated 11.8.2009 but learned counsel for the petitioner made an allegation that the petitioner had neither appeared before Sri Panigrahi nor had he produced the books of accounts before him. According to the learned counsel for the petitioner, as the said books of accounts were examined by the predecessor of Sri Panigrahi, the order of assessment passed by Shri Panigrahi was illegal, as Shri Panigrahi has never perused the said books of Accounts. Therefore, we directed Sri Panigrahi, Sales Tax Officer, Rourkela-II Circle, and his predecessor, Sri D.Murmu, to appear in person before this Court on 14.9.2009 and in terms of that order, both the Officers appeared before this Court on 14.9.2009 and filed their affidavits. That apart, Shri Panigrahi also filed a reply to the additional affidavit filed by the petitioner.

6. In paragraph 2 of the affidavit dated 13.9.2009 filed by Sri B.K.Pnigrahi in reply to the additional affidavit filed by the petitioner, it has been stated that he had issued notice to the petitioner for production of books of accounts for the year 2003-04 fixing the date to 6.12.2006 and the petitioner had received the said notice on 1.12.2006. The notice and the receipt showing acknowledgement of notice have been annexed as Annexures-C/1 and C/2. Thereafter, the petitioner appeared on 5.1.2007 for



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assessment for the years 2003-04 and 2004-05 along with Advocate Sri D.Pati and on that day the statement of the petitioner for the year 2004-05 was recorded and the purchase register was verified. Mr. Pati, however, now submits that so far as the assessment for the year 2003-04 is concerned, the petitioner had not produced any Books of Accounts. He further submits that no notice, as stated above, was received by the petitioner for the year 2003-04 and the signature on the receipt of the notice does not belong to any one of the petitioner-firm. In the affidavit dated 1.9.2009 filed by Sri Panigrahi on 14.9.2009 the deponent has also taken a stand that due to bona fide official delay, the assessment order and demand notice were issued for service by the Bench Clerk through the Office Peon on 15.10.2007 and the same were served on the petitioner on 8.1.2008. According to Sri Panigrahi, the order of assessment was passed on 5.1.2007.



If we accept the plea of the Revenue that the order of assessment was passed on 5.1.2007, we find that the same was issued to the petitioner on 15.10.2007, i.e., ten months after passing of the order and the order was served on the petitioner on 8.1.2008, i.e., three months after it was issued. Learned counsel for the Revenue relies upon the relevant entries of the Process Register annexed as Annexure-E to the reply affidavit of Sri Panigrahi.

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We do not find any explanation by Sri B.K.Panigrahi as to why and under what circumstances, the assessment order was typed in the computer putting the date as 6.12.2006, which was scored through and the date, i.e., 5.1.2007 was mentioned by hand.

7. Today, in terms of the order of this Court dated 14.9.2009, Sri Dasmata Murmu, Predecessor-in-Office of Sri B.K.Panigrahi, appears and files an affidavit before this Court. In paragraphs-1 & 3 of the said affidavit it is stated as follows :-

"1. That I was working as the Sales Tax Officer, Ward-B, Rourkela-II Circle from 18.8.2005 to 27.7.2006. I was the assessing Officer for the petitioner for the year 2003-04. I had taken up the Assessment for that year and had verified the books of accounts of the dealer on 23.12.2005. But the assessment could not be completed during my tenure.

3. That I was maintaining the order sheets of all the assessment records in normal course. As such, I had also maintained the order sheet of the assessment of the petitioner for the year 2003-04 as well up to date. But at present I could not find those order sheets in the assessment record. The assessment records are kept in the custody of the Assessment Clerk of the respective Wards."

So from the aforesaid affidavit, it appears that Sri Murmu had maintained all the order-sheets and the Books of Accounts produced before him, but he could not complete the assessment. We are startled to see that when one Officer says regularly the order-sheets have been maintained by him, in fact, there is no regular order-sheet in the record. As we have indicated in the foregoing paragraphs, the order sheet is maintained in a plain



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paper and most irregularly. The fact whether the assessment order was passed before expiry of the period of limitation is also shrouded with doubt, as it is observed that there is interpolation in the date of order and no reasonable plea has been taken regarding the delay in issuance of the order as well as the notice of demand.

Even though a plea has been taken by Sri Panigrahi that on the same date, i.e., 5.1.2007, the orders for the year 2003-04 as well as 2004-05 were passed, they were issued on 15.10.2007 and the assessee received the same on 8.1.2008. We find that there is no satisfactory explanation regarding the delay in service of the order of assessment upon the assess-petitioner. This aspect is required to be probed by an Officer not below the rank of an Additional Commissioner of Sales Tax and accordingly, we so direct.

8. So our conclusion is that there is lack of regularity in maintaining the order-sheets, as the same have not been maintained in the prescribed form of the Government. The order-sheets maintained in plain papers can be easily replaced. In this case, if we look at the averments made in paragraphs-2 & 3 of the affidavit filed by Sri Murmu as well as the records of the Revenue and accept the statement of Sri Murmu, then we have to believe that the order-sheets might have been replaced. Taking into account the entire factual matrix of the case, as there are



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disputed questions of fact, we are of the considered opinion that the petitioner should approach the first appellate authority.

Accordingly, the petitioner is at liberty to approach the First Appellate Authority in appeal. If the petitioner files the First Appeal before the First Appellate Authority within one month from today along with an application for condonation of delay, the First Appellate Authority after condoning the delay shall entertain the appeal and dispose of the same within a period of four months from the date of such filing. Till the First Appeal is concluded, realisation of the demanded tax shall remain stayed.

9. Before parting with this case, we direct the State Government as well as the Commissioner of Commercial Taxes, Orissa, to issue a Notification to the following effect :

(1) Instructing all the Assessing Officers to use the Government printed order sheet forms from 1st December, 2009,

(2) the order of assessment and the demand notice shall be issued to the dealers by registered Post with A.D. and

(3) the record shall be maintained up-to-date and when the dealer or his authorised representative appears before the Assessing Authority or any other Appellate Authority, his signature shall be taken on the body of the order sheet on the date of his appearance.



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10. As we have pointed out in the earlier paragraphs, the matter requires a thorough probe by an Officer not below the rank of an Additional Commissioner of Commercial Taxes and the persons responsible for replacing the order sheets and scoring through the date of the assessment order should be identified and appropriate action should be taken against them.

The records produced today be returned to the learned counsel for the Revenue. The original order of assessment be returned to the petitioner on being substituted by attested photocopy thereof.

The writ petition is disposed of accordingly.

Let a free copy of this judgment be supplied to the learned counsel for the Revenue.

C.R.Dash, J. I agree.

SP- B-P-DAS, J.

SP- C-R. Dash, J.

Orissa High Court, Cuttack.
The 15th October, 2009/Manoj, P.A.

Manoj P.A.
5/11/09



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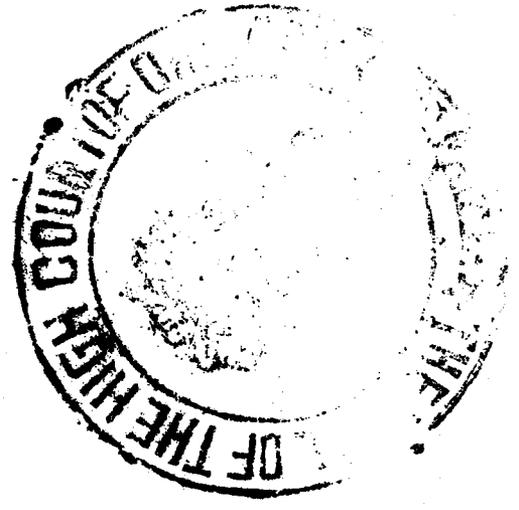
Date of Application-- 4/11
 Date of Notification-- 4/10
 Date of Supply-- 5/11
 Date of Ready-- 7/11
 Date of Delivery-- 6/11/09

CERTIFIED TO BE A TRUE COPY
 12/28/09
 Assistant Registrar (Estt.)
 ORISSA HIGH COURT
 Authorised Under Section 76 Act I of 1872

C.A. No 5717/09

MEMO OF COSTS		Rs.	P.
Application Fee.....	5	50	
Searching Fee.....			
Extra Fee for Urgency	9	00	
Folios 11	27	50	
Other items if any....	7	15	
Total	49	15	

EXAMINER OF COPIES
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(Rupees forty nine & paise fifteen only)

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES, ORISSA,
CUTTACK

No. 22929 /CT,

Dated 30-11-09

CIRCULAR

The Hon'ble High Court of Orissa in their order dated 15.10.2009 in M/s Geetanjali Cement Products -Vrs- Sales Tax Officer, Rourkela II Circle, Rourkela, WP(C) No.2180 of 2008 have directed as follows:-

"Before parting with this case, we direct the State Government as well as the Commissioner of Commercial Taxes, Orissa, to issue a Notification to the following effect:

(1) Instructing all the Assessing Officers to use the Government printed order sheet forms from 1st December, 2009,

(2) the order of assessment and the demand notice shall be issued to the dealers by registered Post with A.D. and

(3) the record shall be maintained up to date and when the dealer or his authorized representative appears before the Assessing Authority or any other Appellate Authority, his signature shall be taken on the body of the order sheet on the date of his appearance".

The above noted order of Hon'ble High Court of Orissa shall be scrupulously followed by all Assessing Authorities and Appellate Authorities from 1st December, 2009 without fail.



(NIKUNJA B. DHAL)

Commissioner of Commercial Taxes, Orissa,
Cuttack

Memo No 22930

Date

30-11-09.

Copy forwarded to all Joint Commissioner of Commercial Taxes, Assistant Commissioner of Commercial Taxes, Commercial Tax Officers in charge of Assessment Units for compliance.

Assistant Commissioner of Commercial Taxes,
(MIS & Statistics)