Ramkumar Jaigopal Vs. Assistant Commissioner of Sales Tax

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Court : Orissa

Decided On : Mar-07-2007

Reported in : 103(2007)CLT735

Judge : B.P. Das and; I. Mahanty, JJ.

Appellant : Ramkumar Jaigopal

Respondent : Assistant Commissioner of Sales Tax

Disposition : Petition allowed

Judgement :

I. Mahanty, J.

1. The Learned Counsel for the Petitioner raised certain important questions regarding the scope and extent of powers of the statutory authority for passing order of 'suspension' of Registration Certificate and 'cancellation' of Registration Certificate under the Orissa Value Added Tax Act, 2004 (in short' the OVAT Act'). In this writ application, the Petitioner seeks to challenge the order of suspension of Registration Certificate dated 23.11.2005 and the order of cancellation of the Registration Certificate dated 16.12.2005 passed by the Assistant Commissioner of Sales Tax, Sambalpur under Annexures-I and 7 to the Writ Petition respectively.

2. The records of the proceedings of suspension as well as cancellation of the Registration Certificate were called for and accordingly, the Learned Counsel for the Revenue produced the original records before us from which the following orders are revealed:

a) 23.11.2005 - Accompanied the C.C.T. Orissa to Sambalpur III Circle, Jharsuguda. In course of scrutiny of returns of the instant dealer, it is found that since April, 2005 to October, 2005 the purchase and sales does not commensurate with each other and as such the input tax credit is always more than the output tax. As per the direction of the C.C.T., Orissa, the A.C.C.T. (Intelligence) Range, Sambalpur and S.T.O. inspected the business premises of the dealer at about 11.30 A.M. In course of inspection the officials detected some of the approval slips where goods were delivered to different parties since April, 2005 onwards and tax and retail invoices are not issued as per the statutory provision. Section 11(4)(a) of the VAT Act stipulates that notwithstanding anything contained in the sale of the goods Act 1930 but subject to Clause (b)(c) the sale of goods shall for the purpose of this Act be deemed to have taken place where title or possession of the goods are transferred or in case of works contract where goods are incorporated in the course of execution of the works contract whether or not there is receipt of payment of such sale. As per the finding of A.C.T.(int.) the customer had taken the possession of the goods i.e., Paints and other items as envisaged in the approval slip books but no tax or retail invoices had been issued within 14 days as per Clause C. Thus the dealer contravened the provision of Section 11(4)(a)(c) of the VAT Act.

From the returns filed by the dealer from April, 2005 to October 2005 the sale turnover is much less than the purchase figure and as such there is accumulation of huge stock which leads to the conclusion that the dealer is indulged in evasion of tax. Pending final examination of the books of accounts the R.C. is suspended forthwith under Section 30(1) of the VAT Act against the following offence committed by him.

1. Knowingly furnishes incomplete or incorrect information in the return furnished for the tax period w.e.f. 1.4.2005 onwards till date.

2. Failed to pay tax, interest and penalty due under the Act for the period 1.4.2005 onwards.

3. Conduct business any such manner that there is reasonable apprehension of evasion of tax or attempt to evade tax and such apprehension is based on facts.

Issue suspension order and notice of suspension in VAT 110 in my camp office at Jharsuguda directing him to appear before the undersigned on 29.11.2005 at Sambalpur. Inform the C.C.T., Orissa, Cuttack accordingly.

b) 24.11.2005 - Seen the order issued vide letter No. 8811/CT dt. 23.11.2005 of Camp office at Jharsuguda. There is some error apparent on the face of the order of suspension of R.C. The errors are rectified and issue the corrigendum order under Section 81 of the VAT Act.

(c) 29.11.2005 - The dealer appeared with the Learned Advocate and produced purchase register, sale register, stock valuation statement and purchase vouchers, sale bills and approval slips. Besides on 28.11.2005 the dealer has filed a written submission praying its restoration. Today he further produced another written submission in addition to the submission already filed on 28.11.2005 explaining the situation under which he does not pay VAT along with his return and copy of tax/retail invoice issued with reference to the approval slips.

Perused the submission, he was asked to file the cash, credit accounts of his bank. The case is partly heard and adjourned to 5.12.2005.

d) 5.12.2005 - The dealer appeared and filed hazira and submitted the cash credit accounts of Allahbad Bank, Jharsuguda branch 24th respect, of loan account from 1.4.2005 to 30.9.2005. Examined the case. I am otherwise busy. Put up later on for order.

e) 16.12.2005 - Seen the preliminary report of Addl. C.T.O. Investigation unit, Sambalpur forwarded by the Asst. Commissioner of Commercial Taxed, Sambalpur Range Sambalpur (Int.) vide Confidential letter No. 21/16.12.2005.Gone through the report and the findings there of. There is substantial evasion of taxes. Order is passed separately today canceling the certificate of Registration under Section 31(5) of the VAT Act. Details are discussed in the order1. Issue order of cancellation accordingly.

3. In this respect it is important to take note of the provisions of Sections 30 and 31(5) of the VAT Act which are quoted below:

30. Suspension of registration certificate-(1) if a dealer-

(a) fails to file the returns under this Act within the time prescribed : or

(b) knowingly furnishes incomplete or incorrect particulars in his returns : or

(c) fails to pay any tax including penalty or interest, if any, due from him under the1 provisions of this Act : or

(d) having issued tax or retail invoices, fails to account for the said invoices in his books of account : or

(e) holds, accepts or furnishes or causes to be furnished, a way bill which he knows or has reason to believe to be false : or

(f) is found to have no business at the place declared in the application for registration as his place of business : or

(g) contravenes any of the provisions of this Act : or

(h) discontinues his business and fails to furnish information regarding such discontinuation or if there is any other reason for apprehension of evasion of tax or any attempt to evade tax, which, in the opinion of the registering authority, is good and sufficient, the registering authority may, at any time, for reasons to be recorded in writing, suspend the certificate of registration of such dealer, by notification, in the manner prescribed.

(2) Where a certificate of registration is suspended under Sub-section (1), the registering authority shall issue a notice to the dealer concerned requiring him to appear in person or through authorized representative and produce records, documents and evidence on the date and time specified therein, which in no case

shall be later than thirty days from the date of such suspension, relying on which he intends to rebut such suspension.

(3) The certificate of registration suspended under Sub-section (1) may be restored on an application made by the dealer along with evidence, to the satisfaction of the registering authority, of payment of taxes due and submission of returns or the evidence to the effect that the grounds on which the certificate of registration has been so suspended is erroneous or not applicable, as the case may be

(4) Where the certificate of registration of a dealer is suspended or is restored after such suspension, the information shall be widely publicised through publication in the Commercial Tax Gazette and in any other manner as may be prescribed.

31.Cancellation of certificate of registration (1) Where-xx xx xx xx

(5) Where the dealer whose certificate of registration has been suspended under Sub-section (1) of Section 30 fails to furnish the requisite evidence within the time specified under Sub-section (3) of the said Section, the registering authority shall, after causing such inquiry as he may consider necessary and after giving an opportunity of being heard to the dealer, cancel the certificate of registration held by him and the cancellation shall take effect from the date of order of cancellation.

4. Learned Counsel for the Petitioner submits that the record of the present case would indicate that while the Registration certificate was suspended on 23.11.2005, pursuant to notice thereof, the Petitioner appeared before the Learned Assistant Commissioner Sales Tax, Sambalpur on 29.11.2005 and produced his purchase register, sale register, stock valuation statement, purchase vouchers, sale bills and approval slips. On the very same day the Petitioner also filed an application before the said authority under Section 30(3) of the OVAT Act praying for restoration of his Registration Certificate. Sri Paikray submits that this application of the Petitioner has not yet been disposed of by the ACST. He further submits that without disposing of the Petitioner's application for restoration under Section 30(3) of the OVAT Act, no order of cancellation under Section 31(5) of the said Act can be legally passed.

5. From the records of the proceedings, it would be clear that though the Petitioner has filed an application on 28.11.2005 seeking restoration of the registration Certificate upon production of all documents directed to be produced, no order was passed and the case was adjourned to 5.12.2005 on which date the Petitioner was directed to file the cash credit accounts of his bank. From the order sheet dated 5.12.2005 it appears that the Petitioner-dealer appeared and complied with the earlier direction of the ACST by submitting the cash credit accounts of Allahabad Bank, Jharsuguda and the ACST after perusal of the documents directed that the matter be put up later on for orders as he was otherwise busy without fixing any other date and thereafter, vide Order dated 16.12.2005, the ACST passed the order of cancellation of the Registration Certificate under Section 31(5) of the VAT Act purportedly by placing reliance on a 'preliminary report' of the Addl. C.T.O., Investigation Unit, Sambalpur alleging substantial evasion of taxes by the Petitioner, copy of which was not served on the Petitioner.

6. From the facts and pleading of the case, it is apparent that the Petitioner is a very old dealer and is a registered dealer since 1947. In other words, the Petitioner is a registered dealer under the Sales Tax Authority for more than 58 years. It is a well settled proposition of law that where the Statute vests in a statutory authority such wide powers of suspension as well as cancellation of the Registration Certificate which would obviously result in the immediate stoppage of business of the dealer, there is a con-commitment obligation/responsibility that such power or authority ought to be exercised by strictly complying with the statutory requirements as well as the principles of natural justice.

7. We are constrained to express our anguish about the manner in which the ACST has sought to exercise the power and authority under Section 30(1) of the OVAT Act, 2004 in a most cavalier manner.

It is clear from the order sheet of the proceeding that, while order of suspension was passed on 23.11.2005, the order of cancellation was passed on 16.12.2005 i.e., within a period of 24 days of such suspension and that too without issuing any show cause notice to the Petitioner of the intent to pass orders of cancellation. Section 30(2) of the VAT Act stipulates that an assessee has an obligation to produce necessary records as may be called for on the date and time and place specified in the notice, which in no case shall be later than thirty days from the date of such suspension. In the present case the assessee produced the necessary records within six days from the date of order of suspension. Section 30(3) vests any. dealer with a right to seek 'restoration' of his Registration Certificate and in terms of the said provision and it is the duty and obligation of the Registering Authority to deal with same and to pass orders thereon. Without dealing with the dealer's application for restoration (if such an application is filed) the statutory authority has no authority to resort to wielding the power of cancellation and pass order of cancellation under Section 31(5) of the VAT Act.

On a reading Section 31(5) of the VAT Act, it is clear that a cancellation order can be passed a dealer whose registration certificate has been suspended under Sub-section (1) of Section 30 and fails to produce the evidence within the time specified under Sub-Section 3 of the said Section, the registering authority shall, after causing such inquiry as he may consider necessary and after giving an opportunity of hearing to the dealer, cancel the certificate of registration otherwise, the rules of natural justice which have. been embodied in the said provision are rendered nugatory.

8. In the present case the Petitioner-dealer has complied with the notice under Section 30(1) by furnishing requisites evidence within the time specified. If the registering authority on being furnished with the requisite evidence is not satisfied with the same, it is obligatory on his part to carry out an inquiry and give 'opportunity' of hearing to the dealer before cancellation of Registration certificate and admittedly no such notice/opportunity was afforded to the Petitioner.

It must be kept in mind that the power of suspension/cancellation of registration certificate of a dealer, clearly imposes civil consequence and in this respect law is well settled in the case of Smt. Maneka Gandhi v. Union of India and Anr. reported in : [1978]2SCR621 wherein, the Apex Court has held that, the rule of natural justice is embodied in every Statute and even-where there is no specific provision for the same and when an administrative action involves civil consequence, the doctrine of natural justice must be held to be applicable.

9. From the order sheet as noted hereinabove it is clear that the Petitioner dealer produced all the necessary documents, i.e., purchase register, sale register, stock valuation statement and purchase vouchers, bills and approval slips on 29.11.2005, thereafter, in pursuance of the direction dated 29.11.2005 of the ACST, the Petitioner had produced the cash credit accounts of Allahabad bank, Jharsuguda Branch on 5.12.2005. We are constrained to hold that no error in the return filed by the Petitioner was ever pointed out to the dealer and no opportunity has been given to the Petitioner-dealer to explain any doubts, if any.

The order of 'cancellation' of Registration Certificate on 16.12.2005 is a glaring example of misuse of authority in wonton disregard of statutory procedure. The order of cancellation, purportedly places reliance, upon a 'report of ASCT' dated 8.12.2005. There is no mention in the order sheet whether the said 'inquiry report' was ever brought to the notice of Petitioner. In other words the order of 'cancellation' is not based on the 'scrutiny of the return', but instead the basis of such action is purportedly an inquiry, stated to have been carried out on 8.12.2005 i.e., fifteen days after the order of suspension. Even then, the minimum requirement of the principles of natural justice i.e., providing a copy of the same to the Petitioner was not complied with. This is clear from the order sheet itself, which indicates that the report was received by the Assessing Officer on 16.12.2005, i.e., the same day the order of cancellation was passed. This fact is clearly by itself adequate reason/justification for the purpose of quashing/setting aside the order of 'cancellation' of registration.

10. In the aforesaid circumstances, we allow the writ application and quash the order of cancellation dated 16.12.2005 under Annexure 7 and declare the same to be illegal and unlawful.

The Opposite Party is directed to deal with the Petitioner's application for restoration under Section 30(3) of the OVAT Act filed by the Petitioner on 28.11.2005 and to dispose of the same expeditiously within a period of two weeks from the date of receipt of this order.

The Writ Petition is allowed to the extent indicated above.

B.P. Das, J.

I agree