Ram Kishan Rajkumar Vs. Assessing Authority and anr.

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SooperKanoon Citation : sooperkanoon.com/534359

Court : Orissa

Decided On : Jun-23-2004

Reported in : [2005]139STC450(Orissa)

Judge : A.K. Patnaik and ;M.M. Das, JJ.

Acts : Orissa Entry Tax Act, 1999 - Sections 7 and 7(4); Orissa Entry Tax Rules, 1999 - Rule 15(1); Orissa Sales Tax Act, 1947 - Sections 11

Appeal No. : W.P. (C) No. 2769 of 2004

Appellant : Ram Kishan Rajkumar

Respondent : Assessing Authority and anr.

Advocate for Def. : Narasingha, Additional Standing Counsel (C.T.)

Advocate for Pet/Ap. : A. Mohanty, Adv.

Disposition : Petition allowed

Judgement :

1. Heard Mr. A. Mohanty, learned counsel for the petitioner and Mr. Narasingha, learned Additional Standing Counsel (C.T.).

2. In this writ petition, the petitioner has challenged the assessment order under the Orissa Entry Tax Act, 1999 for the period 2000-2001 on the grounds, inter alia,

that the petitioner was not given a reasonable opportunity of proving the correctness and completeness of the return submitted by him in accordance with the provisions of Sub-section (4) of Section 7 of the Orissa Entry Tax Act, 1999.

3. On May 10, 2004 this Court has passed orders requesting the Additional Standing Counsel (C.T.) to produce the records to show that an opportunity was given to the petitioner in terms of the proviso to Sub-section (4) of Section 7 of the Orissa Entry Tax Act, 1999 before the impugned order was passed by the assessing authority. Pursuant to the said order dated May 10, 2004, the assessment records have been produced by Mr. Narasingha, Additional Standing Counsel (C.T.).

4. Mr. Narasingha, learned Additional Standing Counsel (C.T.) submitted that it would be clear from the said records that a notice was, in fact, served on the petitioner to produce or cause to produce accounts and documents on October 29, 2003 and in response to the said notice, the petitioner, in fact, appeared before the assessing authority and filed the hazira which would go to show that the petitioner was aware that not only the sales tax assessment but also the entry tax assessment would be taken up by the assessing authority on October 29, 2003. Mr. Narasingha further relied on the provisions of rule 15(1) of the Orissa Entry Tax Rules, 1999 which provides that the assessing authority shall complete the entry tax assessment along with assessment under the Sales Tax Act in the similar manner as applicable to the sales tax under the Orissa Sales Tax Act and separate assessment proceedings under the Orissa Entry-Tax Rules shall not ordinarily be taken up by the assessing authority. Mr. Narasingha submitted that the assessing authority has followed the said provision of Section 15(1) of the Orissa Entry Tax Rules, 1999 and has made the assessment under the Orissa Entry Tax Rules simultaneously along with the assessment under the Sales Tax Act.

5. Mr. Mohanty, learned counsel for the petitioner, on the other hand, submitted that the proviso to Sub-section (4) of Section 7 of the Orissa Entry Tax Act, 1999 specifically provides for giving a reasonable opportunity to the dealer to prove the correctness and completeness of the return submitted by him and in the present

case no such reasonable opportunity was given to the petitioner in terms of the proviso to Sub-section (4) of Section 7 of the Orissa Entry Tax Act, 1999. He further submitted that the language of the notice dated October 21, 2003 issued to the petitioner by the assessing authority would show that the said notice only was for assessment under the Orissa Sales Tax Act, 1947 and not for assessment under the Orissa Entry Tax Act and Rules made thereunder.

6. Sub-section (4) of Section 7 of the Orissa Entry Tax Act, 1999 including the proviso thereof is quoted herein below:

'(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.'

It will be clear from the language of the main proviso to Sub-section (4) of Section 7 quoted above that if the return submitted by the dealer 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. But the proviso to sub-section (4) of section 7 stipulates that before taking action under Sub-section (4), the dealer shall be given a reasonable opportunity of proving the correctness and completeness of the return submitted by him. In the present case, the assessing authority has not accepted the return of the petitioner for the period 2000-2001 under the Orissa Entry Tax Act and the Rules made thereunder to be correct and complete and, instead, has resorted to best judgment and has given reason for such best judgment. Hence, the assessing authority was obliged under the proviso to sub-section (4) of Section 7 of the Orissa Entry Tax Act, 1999 to give a reasonable opportunity to the petitioner of proving the correctness and completeness of the return submitted by him.

7. The next question is whether such reasonable opportunity at all was given to the petitioner to prove the correctness and completeness of the return filed by him. The only notice dated October 21, 2003 which was issued to the petitioner for appearing before the assessing authority on October 29, 2003 with the accounts and the documents is extracted hereinbelow :

'Form VIII

Notice under Sub-section (2) or Sub-section (4) of Section 12

[See Rule 28 (1)]

To

Dealer M/s. Ram Kishan Rajkumar

Address-Nayasarak

Registration No. CUIW 150

*In order to enable me to satisfy whether the return filed by you under Section 11 of the Orissa Sales Tax Act, 1947 of the quarter/year ending 2000-2001 is correct and complete;

Whereas you, a registered dealer under the Orissa Sales Tax Act, 1947 have not furnished a return under Section 11 of the Act for the quarter/year ending 2000-2001 by the due date,

You are hereby required to attend in person or by agent at my office at (place) Sunshine Field on October 29, 2003 at 11.00 a.m. and thereto produce or cause to be produced the account and document specified on the reverse relating to your turnover of sales and/or of purchase for the aforesaid period and any other evidence on which you may rely in support of the said return.

In the event of your failure to comply with all the terms of this notice, I shall assess you under Section 12 of the Act to the best of my judgment as per the details below :

Gross turnover for the period .. Rs. 50,00,000.00Taxable turnover ... Rs. 50,00,000.00Tax payable ... Rs. 6,00,000.00... + surcharge @ 10%Rs. 60,000.00Rs. 6,60,000.00Tax already paid (if any) ... NilBalance tax due ... Rs. 6,60,000.00Office sealPlace : Cuttack SignatureDate : 21-10-2003 Designation

Particulars of accounts and documents required-

(a) Books of account for the period mentioned overleaf in general and records of sales in particular.

(b) A statement classifying sales under sub-clause (a) of clause (A), Sub-section (2) of Section 5.

(c) Accounts and documents relating to the financial transactions of your business including Bank Pass Books for the relevant period.

(d) Duplicate copies of cash receipt or bill showing the sale of tax-free articles and declarations from purchasing dealers as required by sub-rules (1), (2) and (3) of rule 7.

(e) Proof in support of deductions claimed according to item (iii) of sub-clause (a) of clause (A) of Sub-section (2) of Section 5.'

8. The aforesaid notice would show that the said notice issued to the petitioner to produce his accounts and documents specified in the reverse of the notice to satisfy the assessing authority that the return filed by the petitioner under Section 11 of the Orissa Sales Tax Act, 1947 for the period 2000-2001 was correct and complete. There was no notice whatsoever issued to the petitioner asking him to produce the accounts and books to satisfy the assessing authority that the return filed by him under the Orissa Entry Tax Act and the Rules made thereunder was correct and complete. Hence, in our view, no opportunity was given, to the petitioner to prove the correctness and completeness of the return filed by the petitioner under the Orissa Entry Tax Act and the Rules made thereunder and the impugned assessment made under the Orissa Entry Tax Act and the Rules made thereunder is liable to be quashed on this ground alone.

9. Coming now to sub-rule (1) of rule 15 of the Orissa Entry Tax Rules, 1999 on which great reliance was placed by Mr. Narasingha, the said sub-rule (1) of rule 15 only provides that the assessing authority shall complete the assessment under the Orissa Entry Tax Act and the Rules made thereunder along with the assessment under the Orissa Sales Tax Act in the similar manner as applicable to the assessment under the Orissa Sales Tax Act and no separate assessment proceedings under the Orissa Entry Tax Rules shall ordinarily be taken by the assessing authority. The said subrule (1) of rule 15 cannot possibly override the provisions of the proviso to Sub-section (4) of Section 7 of the Orissa Entry Tax Act, 1999. It is only after the reasonable opportunity is given to the dealer in terms of the said proviso to sub-section (4) of Section 7 of the Orissa Entry Tax Act, 1999 that best judgment assessment can be made by the assessing authority where the return filed by the dealer is not found to be correct and complete and such assessment under the Orissa Entry Tax Act and Rules made thereunder can be made simultaneously along with the assessment under the Orissa Sales Tax Act in accordance with sub-rule (1) of rule 15 of the Orissa Entry Tax Rules, 1999.

10. We, accordingly, quash the impugned assessment made under the Orissa Entry Tax Act and the Rules made thereunder on the petitioner for the period 2000-2001 making it clear that by this order the assessment made for the said period under the Orissa Sales Tax Act will not in any way be affected. The petitioner will now be given a reasonable opportunity of proving the correctness and completeness of the return filed by him under the Orissa Entry Tax Act and the Rules made thereunder for the said period 2000-2001 and thereafter fresh assessment orders will be passed in the said Act and Rules in accordance with law after complying with the provisions of the Orissa Entry Tax Act and Rules.

11. The writ petition is accordingly allowed.

12. Urgent certified copy of this order be supplied on proper application.