

SUPREME COURT OF INDIA

M/s Steel Authority of India Ltd.

Vs.

Sales Tax Officer, Rourkela-I Circle

C.A.No....of 2008

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

10.07.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Orissa High Court disposing of the writ petition without any decision on merits because in respect of the assessment year in question, i.e. 2001-02, an order was earlier passed by this Court on 31.03.2006.

3. A brief reference to the factual aspects will be necessary.

“The appellant, a Public Sector Undertaking carries on business in manufacture and sale of Iron & Steel and Chemical Fertiliser as its finished product and bi-product, surplus and rejected articles, in course of inter-state trade and commerce and export. Apart from that, the appellant- Company effects transfer of stock of goods to its branches located at various places of the country. For the assessment year 2001-02, notice was issued under Rule 12(5) of the *Central Sales Tax (Orissa), Rules, 1957* (in short ‘Central Rules’) for the purpose of assessment under *Central Sales Tax Act, 1956* (in short the ‘Act’). After examination of the books of accounts produced, an extra demand of Rs.19, 25, 41,763.00 was raised. The appellant- Company had disclosed net sale and transfer of goods during the year under assessment in question as follows:

| | | |
|----|----------------------|---------------------|
| 1. | Sales U/s 8(1)(a)(b) | Rs.714,18,82,639.06 |
| 2. | Sales U/s 8(2)(b) | Rs. 10,37,23,857.45 |
| 3. | Export Sales | Rs. 10, 95,977.00 |

| | |
|--------------------------|------------------------|
| 4. Branch/Stock transfer | Rs.1130, 24, 48,338.61 |
| Total | Rs.1854, 91, 50,812.12 |

The Assessing Officer found that certain declaration forms in Form 'C' were not produced and, therefore, the differential tax was to be levied. With reference to Clause (a) of Section 3, it was held that the sales made under the Annual Memorandum of Understanding (MOU), which were treated as Bank transfers are in fact, sales made in course of inter-state trade and commerce and, therefore, are subject to tax. Accordingly tax was levied.

Questioning correctness of the assessment made, an appeal was preferred before the Assistant Commissioner of Sales Tax, Sundergarh Range, Rourkela. During the pendency of the appeal, an application for stay was filed. The Assistant Commissioner directed payment of part of the demand. An application for revision was filed before the Commissioner, who, by order dated 28.12.2005 in Revision Case No. SU- 87/05-06 directed payment of Rs.10.00 Crores. A Writ Petition was filed before the High Court pointing out that the decision of this Court in *Ashok Leyland Ltd. Vs. State of Tamil Nadu & Anr.*¹ had full application. A Division Bench of the High Court, by order dated 15.02.2006 directed deposit of Rs.2.00 Crores. The said order was questioned in S.L.P.(C) No.5314/2006. In the said special leave petition, several States and Union Territories were impleaded as opposite parties because it was pointed out that requisite tax under the Act had already been paid in different States and Union territories. This Court passed the following order on 31.03.2006:

"Issue notice

There shall be interim stay in the meanwhile. Any payment already made in compliance of the High Court's order shall be without prejudice to the claims involved."

A few days thereafter, on 19.04.2006, the Assistant Commissioner disposed of the appeal filed dismissing the same and confirming the order of assessment. A Second Appeal was filed before the Orissa Sales Tax Tribunal (in short the Tribunal). An application for stay was also filed. By order dated 14.08.2006, the Commissioner directed deposit of Rs.15.00 Crores. The said order was challenged before the High Court and, as noted above, by the impugned order, the High Court disposed of the said petition without expressing any opinion on merits but observing that the matter was under examination by this Court.

4. Though various points were urged in respect of the appeal, learned counsel for the appellant submitted that even without examination of various issues raised, by a cryptic and practically non-reasoned order, the Assistant Commissioner has dismissed the appeal filed.

5. It is submitted that a statutory appeal should not be disposed of in such a casual manner. It is pointed out that notwithstanding the fact that tax has been paid in several States where the articles transferred the Branches have been sold, the State has erroneously treated the transactions to be inter-state sale and levied tax which in essence amounts to double taxation. It is submitted that this is nothing but an attempt to collect tax illegally. It is not legal and is in clear violation of Article 265 of the *Constitution of India, 1950* (in short the 'Constitution'). It is also pointed out that the ratio of the decision of this Court in *Ashok Leyland Limited v. Union of India & Ors.*² has not been kept in view. It is submitted that an amendment to the Act has been made and Section 19 has been introduced which reads as follows:

"19. Central Sales Tax Appellate Authority (1) The Central Government shall constitute, by notification in the Official Gazette, an Authority to settle inter-State disputes falling under Section 6A read with Section 9 of this Act, to be known as "the Central Sales Tax Appellate Authority (hereinafter referred to as the Authority)".

(2) The Authority shall consist of the following Members appointed by the Central Government, namely:-

(a) A Chairman, who is a retired Judge of the Supreme Court, or a retired Chief Justice of a High Court;

(b) An officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India; and

(c) An officer of a State Government not below the rank of Secretary or an officer of the Government not below the rank of Additional Secretary, who is an expert in sales tax matter.

(2A) Notwithstanding anything contained in sub-section (2), the Chairman or a Member holding a post as such in the Authority for Advance Rulings appointed under clause (a) or clause (c), as the case may be, of sub-section (2) of Section 245-0 of the *Income Tax Act, 1961* may, in addition to his being the Chairman or a Member of that Authority, be appointed as the Chairman or a Member, as the case may be, of the Authority under this Act.

(3) The salaries and allowances payable to, and the terms and conditions of service of, the Chairman and Members shall be such as may be prescribed.

(4) The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act."

6. It is pointed out that ultimately the Central Sales Tax Appellate Authority can decide the matter after the Tribunal in the concerned State decides the matter. It is the stand of the appellant that the Forum provided under the Statute is being rendered un-effective by the casual disposal of the appeal.

7. Learned counsel for the respondent-State of Orissa, however, submitted that when the assessee has already availed the statutory remedy, no interference is called for.

8. In normal course, we would not have entertained the plea relating to the merits of the assessment when a statutory remedy has been availed. But what shocks us is the casual manner in which the first appellate authority has disposed of the appeal. The appellate order covers pages 36 to 42 in the paper book. The first page and a part of the second page deal with various data relating to the assessment order, the assessing officer, the registration number and the details of turnovers and the tax etc. In paragraph (2), the observations of the assessing officer are noted and in paragraph 3, starting from pages 39 to 41, different stands of the appellant has been noted. In paragraph 4, the conclusions of the first appellate authority are noted. They read as follows:

"I have carefully gone through the impugned order of assessment, averments of the learned advocate and the materials available on record. On the first point of dispute regarding the claim of the appellant towards refund of Tax of Rs.14, 59,122.52 collected from the bidders, before this forum also the Appellant failed to adduce any evidences regarding refund of tax to such bidders from whom tax was collected. In absence of such documentary evidences, the claim of the appellant is not credible. On the second point of dispute regarding levy of tax on the sale turnover of Rs,1,21,03375.18 due to non furnishing of declarations in forms. Hence, there is no interference from this forum on the observation of the learned S.T.O., in levying tax under Section 8 (2) (B) of the CST Act.

Lastly on the point of rejection of the claim of the appellant towards branch transfer of goods valued at Rs.241,87,42,357.93 from the order of assessment it is found that the learned S.T.O. on due verification and proper examination of the material evidences has rightly taken by the learned counsel of the appellant company and the decisions of the different courts cited are not applicable in the present case, the same is not considered."

9. A bare reading of the order shows complete non- application of mind. As rightly pointed out by learned counsel for the appellant, this is not the way a statutory appeal is to be disposed of. Various important questions of law were raised. Unfortunately, even they were not dealt by the first appellate authority.

10. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. (See *Raj Kishore Jha v. State of Bihar*³)

11. Even in respect of administrative orders Lord Denning, *M.R. in Breen v. Amalgamated Engg. Union*⁴, observed: "The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. v. Crabtree*⁵ it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

12. Therefore, in terms of the observations made by this Court while issuing notice on 19.10.2006, we set aside the impugned order of the Assistant Commissioner and remit the matter to him for a fresh consideration of the appeal. Needless to say, he has to dispose of the appeal by a reasoned order dealing with all the points of challenge highlighted by the appellant.

13. We make it clear that we have not expressed any opinion on the merits of the case.

14. Considering the fact that similar disputes are a recurring feature, the first appellate authority would do well to dispose of the appeal within a period of six months from the date of receipt of copy of our order.

15. The appeal is allowed to the aforesaid extent without any order as to costs.

¹(2004 (3) SCC 1)

²(1997 (9) SCC 10)

³2003 (11) SCC 519

⁴(1971) 1 All ER 1148

⁵1974 ICR 120 (NIRC)