

C.C.T. ORISSA & ORS.

v.

INDIAN EXPLOSIVES LTD.

(Civil Appeal No. 5123 of 2005)

FEBRUARY 28, 2008

(DR. ARIJIT PASAYAT, C.K. THAKKER AND
LOKESHWAR SINGH PANTA, JJ.)

Orissa Sales Tax Act, 1947; 5th Proviso to S.5(1) and Ss. 11, 23(4)(a)/Orissa Sales Tax rules, 1947; r.80 and Entry 48 of Notification issued u/s.5(1)of 1947 Act:

Sales Tax – Assessee filing return declaring certain goods purchased for manufacture of other goods paying sales tax @ 4% on value of such goods in terms of Entry 48 of a Notification – Accepted by assessing authority – Re-assessment – Issuance of show-cause Notice – Challenge to – Allowed by High Court – Correctness of – Held: Incorrect – High Court failed to take into notice the parameters highlighted by Supreme Court relating to exhaustion of alternative remedy as laid down in the case of ICI India Ltd. vs. State of Orissa – Hence, judgment of the High Court indefensible – Thus, set aside – Assessee directed to file response to the show-cause Notice and authorities to dispose of the proceedings in accordance with law – Judicial discipline – Adhering to.

Respondent-assessee, a registered dealer under the Orissa Sales Tax Act, filed a consolidated return in terms of s.11 of the Act claiming that the goods purchased by it as specified in the Certificate of Registration being used in the manufacture of goods for sale. The assessee furnishing declaration to that effect in Form IV to the Seller of such goods and making payment of sales tax @ 4% on the value of such goods in terms of Entry 48 of the Notification issued by the authorities u/s. 5(1) of the Act. The claim was accepted by the authorities. Later, the

A authorities re-assessed the liability of the assessee and issued a show-cause notice, which was challenged by the assessee by filing a writ petition. The High Court allowed the petition by quashing the show-cause notice. Hence the present appeal.

B Appellant contended that the High Court ought not to have entertained the writ petition more particularly when it had rejected the stand of the assessee for the assessment year 1997-98 and 1998-99. But the High Court did not even refer to the said decision in the instant case.

C Partly allowing the appeal, the Court

HELD: 1.1 The High Court seems to have completely lost sight of the parameters highlighted by this Court in a large number of cases relating to exhaustion of alternative remedy. Additionally the High Court did not even refer to the judgment of another Division Bench for the assessment years 1997-98 and Assessment years 1998-99 in the decided case of ICI India Ltd.* In any event, the High Court ought to have referred to the ratio of the decision in the said case. That judicial discipline has not been adhered to. Looked at from any angle, the High Court's judgment is indefensible and is set aside. (Para – 7) [625-A, B]

F *ICI India Ltd. vs. State of Orissa (2007) 10 SCR 433 – relied on.

G 1.2 The respondent-assessee shall file its response, if any, to the show cause notice dated 14.1.2004. The Commissioner shall consider the reply to the show cause notice filed, if any, and dispose of the proceeding in accordance with law. (Para – 8) [625-C, D]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5123 of 2005.

F From the final Order/Judgment dated 7.1.2005 of the High

Court of Orissa at Cuttack in W.P. (C) No. 1931/2004

Kirti Renu Mishra for the Appellants.

G. Ramakrishna Prasad for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Orissa High Court allowing the writ petition filed by the respondent (hereinafter referred to as the 'assessee').

2. Background facts in a nutshell are as follows:

The assessee is registered as a dealer under the Orissa Sales Tax, Act, 1947 (in short the 'Act') and the Orissa Sales Tax Rules, 1947 (in short the 'Rules'). For the assessment year, 2000-2001 the assessee filed consolidated return under Section 11 of the Act before the Assistant Commissioner of Sales Tax, Sundergarh Range, Rourkela (Assessment). In the said return the assessee claimed that it had purchased goods including Ammonium Nitrate which was specified in its Certificate of Registration as being intended for use in the manufacture of goods for sale by furnishing declaration to that effect in Form IV to the seller of such goods and 4% on the value of such goods purchased by the Assessee was paid by it as provided in Entry 48 of the Notification issued under Section 5(1) of the Act. The claim was accepted by the Assistant Commissioner of Sales Tax Sundergarh Range, Rourkela (Assessment). Subsequently the said authority initiated proceedings for re assessment under Section 12(8) of the Act. The same was dropped, and instead a show cause notice under Section 23(4)(a) of the Act read with Rule 80 of the Rules was issued by the Commissioner of Sales Tax on 14.1.2004. Assessee challenged the said show cause notice by filing the writ application. With reference to various decisions of this Court it was submitted that the notice was without jurisdiction. It was submitted that a plain reading of both Entry 48 of the Notification issued under Section 5(1) of the Act and 5th Proviso to Section 5(1) to the Act shows that the

A goods specified in the Certificate of Registration and purchased by a dealer must only be used in the manufacture of goods inside the State of Orissa and such goods manufactured may be also intermediate products used in further manufacture of furnished goods for sale inside or outside the State of Orissa.

B The Revenue filed its counter affidavit. When the writ petition was taken up for hearing, it was pointed out that disputed questions of fact arise for decision which can be adjudicated by the authorities under the Act and the High Court should not exercise power under Article 226 of the Constitution. It was also submitted that the interpretation given by the assessee was not correct. It was pointed out that in the case of M/s ICI Ltd., a subsidiary of the respondent-assessee, a Division Bench had clearly rejected a similar plea. The High Court was of the view that the writ petition can be entertained even though an alternative remedy is available. Accepting the stand of the assessee the High Court held that the notice issued was to be quashed and accordingly quashed the impugned notice dated 14.1.2004.

E 3. Learned counsel for the appellant submitted that the High Court ought not to have entertained the writ petition more particularly when for the assessment year 1997-98 and 1998-99 another Division Bench in Writ Petition Nos. OJC Nos. 16928 of 1998 and 1500 of 2000 had rejected the stand of the assessee. Though it was brought to the notice of the High Court that such is the position, unfortunately the High Court did not even refer to the said decision.

G 4. It is pointed out that in the counter affidavit filed before the High Court, at para 9, specific reference has been made to the judgment dated 9.10.2001 that in the aforesaid two writ petitions similar stand had been rejected.

5. It is pointed out that this Court in *ICI India Ltd. v. State of Orissa* (2007 (10) SCR 433) has upheld the view expressed by the High Court in OJC Nos. 16928 of 1998 and 1500 of 2000.

H 6. There is no appearance on behalf of respondent-

assessee when the matter was called.

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7. The High Court seems to have completely lost sight of the parameters highlighted by this Court in a large number of cases relating to exhaustion of alternative remedy. Additionally the High Court did not even refer to the judgment of another Division Bench for the assessment years, 1997-98 and Assessment years 1998-99 in respect of ICI India Ltd. In any event the High Court ought to have referred to the ratio of the decision in the said case. That judicial discipline has not been adhered to. Looked at from any angle, the High Court's judgment is indefensible and is set aside.

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8. The respondent-assessee shall, within a period of eight weeks from today, file its response, if any, to the show cause notice dated 14.1.2004. The Commissioner shall consider the reply to the show cause notice filed, if any, and dispose of the proceeding in accordance with law.

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

S.K.S.

Appeal partly allowed.

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