

BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No. 1928 AND 1929 OF 1992-93

(Arising out of the order of the learned ACST, Cuttack-II Range, Cuttack in first appeal Case No. AA 2768 & 2769/CUII/89-90 disposed of on 31.01.1992 & order of Hon'ble Odisha High Court in OJC No.11592 of 2001 dtd.14.02.2019 against S.A. No. 1928 & 1929 of 1992-93)

Present :- Shri A.K. Das, Smt. Sweta Mishra, & Shri S. Mishra,
Chairman 2nd Judicial Member Accounts Member-II.

M/s. Bharat Heavy Electricals Ltd,
PPL Site, Paradeep.

..... Appellant.

-Vrs.-

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack.

..... Respondent.

For the Appellant:

: Mr. B Mohanti, Sr. Advocate.

For the Respondent:

: Mr. M.S. Raman, Addl. S.C.(C.T.)

Date of Hearing : 03.09.2021

Date of Order : 15.09.2021

ORDER

In the instant case, the Hon'ble Orissa High Court in O.J.C. No.11592 of 2001 adjudicated on the application of the instant dealer appellant i.e. M/s. BHEL relating to the tax period 1988-89 under both OST and OAST Act in which the order dated.15.12.2000 passed by the Full Bench of Odisha Sales Tax Tribunal (in short, OSTT) in S.A.No.1928-1929 of 1992-93 that confirmed the orders of the Ld. Assistant Commissioner of Sales Tax (in short, ACST), Cuttack- II Range, Cuttack in first appeal No.2768-2769 /CUII/89-90, was challenged. The Hon'ble

Court Vide their order dtd.14.02.2019, remanded the case to this Tribunal with the following observations:

“..... It is made clear that the parties will be governed by the view taken in the order dt.29.03.1997 passed in S.A. No.974-979 of 1989-90....”

2. The brief history of the case is that the OSTT in Full Bench way back in 2000 passed an order dated 15.12.2000 in S.A. Nos.1928 -1929 of 1992-93 pertaining to an order of assessment under section 12(5) of the OST Act and assessment under rule 5 of the OAST Rules for the year 1988-89. In the said second appeal, the Tribunal held the transactions as Intra-State sales dispelling the claim of the appellant that the goods in question is transferred to the contractee in course of Inter-State sale falling within the meaning of sec 3(a) of the CST Act. The Tribunal also repelled the contention of the appellant that supply of goods to M/s. Paradeep Phosphates Limited (PPL) was pursuant to transfer of document of title by way of endorsement which falls within the scope of sec 6(2)read with sec 3(a) of the CST Act. The Tribunal upheld the impugned transactions executed in course of compliance of works contract as Intra-State and thereby directed for re-computation of tax liability. It is worthwhile to place here that while upholding the view of Ld. Assessing Officer, the Tribunal had taken a fresh view contrary to its earlier order dtd.29.03.1997 in Second Appeal Nos.974-979 of 1989-90 which relate to assessment under section 12(5) of the OST Act and rule 5 of the OST Rules for the year 1984-85 to 1987-88.

3. Sri Bibekananda Mohanti, Learned Sr. Counsel for the appellant placed for perusal the order dated 14.02.2019 passed by the Orissa High Court in O.J.C. No.11592 of 2001 which shows that the dealer company being aggrieved by order dated 15.12.2000 of the Tribunal passed in the subject Second Appeal of Orissa in O.J.C. 11592 of 2001. The Hon'ble High Court commenting upon the order dated 15.12.2000 passed in Second Appeal nos.1928-1929 of 1992-93 observed that "In the above impugned order, the Ld. Tribunal has taken 'U' turn from its earlier decision dated 29.03.1997 passed in Second Appeal nos.974-979 of 1989-90 under Annexure-3 to the Writ Petition". The Hon'ble Court directed the Tribunal as follows:

Quote

6.Having heard learned counsel for the parties and considering the materials available on record, we are of the considered opinion that for the same contract for the different years between the same parties, the earlier decision is binding. Even if the Tribunal was not in agreement with the earlier decision, the Tribunal ought to have referred the matter to the larger bench.

7.In that view of the matter, the order dated 15.12.2000 passed by the "Full Bench" of Orissa Sales Tax Tribunal in Second Appeal Nos. 1928-1929 is required to be quashed and set aside and, accordingly, the same is quashed and set aside. It is made clear that the parties will be governed by the view taken in the order dated. 29.03.1997 passed in Second Appeal Nos.974-979 of 1989-90 at Annexure-3"..

4. Hence, the afore-noted Second Appeals are related to OST and OAST relating to the assessment year 1988-89 and are taken up for hearing analogously. On consideration of rival contention and submission, it is perused that the appellant company has stated to execute the contract from the period 1985-86 to 1988-89. In other words, it can safely be said on perusal of materials available on record that the contract which was the subject matter of S.A. Nos.974-979 of 1989-90 relating to assessment years 1985-86 to 1987-88 is the same contract applicable to the instant assessment year. Hence, the Tribunal has no other option than to maintain parity and consistency. In the present Second Appeals, the observations and the finding qua the contract vide order dated 29.03.1997 in second Appeal nos. 974-979 of 1989-90 apply in all fours.

5. The factual narration made by the appellant authority for the impugned period reveals that the agreement between BHEL and PPL was divisible one, being divided into a supply contract and works contract. While the goods originated from outside the state, the RR/LR are send by the supplier to the site office for arranging prompt delivery of the materials from the carriers after getting necessary endorsement from the Senior manager (constructions) of PPL. The Tribunal in its earlier order dated 29.03.1997 in Second Appeal Nos.974-979 of 1989-90 narrated identical facts with regard to supply of Plant and Machinery to PPL from sub-suppliers outside the State. The Tribunal after analyzing the terms of contract came to hold that there was no sale of finished goods inside

the State. However, the appellant being shown as consigner and Senior Manager (constructions) PPL as consignee in respect of supply of materials from outside the State and the units of BHEL having raised invoices on PPL, the transactions are held to be Inter-State sale within the meaning of Sec 3(a) and Sec 6(2) of the CST Act. Since goods were actually moved from outside the State of Orissa on the strength of declarations, there is no doubt in our mind to hold the contract of supply of equipments and receipt of payments from PPL as Inter-State sales.

6. In the ultimate the majority of the members in Second Appeal Nos. 974-979 of 1989-90 vide order dated 29.03.1997 directed as follows:

Quote

In the result, the appeals are allowed in part and impugned orders of the Ld. Asst. commissioner of Sales Tax stands vacated to the extent indicated above. The STO is directed to re-compute the tax payable by the appellant. Excess tax paid, if any, be refunded as per provisions of law. (Unquoted)

7. In the instant case, the Ld. Sr. Counsel for the appellant brought our attention to the case laws in BHEL Vrs. Union of India & others (1996) 4 SCC 230; Sawhney Steel and Press Works Ltd. Vrs. CTO (1985) 60 STC 301 (SC) and Gannon Dunkerly & Co. Vrs. State of Rajasthan (1993) 88 STC 204 (SC). In BHEL case (supra), the Hon'ble Apex Court under identical supply contracts entered into between BHEL & NALCO held that the transaction constitutes inter-state sales. In

Gannon Dunkerly case (supra), the Hon'ble Court directed for deletion of inter-state sales from the purview of local Sales Tax Act, 1947.

8. The Id. Senior Counsel for the appellant further submitted that the Appellate Authority should always take a consistent view in the appellant's contract with Paradeep Phosphates Ltd which was for four assessment years being 1985-86 to 1988-89. The Tribunal had taken a view for the first three assessment years and another view for the fourth assessment year. Various High Courts and the Hon'ble Supreme court of India have always observed about the practice and procedure of the Appellate Authorities and the Tribunals in India and they have time and again said that precedents have to be carried out. Courts have always held that a sub-ordinate Court is bound by the precedent of a higher Court and a Bench in a court or a Tribunal is bound by the order of a co-ordinate Bench or by a precedent of another co-ordinate Bench. The Hon'ble Supreme Court of India in a case reported in (2000) 1 SCC 644 (sub-Inspector Rooplal Vs. Lt. Governor through Chief Secretary, Delhi) have held as follows:

“The manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal is most dissatisfying. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion of that earlier view taken by the Coordinate Bench of the Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the differences of opinion between two Coordinate Benches

on the same point could be avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under the Indian system. This is a fundamental principle which every Presiding Officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in the judicial system in India. The Supreme Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A coordinate Bench of a court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.”

9. In the present Appeal and in the order which was challenged in the writ petition before the High Court, the Hon’ble Tribunal did not take into account the earlier orders passed by different co-ordinate Benches of the Orissa Sales Tax Tribunal and decided the matter against the Appellant and the said view was not accepted by the Hon’ble High Court and hence the Hon’ble Court quashed the order and directed the parties to be governed by the view taken by the Tribunal in the order dt.29.3.97 in Second Appeal No.974-979 of 1989-90 (BHEL Vs. State of Orissa) which relates to the earlier three assessment years for the periods 1985-

86 to 1987-88. The Appellant, therefore, submitted that the appeals may be allowed in line with the earlier order of this Tribunal dated 29.03.1997 in S.A. Nos.974-979 of 1989-90.

10. In view of order dtd.14.02.2019 passed in O.J.C. No.11592 of 2001 of the Hon'ble Orissa High court, following the analysis made vide order dtd.29.03.1997 in second appeal no.974-979 of 1989-90, we now direct the Assessing Authority for re-assessment of this case.

11. Accordingly, it is ordered.

The case is remanded to the LAO to re-compute the tax payable by the appellant taking into consideration the observations made herein above and pass fresh order preferably within 3 months of receipt of this order, giving the appellant a reasonable opportunity of being heard.

The case is disposed of accordingly.

Dictated & corrected by me,

Sd/-
(Srichandan Mishra)
Accounts Member-II

Sd/-
(Srichandan Mishra)
Accounts Member-II

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member