IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 127 of 2008

M/s. Konark Paper & Industries Ltd., Mayurbhanj .... ***Petitioner***

Mr. M. Agarwalla, Advocate

-versus-

State of Orissa .... ***Opposite Party***

Mr. Sidharth Shankar Padhy, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
20.06.2022

Order No.

05. 1. By the order dated 28th August 2000, this Court had directed the following two questions to be referred to it by the Tribunal for its decision:

> "1. Whether on the facts and in the circumstances of the case, the Sales Tax Tribunal is justified to disallow the branch transfer inasmuch as relevant documents of branch transfer including declaration form-F issued by the branch office has been furnished by the applicant?
>
> "2. Whether on the facts and in the circumstances of the case, the Sales Tax Tribunal was justified to ignore the documents and evidences furnished by the applicant in course of hearing of the appeal?"

2. The short issue involved in the present petition is whether the alleged branch transfers by the Petitioner- Assessee to its Calcutta Office were in fact disguised inter-state sales.

3. The Tribunal has in the impugned order in Paragraph-5 noted as under:

“5. It was next contended by the learned Advocate for the dealer that the forums below were not justified in rejecting the claims of the dealer in respect of branch transfer, particularly when the dealer has filed the supporting ‘F’ forms in respect of such claim. The learned Addl. S.R., on the other hand, argued in support of the impugned assessment made by the forums below, perusal of records reveals that in the order of assessment, the learned assessing officer has observed that in almost all these cases the claim of branch transfer, which have been disallowed, the quantity, quality and specification of papers are almost the same as the orders placed by the customers and accordingly he has held that it is nothing but post arrangement of records for the verbal or telephonic requisition of the customers. To add to this, the learned ACST in his order observed that the goods were received within a short period and disposed of immediately within a day or two. From the copies of various papers received on 2.4.88 by the branch have been sold to the customer on 4.4.98, that the quantity of despatch and quantity of sale are almost the same. Similarly, in the case of the goods received on 3.4.88 those were sold on 5.4.88, those received on 14.4.88 sold on 15.4.88, those received on 18.4.88 sold on 19.4.88, those received on 20.4.88 sold on 22.4.88, those received on 29.5.8 sold on 31.5.88 and so on and so forth in almost all 10 transactions referred to in the assessment order. From all these evidences, it becomes clear that the goods received at the branch were delivered to the customers within a day or two and this could not have been done unless the orders had earlier been placed. The date of despatch and t he date of delivery of the goods show that the goods had moved from Orissa to the branch not in the ordinary course of business, but in compliance to and in pursuance of specific orders for specific quantities of the goods. Therefore, the forums below were legally justified in rejecting the claim of exemption on this count, which also finds support from a decision of Hon’ble High Courts of Punjab and Haryana in the case of Mehta

Group of Industries vs. State of Haryana, reported in (1989) 75 STC 426 (P&H)."

4. Learned counsel for the Petitioner strenuously argued that the conclusions that these were inter-State sales was based on surmises and conjectures and that the documents produced by the Petitioner to prove to the contrary were ignored by the authorities below.

5. Apart from the fact that the sales by the Calcutta Office took place within a day of receipt of the consignment from the Petitioner's office at Baripada by transfer, the important fact to note was that there was a pattern in the sales effected in similar fashion where within a day or two of the receipt of the consignment the sale was effected and of an identical quantity and description of the goods. This could not be termed as a mere coincidence. It is this that has persuaded the Tribunal not to accept the contention of the Assessee.

6. Having considered the submissions of the learned counsel for the parties, this Court is not inclined to interfere with the reasoned order of the Tribunal which upholds the corresponding orders of the Assessing Officer and the ACST. The view taken is a plausible one and arises purely from the factual situation of the case.

7. Consequently, the questions are answered in favour of the Department and against the Assessee. The revision petition is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S. Behera