

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 5123 OF 2005

C.C.T. Orissa & Ors.

...Appellants

Versus

Indian Explosives Ltd.

...Respondent

J U D G M E N T

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 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.

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.

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.

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.

6. There is no appearance on behalf of respondent-assessee when the matter was called.

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.

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.

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

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(C.K. THAKKER)

.....J.
(LOKESHWAR SINGH PANTA)

New Delhi,
February 28, 2008