A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.7178 of 2011

In the matter of application under Articles 226 and 227 of the Constitution of India.

M/s. Toyo Engineering India Ltd.,
represented by its Administration Manager,
I.P.A.S., Paradeep Project Site, Ajay S.Pawgi,
S/o Shripad Bishnu Pawgi,
C/o IFFCO, Musadia, Paradeep,
Dist: Jagatsinghpur ... Petitioner

-Versus-

Sales Tax Officer,
Jagatsinghpur Circle,
Paradeep & another ... Opp. Parties

For Petitioner : M/s. S.N.Sahu, B.Panda, B.B.Sahu & Bijay Panda

For opp. parties : Mr.R.P.Kar (Standing Counsel for Revenue)

P R E S E N T:

THE HONOURABLE THE CHIEF JUSTICE SHRI.V.GOPALA GOWDA
AND
THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment:06.09.2011

B.N.Mahapatra, J. Challenge has been made to the notices issued for less payment of tax in Form- E24 under Rule 10(6)(b) as well as demand notice in Form-E8 under Rule-16 of the Orissa Entry Tax Rules, 1999 (for short 'OET Rules') on the ground that both the notices have been issued directing

the petitioner to pay Rs.13,33,115/- along with interest at the rate of 2% for the period from 01.01.2010 to the date of payment of the amount as directed in Form E24 without application of mind and misconstruing the above provisions of the OET Rules.

2. Petitioner's case in a nutshell is that the petitioner is a dealer registered under Value Added Tax Act, 2004 (for short 'VAT Act') and Entry Tax Act, 1999 (for short 'ET Act'). It has been regularly filing its quarterly returns as required under sub-section (1) of Section 7 of the OET Act before the Assessing Authority disclosing nil turnover of value of goods on which entry tax is payable. In spite of the same, the Sales tax Officer, Paradeep Circle, Paradeep, Jagatsinghpur issued notice for less payment of tax in Form E-24 under Rule 10(6)(b) followed by notice of demand in Form E-8 under Rule 16 of the OET Rules for Rs.13,33,115/- along with interest as directed in Form-E24. Hence, the present writ petition.

3. Mr.B.Panda, learned counsel for the petitioner submitted that the said notices have been issued without application of mind. The petitioner is a works contractor and in order to execute the work, it has procured machineries and construction materials from outside the State of Orissa and overseas countries on which no entry tax is leviable. The petitioner has been regularly filing its quarterly return in Form E-3 as required under sub-section (1) of Section 7 of the OET Act. According to Mr.Panda, since the petitioner has filed quarterly return as required under Section 7(1) of the OET Act, no assessment can be made under Section 9A read with Rule 15A

of the OET Rules. The impugned demand has been made ignoring the principle laid down in the judgment of this Hon'ble Court dated 18.02.2008 in W.P.(C) No.6515 of 2006 in the case of Reliance Industries Limited. Levy of entry tax on the goods imported from foreign countries is hit by Article 286(b) of the Constitution. The VAT amounting to Rs.50,55,057/- has been deducted at source from the payments made to the petitioner on account of execution of work. Therefore, further demand raised under OET Act is illegal.

4. Mr. Kar, learned counsel appearing for the Commercial Taxes Department submits that there is no illegality or infirmity in issuing the notice in Form E-24 under Rule 10(6)(b) and demand notice in Form E-8 under Rule 16 of the OET Rules. The petitioner having claimed illegal deductions from the total value of goods purchased and utilized in execution of the works contract, the Assessing Officer in exercise of power vested under Rule 10(6) (b) of the OET Rules has issued Form E-24 raising the amount due from the dealer. Consequently, notice of demand issued in Form E-8 is also valid.

5. On rival contentions of the parties, the only question that arises for consideration by this Court is as to whether in exercise of the power vested with the Assessing Officer under clause (b) of sub-rule (6) of Rule 10, the Assessing Officer can examine the correctness of various deductions claimed in the return to find out the amount of tax due from the assessee unilaterally by applying his own method of calculation.

6. To deal with the above question, it is necessary to know what is contemplated in sub-rule (6) of Rule 10, which is reproduced below:-

> "(6) (a) Each and every return in relation to any tax period furnished by a dealer shall be subject to manual or system based scrutiny.
> (b) If, as a result of such scrutiny, the dealer is found to have made payment of tax less than what is payable by him for the tax period, as per the return furnished, the assessing authority shall serve a notice in Form E24 upon the dealer directing him to pay the balance tax and interest thereon by such date as may be specified in that notice."

7. A plain reading of above rule makes it clear that the return filed by the dealer shall be subject to manual or system based scrutiny and on such scrutiny, if the dealer is found to have made payment of tax less than what is payable by him for the tax period as per the return furnished, the Assessing Officer shall serve the notice in Form E 24 upon the dealer directing him to pay the balance tax and interest thereon by such date as may be specified in that notice. Thus, by exercising power vested under clause (b) of sub-rule (6) of Rule 10, the Assessing Officer shall ask the dealer to pay differential amount between the tax payable by him as per the return furnished and the amount of tax paid along with return. In other words, if the dealer pays the less amount of tax than what he admits to be payable by him as per the return furnished, the Assessing Officer shall and can ask the dealer to pay the differential amount in form E-24. To illustrate, if, as per the return filed by the dealer, Rs.100/- tax is payable by him and his return is accompanied by a challan showing payment of

Rs.40/-, the Assessing Authority shall issue notice in Form E-24 for the balance amount of Rs.60/-. Therefore, under sub-rule (6) of Rule 10 there is no provision to give any opportunity of hearing to the dealer before issuing notice under that sub-rule in Form E-24. Opportunity of hearing the dealer before issuing notice in Form-24, has been rightly not provided because the Assessing Authority is only required to ask the dealer to pay the differential amount between the amount admitted by the dealer in his return to be payable and the amount already paid. If the provisions contained in sub-rule(6) of Rule 10 would be construed otherwise, it would give unbridlled power to the Assessing Authority to disallow various deductions claimed in the return giving his own interpretation without affording any opportunity of hearing to the assessee and to raise any demand which is certainly not the intention of legislature.

8. In this context, it is also very much necessary to deal with an important aspect raised by Mr. Kar, the Standing Counsel for the Revenue that if the assessee claims bogus, illegal deductions in its return, the Assessing Authority cannot remain a silent spectator and accept the tax admitted by the dealer in its return. According to Mr. Kar, in that event there will be huge loss to the State Exchequer. Therefore, according to Mr. Kar, the phraseology used “tax payable by the dealer” as per the return furnished connotes the tax which is payable according to the provisions of the statute. We are unable to accept such contention taken by Mr. Kar as in that event in exercising power under clause (b) of sub-rule (6) of Rule 10

which does not provide any opportunity of hearing to the dealer, the Assessing Authority shall raise demands by unilaterally disallowing various claim made in the return. That would be in gross violation of the principles of natural justice.

9. It is pertinent to note here that the apprehension of Mr.Kar has been taken care of by the Legislature in Rule 10 itself.

It is well settled legal position that, while interpreting the provisions of the statute, every part of the provisions of the statute has to be given effect and one part cannot be interpreted in a manner inconsistent with another part of the statute that would defeat the object and purpose of the Act and Rule. In ***Mohammad Ali Khan and others Vs. Commissioner of Wealth-tax***, AIR 1997 S.C. 1165, the Supreme Court has quoted the following observations of the Court made in ***J.K. Cotton Spinning & Weaving Mills Co. Ltd., vs. State of U.P.,*** AIR 1961 SC 1170:

> "The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of statute should have effect."

10. It is a settled position in law that where language of any provision in a Statute is clear, it is impermissible to vary the language unless the plain and unambiguous language leads to an absurd result. That is not the case here.

11. At this juncture, it will be beneficial to refer the decision of the Hon'ble Supreme Court in the case of ***H.H. Maharajadhiraja Madhav Rao***

Jivaji Rao Scindia Bahadur and others etc., vs. Union of India, *AIR 1971 SC 530,* wherein the Hon'ble Supreme Court in the context of interpretation of the constitutional provision held that:

> "134. ….. A constitutional provision will not be interpreted in the attitude of a lexicographer, with one eye on the provision and the other on the lexicon. The meaning of a word or expression used in the Constitution often is coloured by the context in which it occurs: the simpler and more common the word or expression, the more meanings and shades of meanings it has. It is the duty of the Court to determine in what particular meaning and particular shade of meaning the word or expression was used by the Constitution makers, and in discharging the duty the Court will take into account the context in which it occurs, the object to serve which it was used, its collocation, the general congruity with the concept or object it was intended to articulate and a host of other considerations. Above all, the Court will avoid repugnancy with accepted norms of justice and reason….."

12. As per Rule 10(1)(a), the return under sub-section (1) of Section 7 of the Act shall be submitted in Form E-3 within twenty-one days of the date of expiry of the month or quarter as the case may be, to which the return relates.

13. Clause (a) of Sub-rule (3) of Rule 10 of OET Rules provides that the return under sub-rule (1) or (2) shall be accompanied by the receipt from the Government treasury or a crossed demand draft drawn in any scheduled bank or a bankers' cheque issued by the scheduled bank in favour of the Asst. Commissioner, Sales tax or Sales Tax Officer of the Circle, as the case may be, to fulfill the payment of tax as per the return.

Clause (b) of sub-rule (3) of Rule 10 provides that where the dealer furnishes a return under sub-rule (1) or (2) without proof of full payment of tax payable for the tax period, a notice in form E-21 shall be served upon such dealer for payment of the tax due as per the return furnished and the dealer shall pay the amount of tax defaulted within the time specified in that notice.

14. Rule 10(5)(a) provides, where a dealer fails to make payment of the tax due and interest thereon along with return or revised return furnished for any tax period, a notice in Form E-22 requiring such dealer to show cause within 14 days from the date of receipt of the notice shall be served upon him.

Rule 10(5)(b) provides, where the dealer fails to respond to such notice or explain the default in payment of tax or interest or both to the satisfaction of the authority issuing notice under clause (a) penalty shall be imposed under sub-section (6) of Section 7 and the order shall be issued in Form E-23.

Rule 10 (5) (c) provides where a dealer fails to furnish the proof of payment as required under sub-section (1) of Section 7, a notice in Form E-22 requiring such dealer to show cause within fourteen days from the date of receipt of the notice shall be served on such dealer and if the dealer either fails to respond to such notice or fails to explain to the authority issuing such notice, sufficient cause for not furnishing the proof of

payment of the tax due, the penalty shall be imposed under sub-section (7) of Section 7 and the order shall be issued in Form E-23.

15. Thus, on a conjoint reading of the above provisions, if a dealer is required to pay the tax due as per the return and he fails to make payment of the tax due as per the return and interest accrued thereon along with return or revised return the show cause notice is served upon the dealer to make payment of the tax due on the return. If the dealer fails to respond to such notice an order has to be issued in Form E-23 imposing penalty.

16. In the instant case, the petitioner-dealer has filed its nil return for the period under consideration. Since it is not the case of the Assessing Officer that the dealer has admitted certain amount towards its tax liability in the return and made less payment than the amount admitted to be payable by him in its return, he is not justified to issue notice in Form E-24 and consequently demand notice in Form E-8 raising demand of Rs.13,33,115/-. According to the Assessing Officer, as per the figures furnished in the return the tax due for the period under consideration comes to Rs.13,33,115/- as various deductions claimed by the dealer, according to the Assessing Authority, is not admissible/allowable. In that event, the Assessing Officer shall issue a show cause, asking the dealer to pay the amount due on the return in Form E-22 and E-23 as provided under rule 10(5).

17. In view of the above, the notice issued in Form E-24 and demand notice in Form E-8 under Annexure-3 series are quashed. Liberty is given to the Assessing Officer to proceed against the petitioner in accordance with law, if he is of the opinion that the tax due on the return as furnished by the petitioner is not paid by it due to wrong/excessive claim of deduction(s) in the return.

18. In the result, the writ petition is allowed.

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B.N.Mahapatra, J.

V.Gopala Gowda, C.J. *I agree.*

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Chief Justice

Orissa High Court, Cuttack
Dated 6th September, 2011/skj/ss/ssd