

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES:
ODISHA, CUTTACK.

No. 1073 /CT.
BH - 267 (V) / 2017-18

Dated 17/1/18

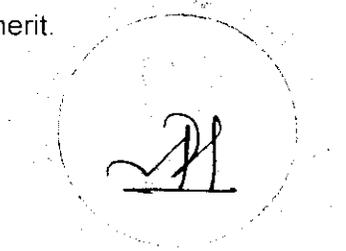
Revision Case No : BH - 267 (V) / 2017-18
Name and address of the petitioner : M/s Kasturi Industries
Plot No. 1212, God Sahi, Nayapalli,
Bhubaneswar
At Present
Plot No. 2517, Pandara, Hi-tech Medical
College Road, Bhubaneswar.
Registration Certificate No : 21082702326 (Cancelled)
Date of Hearing : 23.12.2017
Date of Order : 17.01.2018
Petition filed by : Sri. Gouri Shankar Mohanty, Ld Advocate.

ORDER

This revision petition has been filed by M/s Kasturi Industries, Bhubaneswar on 12.09.2017 seeking revision u/s 79(2) of the orders of the Joint Commissioner of Sales Tax, Bhubaneswar Range dated 16.03.2017 and 05.08.2017.

The facts of the case in brief are as follows.

- (a) The petitioner, M/s Kasturi Industries, Bhubaneswar, was a registered dealer under Bhubaneswar II Circle bearing TIN 21082702326 under the OVAT Act. Since the dealer petitioner did not file any return, the registration certificate was cancelled by the Registering Authority on 16.08.2016 after giving the dealer a show cause notice. The dealer then filed a revision petition before the Joint Commissioner of Sales Tax, Bhubaneswar seeking restoration of the cancelled Registration certificate. The revisional authority, i.e. the Joint Commissioner of Sales Tax, Bhubaneswar Range, after hearing the Ld Counsel of the dealer petitioner, has upheld the order of cancellation vide his order dated 16.03.2017.
- (b) The dealer then filed a petition u/s 81 of the OVAT Act before the Joint Commissioner of Sales Tax, Bhubaneswar Range on 24.07.2017 seeking rectification of the revision order dated 16.03.2017.
- (c) The dealer petitioner was heard by the revisional authority and vide his order dated 05.08.2017, the revisional authority rejected the rectification petition dated 24.07.2017 on being devoid of any merit.



2. Now the dealer petitioner has moved this forum by filing a revision petition No. 79(2) seeking to revise the order of the Joint Commissioner of Sales Tax, Bhubaneswar Range dated 16.03.2017. In this case, the Joint Commissioner of Sales Tax, Bhubaneswar Range has exercised the revisional power of the Commissioner duly delegated to him by the Commissioner. So, a view can be taken that in such cases of delegation of statutory power, the order of the delegatee authority can be deemed to be an order of the delegator authority; i.e Commissioner of Sales Tax in this case; and hence the Commissioner of Sales Tax cannot revise his own order. The dealer petitioner was, therefore, asked to clarify on the admissibility and maintainability of his revision petition dated 12.09.2017.

3. The Ld counsel, Sri G.S Mohanty appeared on 23.12.2017 and argued that Section 5 of the OVAT Act states that order passed by the delegatee shall be deemed to be an order passed by **that** person; and hence revision against the order passed by that person can very well lie with the Commissioner of Sales Tax.

4. I have gone through all the relevant materials including the submissions of the Ld counsel appearing on behalf of the petitioner. The question to be answered is whether an order passed by a delegatee authority sub-ordinate to the Commissioner of Sales Tax by exercising the delegated power of the Commissioner of Sales Tax, is deemed to be an order passed by the Commissioner or by the said delegatee sub-ordinate authority. If the order is deemed to be the order of the Commissioner, then no revision against that order can lie with the Commissioner as because the Commissioner cannot revise his own order.

5. Section 5 of the OVAT Act reads as follows.

Delegation of the Commissioner's power and function. -

"Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers and functions under this Act or the rules to any person appointed under sub-section (2) of section 3, and any order passed by any such person in exercise of the powers so delegated shall be deemed to be an order passed by that person".

On a bare reading of the above provision it is seen that the order passed by a delegatee in exercise of the delegated function is to be construed as an order passed by the delegatee. In the present case, the matter of taking of revision of a registration related issue



has been delegated by the Commissioner of Sales Tax to the Joint Commissioners of Sales Tax by order dated 23.07.2016. Therefore, the order passed by the Joint Commissioner of Sales Tax is to be construed as an order passed by him and not by the Commissioner of Sales Tax. Accordingly, revision against the order of the Joint Commissioner of Sales Tax can very well lie with the Commissioner of Sales Tax.

6. Accordingly, the submission of the Ld counsel is accepted and the revision petition is admitted for hearing on merit. The petitioner is called upon to appear before the undersigned or be represented by his counsel on **03.02.2018 at 11.00 AM** in my office chamber at Baniyakar Bhawan, Cuttack for hearing of the issue on merit. Lower Court record in the instant case be obtained and placed at the time of hearing.

Dictated and corrected by me.

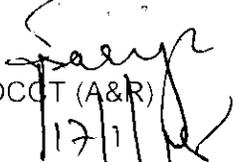
Commissioner of Sales Tax
Odisha

Memo No. 1074 /CT.


(Saswat Mishra) 17.1.18
Commissioner of Sales Tax
Odisha

Dated 17/1/18

Copy forwarded to the above named petitioner / J.C.S.T. Bhubaneswar Range, Bhubaneswar / DCST, Bhubaneswar II Circle, Bhubaneswar for information and necessary action.


DCCT (A&R)
17/1/18
O/C