



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.32208 of 2024

***M/s. Hindustan Coca-Cola
Beverages Pvt. Ltd., BBSR***

....

Petitioner

-versus-

***The Commissioner, CT and GST,
Odisha, Cuttack and others***

....

Opposite Parties

Learned advocates appeared in the case:

For petitioner : Mrs. K.R. Choudhury, Advocate

For opposite parties : Mr. S. Mishra, Advocate
(Standing Counsel)

CORAM:

**THE HON'BLE MR. JUSTICE ARINDAM SINHA
AND
THE HON'BLE MR. JUSTICE M.S. SAHOO**

J U D G M E N T

Date of hearing and judgment: 9th January, 2025

ARINDAM SINHA, J.

1. Mrs. Roy Choudhury, learned advocate appears on behalf of petitioner and submits, impugned is, inter alia, intimation dated 30th November, 2024 intimating that the Joint Commissioner of Sales Tax (Appeal), in its appeal order no.3623 dated 21st October, 2023 had



dismissed the appeal. As such, petitioner then became liable to pay tax and interest within 15 days of receipt, failing which recovery proceeding will be initiated. She submits, mentioned appeal order was never communicated to her client. She relies on rule 121 in Odisha Value Added Tax Rules, 2005, reproduced below.

“121. Order of assessment, appeal or revision to be communicated to the dealer.—

A copy of the order of assessment, appeal or revision shall be supplied to the concerned dealer free of cost and without application for the same.”

She seeks interference.

2. Mr. Mishra, learned advocate, Standing Counsel appears on behalf of revenue and draws attention to annexure-4 being order dated 21st October, 2024, referred in the intimation. He submits, the order is one of rectification made to order dated 24th April, 2023. It having been disclosed in the writ petition is demonstration that petitioner was communicated the rectification order, subject matter of the intimation.

3. So far as appeal order dated 24th April, 2023 is concerned, Mr. Mishra hands up copy of the order and attached thereto postal receipt showing dispatch to petitioner on date appearing to be sometime in July, 2023. Mr. Mishra attempts to give the date as in the postal stamp to be 4th July, 2023. As such he submits, only discrepancy in the



intimation is reference to the rectification order as appeal order. It is not a discrepancy inasmuch as the appeal order merges in the rectification order, to become the appeal order.

4. Mrs. Roy Choudhury in reply points out, impugned intimation talks about appeal order dated 21st October, 2023. It was not served on her client. The rectification order is dated 21st October, 2024.

5. In trying to sort-out the confusion created we see that mention of appeal order gives no.3623 and date 21st October, 2023. It carries error inasmuch as the rectification of appeal order is order no.3623 dated 21st October, 2024. The order reference has been correctly stated in the intimation but the date carries a mistake. Revenue committed error, albeit typographical error in printing date of the order mentioned in impugned intimation. Petitioner's contention is that the order mentioned in impugned intimation was not served. It could not have been as the particulars of the order themselves carry an error. However, we are convinced that petitioner was aware all along.

6. At this stage Mrs. Roy Choudhury submits, by the rectification there was enhancement without giving opportunity of hearing. Mr. Mishra submits, by the rectification there has been reduction in tax and increase in interest, but the aggregate demand remained the same.



7. Proviso in sub-section(1) of section 81 says that an amendment, which has effect of enhancing an assessment or otherwise increase liability of the assessee shall not be made unless the authority has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard. Going by submission made on behalf of revenue, if there has been increase in the amount of interest by the rectification, petitioner was entitled to a notice for being heard. The concept of aggregate demand remaining same is not supported by the provision.

8. Impugned rectification order and the intimation are set aside and quashed. Petitioner will forthwith communicate certified copy of this order to the authority within 24th January, 2025 and obtain date of hearing, for purpose of rectification. In event of omission to communicate as directed, impugned order and intimation will automatically stand restored.

9. The writ petition is disposed of.

(Arindam Sinha)
Judge

(M.S. Sahoo)
Judge

Signature Not Verified

Digitally Signed
Signed by: PRASANT KUMAR SAHOO
Designation: PERSONAL ASSISTANT
Reason: Authentication
Location: Orissa High Court
Date: 08 Jan 2025 18:13:14

