IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.69 of 2009

M/s. Ginni Metal Industries (P) Ltd., Rajgangpur .... ***Petitioner***

Mr. M. L. Agarwal, Advocate

-versus-

State of Orissa, represented through the Commissioner of Sales Tax, Orissa .... ***Opposite Party***

Mr. Sunil Mishra, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
DR. JUSTICE S. K. PANIGRAHI

ORDER
26.07.2022

Order No.

05.

1. The present revision petition by the Assessee arises from an order dated 31st July, 2008 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) dismissing the Assessee's S.A. No.2890 of 2004-05 for the year 2001-02, thereby affirming the order dated 31st July, 2003 of the Assistant Commissioner of Sales Tax, Sundargarh Range, Rourkela (ACST), which in turn confirmed the demand of Rs.2,68,337/- raised by the Sales Tax Officer (STO), Rajgangpur under Section 12(4) of the Orissa Sales Tax Act, 1947 (OST Act).

2. Admit.

3. The following question of law is framed for consideration:

> *"2. Whether in the facts and circumstances of the case, the Tribunal was justified in holding that the petitioner as purchaser of raw materials was not entitled to claim 'set off' of tax to the tune of Rs.2,52,337.00 paid by the selling dealer under Entry 69 of the Taxable schedule in terms of*

the 'Foot Note' to the Taxable schedule of goods under Orissa Sales Tax Act?"

4. The admitted facts are that the Petitioner is engaged in manufacture and sale of C.I. Pipes and fittings, manhole cover etc., and purchases steel scrap and steel products from a seller, who in turn purchases it from Rourkela Steel Plant (RSP). In terms of **Note 1** under Entry 68 and 69 of the OST Rate chart and 68 appended to the schedule to the OST Act, the amount of tax payable in respect of the goods specified in Entry 68 and 69

"shall be reduced by the amount of Orissa Sales Tax paid by him on raw materials and consumables subject to tax on purchase turnover and/or tax collected from him by the selling dealer separately on the body of the bill in respect of sale of raw materials and consumables subject to tax on sale turnover directly used in manufacture of such goods.
Explanation-Building materials for construction of Factories and allied construction, Office equipments, Packing materials, vehicles and such other materials which are not directly used in manufacture shall not be treated as raw material or consumable for the purpose of allowing set off."

5. In the present case, on the short ground that the invoices produced by the Petitioner-Assessee did not separately show the tax already paid on the purchase of the goods by the Petitioner's seller from RSP, the set off has been denied to the Petitioner.

6. Relying on the decision of this Court in ***Utkal Steels Ltd. v. State of Orissa, (2019) 65 GSTR 373,*** it is contended by learned

counsel for the Petitioner that the Petitioner ought to have been given an opportunity to produce the invoices of its seller raised on such seller by the RSP, which sold the raw materials on which the sales tax already stood paid by the Petitioner's seller.

7. A perusal of the impugned order of the Tribunal reveals that there was no reference made to any invoice produced by the Petitioner, which has been raised by RSP on the Petitioner's seller. The reference is only to the invoices raised on the Petitioner by its seller, which obviously does not contain endorsement on the body of the invoice that tax has already been paid by the seller while purchasing raw materials from RSP.

8. Mr. Sunil Mishra, learned Additional Standing Counsel is also not able to dispute the above facts.

9. Consequently, following the decision of this Court in ***Utkal Steels Ltd.****(supra),* this Court sets aside the impugned orders of the STO, ACST and the Tribunal and remands the matter to the STO for a fresh determination after giving the Petitioner an opportunity of being heard and in particular after giving the Petitioner an opportunity to produce before the STO the copies of the invoices raised on its seller by the RSP, which would reflect the tax already paid on the raw materials purchased by the Petitioner's seller.

10. The question framed by this Court is answered in favour of the Petitioner-Assessee and against the Department.

11. The petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(Dr. S. K. Panigrahi)
Judge

M. Panda