IN THE HIGH COURT OF ORISSA AT CUTTACK
STREV No. 87 of 2009

M/s. Swati Marbles	....	***Petitioner***

Mr. Jagabandhu Sahoo, Advocate

-versus-

State of Odisha, represented by the Commissioner of Sales Tax	...	***Opposite Party***

Mr. Sunil Mishra, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

<u>ORDER</u>
22.06.2022

<u>Order No.</u>

04. 1. While admitting this revision petition on 4th November, 2009 the following substantial question of law was framed by this Court for examination:

> "Whether the order passed by the Tribunal confirming the order of assessment resulting in enhancement of the assessment so reduced in the first appellate stage is in violation of Rule 50(3) of the OST Rules ?

2. The present revision petition arises out of an order dated 22nd September, 2008 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in S.A. No.1588 of 2000-01 filed by the State of Orissa as well as S.A. No.1658 of 2000-01 filed by the Petitioner-Assessee against an order dated 30th November, 2000 of the Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack (ACST) reducing the demand of Rs.1,67,847/- raised by the Sales Tax Officer, Cuttack-I Circle (STO) for the assessment year 1998-

99 under Section 12(4) of the Orissa Sales Tax Act, 1947 (OST Act) to Rs.23,005/-.

3. The Tribunal has by the impugned order dismissed the appeal filed by the Assessee and allowed the appeal filed by the Department. As a result, the demand raised by the STO has been restored.

4. This Court has heard the submissions of Mr. Jagabandhu Sahoo, learned Senior Advocate for the Petitioner and Mr. Sunil Mishra, learned Additional Standing Counsel for the Department.

5. The background facts are that the dealer has been dealing in marbles, granite stones, mosaic, chips, white cement, colour oxide, and lime stone powder etc. during the year in question i.e. 1998-99. Two fraud case reports were submitted against the Petitioner. One was by the Inspector-in-Charge (Vigilance), Sambalpur on 31st March, 1999 and another by the Inspector of Sales Tax, Rourkela-II Circle.

6. In the first report, the dealer was charged with purchase suppression of goods valued at Rs.1,50,000/- after a truck containing marble slabs was intercepted on 16th December, 1998. It was found that the consignments of marble slabs were not accompanied by fully filled up way bill. While determining the value of goods at Rs.1,50,000/-, the inspecting officials levied tax at Rs.25,000/- and "realized the same from the dealer through the driver of the vehicle". The STO found the invoice price at Rs.33,613/- and estimated the purchase suppression of the marble slabs at Rs.1,00,000/-.

7. As far as the other fraud report is concerned, this again arose from the interception of a truck carrying slate stone and polish marble tiles is in excess stock of 15 packets of marmo tiles manufactured by M/s. Marmo (P) Ltd. and they again were not supported by any sales memo. The sale price was determined at Rs.4,500/- and penalty of Rs.2160/- was collected by the inspecting officials. The STO estimated the dealer's sales suppression at Rs.4,500/-.

8. When the matter went in appeal before the ACST, the enhancement, as a result of the supersession was reduced to Rs.1,40,000/-. Correspondingly, after adjusting the amount already paid to the dealer, he was required to pay the balance of Rs.23,005/-.

9. Having considered the submissions of learned counsel for the parties, the Court is of the view that the ACST had taken a balanced view of the matter and determined the sale suppression and purchase suppression on the basis of the value of the consignment. Nothing has been indicated in the impugned order of the Tribunal in support of the conclusion that the reduction of the purchase suppression by the ACST from Rs.1,00,000/- to Rs.33,613/- and deletion of the sales suppression of Rs.4,500/- was arbitrary.

10. In that view of the matter, the Court is of the view that there was no justification for the Tribunal to have set aside the order of the ACST and restore the order of the STO. Accordingly, the impugned order of the Tribunal is hereby set aside. The question

framed is answered in favour of the Assessee and against the Department. It is clarified that the the order of the ACST is restored to file.

11. The revision petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.