IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7753 of 2010

M/s. Kanika Furniture (P) Limited, Balasore .... ***Petitioner***

Ch. S. Mishra, Advocate

-versus-

Joint Commissioner of Commercial Taxes, Balasore and another .... ***Opposite Parties***

Mr. Sunil Mishra and Mr. S. S. Padhy, Additional Standing Counsel for the Department

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
10.05.2022

Order No.

06. 1. A short question arises for consideration in the present case. The Petitioner Assessee's premises was visited by Tax Audit Team on 23rd November, 2007. The Audit Report was submitted on 30th August, 2008. The Assessee claims that this is in violation of Section 41(4) of the Orissa Value Added Tax Act, 2004 ('OVAT Act'), which mandates that the Audit Visit Report (AVR) has to be submitted within seven days of the 'completion of audit'.

2. In the counter affidavit filed, the above dates are not disputed by the Department. It is however claimed that since the Assessee himself wrote a letter on 23rd November, 2007 seeking time for submitting further documents, the audit was not completed awaiting those documents. It is accordingly submitted that the

audit was completed only on 30th August 2008, the very date on which the AVR was submitted.

3. Incidentally, it may be noted that no notice was issued to the Assessee by the Department in From 303 in terms of Rule 45(2) of the OVAT Rules between the date of the audit visit 23rd November, 2007 and 30th August 2008, the date of submission of the AVR.

4. It is pointed out by learned counsel for the Petitioner that no document was submitted by the Petitioner after the audit visit. Even assuming that one week's time had been sought by the Petitioner for that purpose on the date of the visit by the audit team i.e. 23rd November, 2007, the Audit Team could not have waited for a period way beyond 30th November, 2007 for completing the audit.

5. The original record has been perused by learned Additional Standing Counsel for the Department in Court and he states that it does not show that any document was submitted by the Assessee after 23rd November, 2007. Allowing for a reasonable time for awaiting the documents of the Assessee, the audit ought to have been completed soon after 30th November, 2007. There was no occasion for the Department to have waited till 30th August, 2008 to complete the audit. Consequently, the very object of Section 41(4) of the OVAT Act appears to have been defeated in the present case.

6. Whether in a particular case, the audit was actually completed within the reasonable time after the audit visit will be depend on

the facts and circumstances of each case. As far as the present case is concerned, the Court is not prepared to accept the plea of the Department that the date of submission of the AVR should be taken to be the date of completion of audit. The Department could not have possibly waited for almost a year after the audit visit to submit the AVR.

7. Consequently, there is a violation of Section 41(4) of the OVAT Act read with Rule 45(3) of the OVAT Rules. The Court accordingly sets aside the impugned assessment order dated 15th December, 2009 passed by the Joint Commissioner of Commercial Taxes, Balasore.

8. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda