IN THE HIGH COURT OF ORISSA AT CUTTACK

OVTA No.1 of 2007

Mr. Vishal Tanaji Shetake, Berhampur .... ***Appellant***
Mr. S. K. Acharya, Advocate

-versus-

Commissioner of Commercial Taxes, Cuttack and another .... ***Respondents***
Mr. Sunil Mishra, Additional Standing Counsel

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

ORDER
26.07.2022

Order No.

16. 1. The short ground on which the Assessee has challenged the penalty order dated 29th December 2006, which has been upheld by the order dated 5th April, 2007 of the Commissioner of Commercial Taxes, Cuttack in Revision Case No.SU-256/06-07 & SU-257/06-07 is that prior to passing such penalty order, the Appellant was not provided with the documents that were seized from his premises at the time of a search and seizure operation.

2. During the pendency of the present appeal, on 11th May 2007, this Court had passed the following order:

"**Misc. Case No.8 of 2007**

8. Heard.

This is an application by the Sales Tax Department drawing the attention of this Court that though the Income Tax Department has issued a notice under Section 132A of the Income Tax Act, 1961 on 16.12.2006, the O.Ps. could

> not bring the said fact to the notice of this Court while the order dated 17.4.2007 was passed.
>
> This being the position, when we have already allowed the prayer for impletion of Income Tax authority, we do not want to modify our order dated 17.4.2007 directing release of the seized goods. But at the same time, the petitioner and his sureties shall give an undertaking before the Income Tax authority that in the event any liability accrues on them, they shall satisfy the same. It is alleged that the copy of the seizure list and the copies of the documents seized have not been released to the petitioner. The Sales Tax authorities are directed to keep the original copies of the documents and return the authenticated copies of the documents to the petitioner.
>
> The Misc. Case is accordingly disposed of.
>
> Let a copy of the appeal memo be served on Mr. Akhil Mohapatra, learned counsel appearing for the Income Tax Department.
>
> A free copy of this order be handed over to the learned counsel for the Sales Tax Department."

3. While Mr. Sunil Mishra, learned Additional Standing Counsel for the Department states that he needs time for instructions on whether the above order has been complied with, Mr. S. K. Acharya, learned counsel for the Appellant states that till date the documents have not been handed over.

4. In any event, the fact that the above order takes note of the fact that the documents are still with the Department and not with the Assessee is itself sufficient for the Court to invalidate the order dated 29th December, 2006 imposing the penalty on the Appellant since that obviously was passed without giving the Appellant access to the documents seized from him. The request made by the Appellant in that regard was not

unreasonable and the authority ought to have acceded to it before passing the penalty order.

5. On this short ground, the impugned order dated 29th December, 2006 of the Sales Tax Officer, Vigilance, Berhampur Division, Berhampur and the corresponding order dated 5th April, 2007 of the Commissioner of Commercial Taxes, Cuttack dismissing the Appellant's revision petition against the said order are hereby set aside.

6. A direction is issued that, if not already provided to the Appellant, the documents seized from him during search will be provided to the Appellant in terms of the order already passed by this Court on 11th May, 2007 within a period of four weeks from today and in any event, not later than 1st September, 2022.

7. The matter will then proceed before the Commissioner in accordance with law on the issue of penalty and a fresh order will be passed in that regard within a further period of eight weeks thereafter.

8. The appeal is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(Dr. S. K. Panigrahi)
Judge

M. Panda