

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 13 of 2014

M/s. Gupta Distributor, Cuttack ***Petitioner***

Mr. B.P. Mohanty, Advocate

-versus-

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

Mr. S.K. Pradhan, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
06.12.2022

Order No.

07. 1. The Petitioner/Assessee has in this revision petition questioned an order dated 19th June, 2013 passed by the Orissa Sales Tax Tribunal (Tribunal), Cuttack in S.A. No.59 (V)/2012-13 whereby the appeal filed by the Revenue was allowed and an order dated 28th April, 2012 passed by the Deputy Commissioner of Sales Tax (DCST) (Appeal), Cuttack deleting the demand raised by the Sales Tax Officer (STO), Cuttack-I City Circle for the period from 1.4.2009 to 31.1.2010 was set aside.
2. The net effect of the impugned order of the Tribunal is that the demand raised by the STO for the aforementioned period has been restored.

3. While admitting the present revision petition on 3rd November, 2016 the following question was framed for consideration by this Court:

“Whether the Tribunal is justified in confirming the reversal of input tax credit by applying sub-section (8-a) of Section 20 of the OVAT Act on the amount received towards credit notes from different companies based on achieving the business target where no input tax credit was involved in such credit notes?”

4. The background facts are that the Assessee/Dealer registered under the Orissa Valued Added Tax Act, 2004 (OVAT Act) carries on business and trading of electronics and electronic home appliances within the jurisdiction of the Assistant Commissioner of Sales Tax (ACST), Cuttack-1 City Circle. It is stated that the Dealer is carrying on the business of trading in the above goods by purchasing them inside the State of Odisha on payment of the requisite VAT which under the law has to be adjusted against the output VAT.

5. It is stated that the returns were filed for the aforementioned period by the Assessee/Dealer and no assessment order was initially passed. However, notice was received by the Petitioner from the Assessing Officer under Section 43(1) of the OVAT Act alleging that the Petitioner had not paid any output VAT from April 2005. On the other hand, carry forward of Input Tax Credit (ITC) to the tune of Rs.5,80,689/- was shown as on 1st February, 2010. Among the other things noticed was the receipt of credit notes from different selling companies during the period April 2009 till

January 2010 which was not reflected by the Dealer in his books of accounts.

6. Accordingly, it was stated in the Tax evasion report, that ITC on Rs.39,02,681/- had to be reversed under Section 20 of the OVAT Act on the ground that sale price of the goods would be less than the purchase price due to grant of incentive in the form of credit notes.

7. In rejecting the plea of the Dealer, the Tribunal appears to have referred to Section 20(8-a) of the OVAT Act, which *inter alia* states that if the ITC that has been availed is in excess of the output tax paid or payable, it shall be reversed in the manner prescribed.

8. Further in terms of the proviso to Section 22 of the OVAT Act no adjustment of ITC shall be allowed “where any credit note has been issued as a consequence of cash discount or sale incentive by any registered dealer to another registered dealer after the tax invoice is issued”.

9. The stand of the Petitioner is that the credit notes issued to the Petitioner do not involve any ITC nor were the credit notes issued in respect of any tax invoice and further the sale price of the goods was not less than the purchase price of the goods. It is accordingly contended that the reversal of Rs.487835.12 from the claim of ITC was without jurisdiction and without any authority of law.

10. The Court finds that there is no determination on factual basis whether the ITC issued by the companies to the Petitioner for achieving the business targets were not credit notes as defined in Section 23 read with Section 22 of the OVAT Act. IN the absence of such determination, this Court is unable to appreciate whether the Tribunal was justified in its conclusion. Since these issues purely turn on facts, it was necessary for the Tribunal to have embarked on a factual enquiry before arriving at the conclusion which has been challenged in the present revision petition.

11. Accordingly, the question framed is answered by holding that the Tribunal should revisit the entire issue in the light of the available materials and any further documents that may be placed by the parties before it upon remand. The impugned order of the Tribunal is accordingly set aside and the matter, i.e., S.A. No.59 (V)/2012-13 (State of Orissa v. M/s. Gupta Distributors) is restored to the file of the Tribunal to be now proceeded with in accordance with law. The matter will be listed before the Tribunal for directions on 30th January, 2023 on which date, the Dealer/Petitioner will be present through either an authorized representative or an Advocate and the Department by its Standing Counsel. The Tribunal is requested to dispose of the matter afresh after hearing the parties in accordance with law as expeditiously as possible and preferably within a period of six months thereafter. The LCR be returned forthwith to the Tribunal.

12. The revision petition is disposed of in the above terms. A copy of this order be delivered to the Tribunal forthwith.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera

