IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.5603 and 5604 of 2007

M/s. Chinu Traders .... ***Petitioner***
(In W.P.(C) No.5603 of 2007)

M/s. Bikash Iron Store
(In W.P.(C) No.5604 of 2007)

Mr. R.P. Kar, Advocate

-versus-

The Sales Tax Officer, Bargarh Circle and others .... ***Opposite Parties***

Mr. S.S. Padhy, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
18.05.2022

Order No.

07. 1. There are two grounds on which these Petitioners have approached the Court seeking reliefs against the Sales Tax Department (Department). One is that the audit visit report was not submitted within seven days of the visit and the second is that contrary to the decision of this Court in ***M.G. Garments v. Sales Tax Officer, Investigation Unit (2009) 19 VST 372 (Ori),*** penalty amount was collected by the audit visit team at the time of the visit itself without any previous show cause notice to the Petitioners.

2. As far as first issue is concerned, it is seen from the copy of the audit visit report form that the visit in fact took place on 19th July 2006 whereas the report itself appears to have been prepared only on 10th August 2006 and submitted much later some time in September, 2006. Clearly, therefore the audit visit is beyond the mandatory period of seven days. Recently, this Court in its order

dated 10th May 2022 in W.P.(C) No.7753 of 2010 (***M/s. Kanika Furniture (P) Limited, Balasore v. Joint Commissioner of Commercial Taxes, Balasore)*** had in similar circumstances held that the failure to submit the audit visit report within seven days of the visit of the audit visit team, would be in violation of Section 41 (4) of the OVAT Act read with Rule 45 (3) of the OVAT Rules.

3. Consequently, the audit visit reports in both these cases are hereby quashed and all proceedings and orders consequential thereto are also hereby quashed.

4. As regards the penalty amount, in ***M.G. Garments*** (supra), this Court observed as under:

> "16. In the present case, no speaking order imposing penalty has been passed before penalty u/s 73(10) under the OVAT Act was collected. Same is the situation in respect of collection of tax and penalty under the OET Act. This is certainly unfair. Besides, Section 73 (10) provides that in addition to giving an opportunity of hearing to the Petitioner the officer should hold further enquiry as he may consider necessary before imposing penalty u/s 73(10). There is no material on record to show that any further enquiry as contemplated u/s 73 (10) of the OVAT Act has been conducted before collecting penalty under the said Section."

5. Consequently, the Court directs that the penalty amount collected under Section 61 (5) and Section 73 (10) respectively of the OVAT Act from the respective Petitioners be refunded to them together with interest payable in accordance with the Rules within four weeks hence.

6. Both the writ petitions are accordingly allowed.

7. Urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin