IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 161 of 2007

M/s. Harendra Prasad Sahoo .... ***Petitioner***

Mr. M. Agrawal, Advocate
Mr. A. Kedia, Advocate

-versus-

State of Orissa .... ***Opposite Party***

Mr. Sunil Mishra, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
13.04.2022

Order No.

09. 1. While admitting this revision petition by an order dated 19th February 1999, the following questions were framed by this Court for consideration:

> "(i) Whether on the facts and in the circumstances of the case, because of non-incorporation of rectified spirit in the registration certificate No.CUIE-2358 of the applicant the selling dealer M/s. Aska Co-operative Sugar Industries is liable to be assessed for sales of rectified spirit to the applicant?
>
> (ii) Whether on the facts and in the circumstances of the case levy of penalty is justified?

2. The facts in brief are that the Petitioner carries on business in manufacturing and selling country liquor within the jurisdiction of the Sales Tax Officer (STO), Cuttack I Each Circle, Cuttack. The Petitioner is a registered dealer under the Orissa Sales Tax Act, 1947 (OST Act) and holds a registration certificate.

3. For the year 1980-81, the STO reopened the assessment under Section 12 (8) of the OST Act. Pursuant to the notice issued to it,

the Petitioner appeared and produced the books of account. By the assessment order dated 30th June 1983, the STO raised an extra demand of tax of Rs.42,689/- and imposed penalty of Rs.20,000/- on the ground that the Petitioner was not entitled to purchase 'rectified spirit' by furnishing declaration in Form IV. Tax was calculated @7% on the rectified spirit and after crediting the tax paid at the time of purchase of the rectified spirit, the balance tax and penalty was demanded.

4. The Petitioner then went in appeal before the Assistant Commissioner of Sales Tax (ACST), Cuttack I Range. By the order dated 11th February 1988, the appeal was allowed by the ACST on the ground that the payment against Form IV had to be made by the Seller and not the purchaser.

5. The State then went in appeal before the Tribunal. The Advocate for the dealer was unable to appear on account of illness and the Tribunal set the Petitioner dealer set ex parte. By an order dated 30th June 1994, the Tribunal allowed S.A. No.1120 of 1988-89, thereby restoring the assessment order.

6. Aggrieved by the above order, the Petitioner filed a reference application under Section 24(1) of the OST Act on 17th November 1994 before the Tribunal and sought reference of the above questions to this Court together with the statement of the facts.

7. By the order dated 28th September, 1995 in Reference Application No.133 of 1994-95, the Tribunal framed two questions of law as above and observed that the selling dealer, who sells goods at the concessional rate of tax on obtaining a declaration in the prescribed form from the purchasing dealer must satisfy himself

that the goods sold to the purchasing dealer are mentioned in the certificate of registration of the purchasing dealer for such purpose.

8. Factually in the present case, the registration certificate of the present Petitioner has been amended to incorporate rectified spirit and this has been done with effect from the initial date of the registration itself. That being the position, the question of any extra demand of tax being raised on the Petitioner does not arise. In other words, the conditionality pointed out by the Tribunal for availing the concessional rate of tax stands fulfilled in the present case.

9. Consequently, the questions framed by this Court by the order dated 19th February 1999, are answered in favour of the Assessee and against the Department by holding that the Petitioner is not liable to pay any extra tax and further that the levy of penalty is also not justified.

10. The revision petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

S. Behera