IN THE HIGH COURT OF ORISSA AT CUTTACK

OTC No.3 of 2007

M/s. Utkal Steels Limited, Sundargarh .... ***Appellant***
Mr. Jagabandhu Sahoo, Senior Advocate
assisted by Ms. K. Sahoo, Advocate

-versus-

State of Orissa, represented by the Commissioner of Sales Tax, Cuttack-1 .... ***Respondent***
Mr. Sunil Mishra, Additional Standing Counsel

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

ORDER
26.07.2022

Order No.
05.

1. The present petition by the Assessee arises from an order dated 29th March, 2007 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in S.A. No.56 (ET) of 2006-07 dismissing the Appellant's appeal against an order dated 21st November, 2005 of the Assistant Commissioner of Sales Tax (ACST) Sundergarh Range, Rourkela confirming the assessment order passed by the Sales Tax Officer (STO) Rourkela-1 Circle, Rourkela raising an extra demand of Rs.9,54,611/- on the Assessee under the Orissa Entry Tax Act, 1999 (OET Act).

2. While admitting this petition on 13th November 2007, the following questions were framed for consideration by this Court:

> *"i. Whether in the facts and circumstances of the case, disallowance of set off of entry tax paid amounting to Rs.9,54,611/- by the taxing authorities under Rule 19(5) of the OET Rules read with Section 26 of the OET Act is lawful and valid?*

ii. Whether in view of judgment rendered by this Hon'ble Court in the case of M/s. Ram Kishan Rajkumar Vs. Assessing Officer, Cuttack I West Circle, Cuttack 139 STC 450 (Orissa), order of assessment and consequential orders without statutory notice u/s.7(4) of the OET Act are lawful and proper?"

3. The background facts are that the Appellant is a dealer registered under the OET Act engaged in the manufacturing of M.S. Rounds, Flats, Angles etc. in its re-rolling Industrial Unit. For the purposes of manufacturing the above products, the Appellant purchased from the various registered dealers iron scraps/defective plates/cuttings/rejects, which were then used as raw materials. In this case, the purchases for the period in question were made essentially from the Rourkela Steel Plant (RSP).

4. While effecting such sales, RSP was obliged to collect entry tax and, therefore, the dealer including the present Appellant while purchasing such goods from the RSP had paid already entry tax. While filing its return for the period in question i.e. 2003-04, the Appellant claimed set off of the entry tax already paid.

5. The grievance of the Appellant is that the assessment order was passed by the STO for 2003-04 on 30th August, 2004 without giving any set off for the entry tax already paid. After the appeal by the Assessee was dismissed by the ACST on 21st November, 2005, the Assessee went before the Tribunal, which too has dismissed the Assessee's appeal.

6. Section 7(4) of the OET Act reads as under:

"7. Return and return defaults.—

xxx xxx xxx

(4) If no return is submitted by the dealer under sub-section (1) within the period prescribed or if the return submitted by

> him appears to the assessing authority to be incorrect or incomplete, he shall assess the dealer to the best of his judgment recording the reasons for such assessment:
>
> ***Provided that*** before taking action under this sub-section the dealer shall be given reasonable opportunity of proving the correctness and completeness of the return submitted by him."

7. Section 7(4) of the OET Act states that where its appears to an Assessing Authority that the return submitted by an Assessee is "incorrect or incomplete", such Assessing Authority can assess the dealer to the best of his judgment by recording reasons. However, the proviso makes it mandatory that before doing so, the Assessing Authority shall give a reasonable opportunity to the dealer "of proving the correctness and completeness of the return submitted by him."

8. In the present case, the admitted position is that the Assessee did file a return but the impugned assessment order was passed on 30th August, 2004 without any notice to the Assessee. The mandatory requirement of the proviso has been emphasized by this Court in its decision in ***Ram Kishan Rajkumar v. Assessing Authority, Cuttack, (2005) 139 STC 450 (Ori.).*** There, in a similar circumstance, while setting aside the assessment order, the Court remanded the matter to the Assessing Authority for a fresh order to be passed after providing the Assessee an opportunity of being heard.

9. Learned Additional Standing Counsel for the Department is unable to dispute the fact that no notice in terms of the proviso to Section 7(4) of the OET Act, as it stood at the relevant time i.e. for the year 2003-04, was provided to the Assessee before the impugned assessment order was passed.

10. On that short ground, following the decision of this Court in ***Ram Kishan Rajkumar*** *(supra),* this Court sets aside the impugned order of the Assessing Authority i.e. S.T.O and corresponding orders of ACST and the Tribunal and remands the matter to the STO for a fresh decision which will be rendered after hearing the Assessee on a date to be informed to the Assessee at least one week in advance.

11. Question (ii) is accordingly answered in favour of the Assessee and against the Department.

12. While hearing the Assessee afresh and passing a fresh assessment order, the Assessing Authority will take into account the submissions to be made by the Assessee vis-à-vis question (i) framed hereinabove, which therefore is not being decided at this stage by this Court.

13. The petition is disposed of in the above terms.

Misc. Case No.7 of 2007

14. In view of the above order passed in the main appeal, no order is called for in this application. It is disposed of as such.

(Dr. S. Muralidhar)
Chief Justice

(Dr. S. K. Panigrahi)
Judge

M. Panda