IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4910 of 2018

M/s. Seetal Automobiles, Bhubaneswar .... *Petitioner*

M/s. B. P. Mohanty and associates, Advocates

-versus-

Odisha Sales Tax Tribunal, Cuttack and another .... ***Opposite Parties***

Mr. Sunil Mishra, Additional Standing Counsel for Revenue Department

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
14.12.2022

Order No.

03. 1. The impugned order which is titled "Extract order from Order-sheet bearing Sl. No.3 passed by Chairman in S.A. No.33 (ET) of 2016-17" reads as under:

> "**SL No.03/dtd.24.02.2018**
>
> Case record is put up before me today. It appears that the notice in Form VAT-503 was issued on 17.08.2016 to the dealer for rectification of the defects pointed out by the Registry. Such notice appears to have been received by the dealer on 25.08.2016 as evident from the A.D. Nearly one and half years have elapsed in the meantime. The dealer-appellant has neither appeared nor taken any steps for removal of defects. Therefore, no fruitful purpose would be served by keeping the matter pending any further.
>
> The appeal is, therefore, rejected for non-removal of defects."

2. It is not in dispute that the above order by the Chairman, Odisha Sales Tax Tribunal, Cuttack (Tribunal) was passed on the administrative side and not on the judicial side. In other words, this was not an order passed by listing the case on the judicial side before the Tribunal but perhaps passed in the chamber of the Chairman.

3. Rule 95(4) of the Odisha Value Added Tax Rules, 2005 (OVAT Rules) reads as under:

> *"**95. Registration of appeal.** – xxx*
>
> *(4) If the defect or defects are not remedied within the period allowed, the Registrar shall make a report to that effect to the Tribunal, who may reject the appeal or fix a date for hearing the matter and give a notice for such hearing to the appellant or his agent in Form VAT-504."*

4. On reading the impugned order, it does appear that the registrar reported to the Tribunal about the non-curing of defects. However, the remaining part of Rule 95(4) of the OVAT Rules, which enables the Tribunal to reject the appeal or fix a date for hearing a matter and give a notice for such hearing to the Appellant in Form VAT-504, was clearly not complied with.

5. On that short ground, the impugned order is set aside and the S.A. No.33 (ET) of 2016-17 is restored to the file of the Tribunal where it will be listed for hearing on 1st February, 2023 on which date the Petitioner will appear through its authorized representative. The Tribunal will then proceed with the matter in accordance with law. Mr. Mohanty, learned counsel for the Petitioner states that the

Petitioner will positively remove the defects pointed out by the Tribunal before the aforementioned date of listing.

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

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda