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IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.117 of 2013

State of Odisha .... ***Petitioner***

Mr. Sunil Mishra, Standing Counsel

-versus-

M/s.Daehsan Trading (India) Pvt. Ltd., Cuttack .... ***Opp. Party***

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

ORDER
13.07.2022

Order No.

Dr. S. Muralidhar, CJ.

05. 1. The State has filed this revision petition questioning an order dated 3rd August, 2012 of the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in S.A. No.192 (VAT) of 2011-12 which has invalidated the assessment on the ground that the audit team that undertook the audit visit was not properly constituted in terms of Rule 43 of the Orissa Value Added Tax Rules, 2003 ('OVAT Rules').

2. During the period in question, i.e. 1st April, 2005 to 31st August, 2008 Rule 43 of the OVAT Rules read as under.

> "The tax audit under Rule 41 shall be undertaken by a team constituted for the purpose and such audit team may consist of one or more Assistant Commissioner, Sales Tax Officer and Assistant Sales Tax Officer, as the Commissioner may deem fit."

3. It may be noted here that subsequently with effect from 25th February, 2009 Rule 43 has been substituted and now reads as under:

> "43. The tax audit to be conducted by an audit team-
>
> (1) The tax audit under Rule 41 shall be undertaken by a team constituted by the Commissioner.
>
> (2) The audit team referred to in sub-rule (1), for audit of dealers assigned with TIN, shall comprise two or more officers, one of whom shall not be below the rank of Sales Tax Officer and the senior most officer in rank shall function as the head of the audit team.
>
> (3) The audit team for audit of dealers assigned with SRIN shall comprise two or more officers not below the rank of Assistant Sales Tax Officer and the senior most member shall function as the head of the audit team."

3. Admittedly, in the present case, at the relevant time when the audit team was assembled, it did not comprise an Assistant Commissioner. The Tribunal, therefore, found the team to be not properly constituted and declared that the Audit Visit Report of such audit team would not be sustainable in law.

4. Mr. Sunil Mishra, Standing Counsel for the Department sought to contend that the word 'may' preceding the words "consist of one or more Assistant Commissioner" in Rule 43 as it then stood gave a discretion to the Commissioner to completely exclude an Assistant Commissioner from the audit team. The Court is unable to agree with the said interpretation. The word 'may' occurring in

Rule 43 as it stood prior to 25th February 2009 qualified the words ‘one or more’. The discretion of the Commissioner was, therefore, limited to deciding whether in the audit team there should be one or more Assistant Commissioner.

5. In that view of the matter, the Court is unable to find any error having committed by the Tribunal. No substantial question of law arises. The petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

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