IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 60 of 2013

M/s. Prusty & Prusty, Puri .... ***Petitioner***

M/s. Ajit Kumar Roy, Advocate & Associates

-versus-

State of Orissa, represented through Commissioner of Sales Tax .... ***Opposite Party***

Mr. S.K. Pradhan, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
06.12.2022

Order No.

06. 1. While admitting the present revision petition on 27th April, 2015 the following questions were framed for consideration:

> "(i) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in sustaining the enhancement made in the best judgment assessment when the provisions of section 42(3) of the OVAT Act is directly hit in the instant case?
>
> (ii) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in sustaining the penalty of Rs.1,18,994.00 in the absence of any suppression of sales, purchase or mis-representation of fact?"

2. It is seen that the assessment was finalized on the basis of the audit visit report which allegedly found suppression of both

purchase and sale figures to the tune of Rs.2,84,154.00. Learned counsel appearing for the Petitioner points out that, this was on the basis of eye estimation and not on the basis of any concrete material. In particular, reliance is placed on the decision of this Court dated 22nd March, 2022 in STREV No.2 of 2008 (***M/s. Gupta Distributors, Cuttack v. State of Orissa represented by Commissioner of Sales Tax, Cuttack-1***) to urge that unless the Department is further able to show that the suppressed stocks were sold by the Assessee, there cannot be an automatic enhancement of the taxable turnover.

3. Learned counsel appearing for the Department referred to the observations in the order of the Assessing Authority regarding detection of suppression of both purchase and sales as detected by the audit team. The fact however remains that there was no corresponding finding that the suppressed stocks were in fact sold by the Assessee. In similar circumstances, in ***Laxminarayan Sawalram v. State of Orissa*** (order dated 20th July, 1971 in OJC No.286 of 1968) and ***Mahabir Rice Mill v. State of Orissa 1983 54 STC 218 (Ori)*** it was held that in the absence of any material to establish that goods found short have been sold, there cannot be an automatic enhancement of the taxable turnover.

4. In light of the legal position explained above, the Court answers questions (i) and (ii) in the negative i.e. in favour of the Petitioner Assessee and against the Department. The impugned order dated 12th October, 2012 of the Orissa Sales Tax Tribunal in S.A. No.72

(VAT) of 2010-11 for the tax period from 1st April, 2005 to 31st March, 2008 is set aside.

5. The revision petition is allowed in the above terms but in the circumstances with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera