IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV Nos.52 and 53 of 2009

M/s. Shree Ram Agencies, Cuttack .... ***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate and associates, Advocates

-versus-

State of Orissa, represented by the Commissioner of Sales Tax, Cuttack .... ***Opposite Party***

Mr. S. S. Padhy, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
29.06.2022

Order No.

04. 1. While admitting both these revision petitions on 22nd October, 2009 by this Court, the following questions of law were framed for consideration:

> *"(a) Whether in the facts and circumstances of the case, the re-assessment proceeding initiated under Section 12(8) of the OST Act is lawful and valid?*
>
> *(b) Whether in the facts and circumstances of the case, the impugned enhancement sustained by the Tribunal has any lawful and valid nexus and can be sustained in law?"*

2. The background facts are that the Petitioner-Assessee deals in paper, card board, binding cloth on wholesale and retail basis in Cuttack. The Petitioner is registered under the Orissa Sales Tax Act (OST Act) as well as the Central Sales Tax Act (CST Act). For the years 1991-92 and 1992-93, the Petitioner was assessed under Section 12(4) of the OST Act. Thereafter a fraud case report dated 30th August, 1993 was received from the IST, Vigilance, Cuttack.

As a result of which, the Sales Tax Officer (STO) reopened the assessment under Section 12(8) of the OST Act. As per the report, Investigating Officer of the Vigilance Wing, Cuttack visited the business premises of M/s. Paper Home, Balagandi, Puri on 28th August, 1993 and recovered a diary book. The contents of the diary revealed that M/s. Paper Home had purchased paper from the Petitioner on different dates during the years 1991-92, 1992-93 and 1993-94. Suppressed transactions worked out to Rs.1,29,159/- for the year 1991-92, Rs.3,13,864/- for the year 1992-93 and Rs.2,48,269/- for the year 1993-94.

3. The purchasing dealer was summoned by the STO and the Petitioner was allowed opportunity to confront the said purchasing dealer. The STO then proceeded to reject the books of account maintained by the Petitioner and completed the assessment on best judgment basis. After estimating the established suppression for the aforementioned years, extra demand towards tax, surcharge and penalty was raised in the sum of Rs.1,46,392/- for the year 1991-92 and Rs.3,46,941/- for the year 1992-93.

4. The matter travelled to the Assistant Commissioner of Sales Tax (ACST) by way of an appeal by the Petitioner. The factum of suppression of purchases was concurred with. However, the enhancement made for the year 1991-92 was reduced from Rs.7,74,954/- to Rs.3,87,477/- and for the year 1992-93, the demand was reduced to Rs.1,72,945/-.

5. The further appeal (S.A. Nos.367 and 368 of 2003-04) by the Assessee was dismissed by the Sales Tax Tribunal, Cuttack (Tribunal) by the impugned order dated 20th June, 2008.

6. Learned counsel for the Petitioner sought to refer to the submissions made on behalf of the Petitioner both before the ACST and the Tribunal denying the contention of M/s. Paper Home, Balagandi, Puri, who had admitted the purchasing of goods from the Petitioner. However, it is seen that these were mere denials by the Petitioner with there being no material placed on record to substantiate it. On the other hand, the proprietor of M/s. Paper Home, Balagandi, Puri was produced as a witness for cross-examination by the Petitioner, despite which, the Petitioner could not demonstrate that there was no purchase suppression as was shown in the diary maintained by M/s. Paper Home.

7. The Court notices that findings of the STO and ACST were based on the evidence on record. With there being no occasion to take a different view, the Tribunal has concurred with the views of the STO and ACST. Even before this Court, learned counsel for the Petitioner has been unable to persuade the Court to hold otherwise. Accordingly, the questions are answered in the affirmative i.e. in favour of the Department and against the Assessee.

8. The revision petitions are dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda