IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.107 of 2009

M/s. Madan Mohan Store .... ***Petitioner***
Mr. R.P. Kar, Advocate

-versus-

State of Odisha represented by the Commissioner of Sales Tax, Cuttack .... ***Opp. Party***
Mr. S. Mishra, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

ORDER
22.06.2022

Order No.

07. 1. Admit.

2. The following question of law is framed for consideration:

> "Was the Tribunal justified in confirming the assessment order issued by the Sales Tax Officer (STO) raising a demand of Rs.56,866/- against the Petitioner for the year 1993-94?"

3. The background facts are that the Petitioner Assessee deals in betel nut. For the year in question, the STO took into consideration a fraud case report submitted by the ACTO, Vigilance Wing, Cuttack in which it was stated that an inspecting Officer of the Vigilance Wing visited the business premises of M/s. Orissa Trading Company (OTC), Malgodown, Cuttack and seized certain documents and also recorded a statement of the partner of the said firm i.e. OTC. One of the slips recovered purportedly showed cash sales to the present Petitioner of goods worth Rs.7,101/- for which neither sale memo nor credit memo was issued. Another slip

showed the said OTC having received Rs.30,000/- from the present Petitioner towards credit sales. A third slip also showed that the Petitioner had entertained certain transactions with OTC. It is claimed by the Department that the Petitioner failed to show any entry of such transaction in his books of accounts. Accordingly, it was concluded by the STO that there had been suppression of sale of transactions worth of Rs.1,42,164/-. He recommended the enhancement of the tax turnover of the Petitioner by Rs.10lakh and accordingly raised the disputed demand.

4. After the ACST affirmed the order of the STO on 15th March, 1986, the Assessee went in appeal by filing S.A. No.2788 of 1996-97 before the Tribunal. The Tribunal appears to have proceeded on the basis that even if the item in question i.e. areca nut (betel nut) was a first point tax paid goods, since OTC had not issued any sale memo and the Petitioner had not accounted for the transaction, the liability to pay tax passed on to the present Petitioner.

5. This Court has heard the submissions of Mr. R.P. Kar, learned counsel for the Petitioner and Mr. Sunil Mishra, learned ASC for the Department.

6. There is no dispute that the areca nut is a first point tax paid goods. In other words, subsequent sales of the same goods would not attract sales tax. In the present case, the first purchaser was, in fact, the OTC and the present Assessee purchased the goods in question from OTC as a second purchaser. An important fact that the case to have escaped the

notice of the Tribunal is that there cannot be an automatic shifting of liability to pay tax on the failure of OTC to pay tax at the first point of sale. The decision of the Andhra Pradesh High Court in ***B. Narasaiah & Co. v. State of A.P. (2002) 127 STC 606*** supports the contention of the Petitioner in this regard.

7. Further it is seen that before the First Appellate Authority, the Petitioner had summoned a very same partner of OTC who appeared and denied having made sales to the Petitioner. This too has not taken note of by the Tribunal.

8. In the circumstances, there appears to be no valid justification for the STO to have enhanced the GTO by five times the alleged suppression of Rs. 1,42,164/-. Consequently, this Court set aside the impugned order of the Tribunal and the corresponding orders of the ACST and STO. The question framed is answered in favour of the Assessee and against the Department. The amount of tax paid by the Petitioner will be refunded to it in accordance with the rules within a period of eight weeks.

9. The revision petition is allowed in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

KC Bisoi