IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.2 of 2010

M/s. Das Rice Industries	....	***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate along with
Mr. Ronit Ghosh, Advocate

-versus-

State of Orissa	....	***Opposite Party***

Mr. Sunil Mishra, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
10.08.2022

Order No.

09. 1. This revision petition by the Assessee-Dealer arises out of an order dated 20th April 2009 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in S.A. No.1558 of 2006-07 filed by the State of Orissa thereby allowing the State's appeal against an order dated 4th October 2006 of the Assistant Commissioner of Sales Tax (ACST), Ganjam Range, Berhampur, who had reduced the demand raised on the Assessee-Dealer from Rs.72,725/- raised by the Sales Tax Officer (STO), Ganjam-II Circle for the year 2001-02 under Section 12 (4) of the Orissa Sales Tax Act, 1947 (OST Act) to Rs.20,183/-.

2. While admitting this revision petition on 15th July 2015, the following Questions of law were framed by this Court:

> "(I) Whether the Sales Tax Tribunal have been accepted the explanation provided by the Assessee regarding alleged short fall of 110 quintal of boiled

rice and having accepted the dispatched documents as evidence thereof?

(II) Whether the Tribunal could have arrived at the same taxable turn over as arrived at by the assessing officer without allowing deduction thereof?

(III) Whether the Tribunal has committed any irregularity in not considering the cross objection stated to have been filed by the Dealer-Petitioner.'

3. The background facts are that the Assessee-Dealer runs a rice mill. It purchases paddy, converts the same to rice, broken rice and bran and sells the goods. For the year 2001-02, the STO passed an assessment order under Section 12(4) of the OST Act on 31st December 2002 raising a demand on account of "undervaluation of sale price of raw rice, boiled rice and broken rice". Based on the visits by the inspective officers on 10th and 14th March 2002, the STO concluded that "there was discrepancy of excess stock of 167quintal of paddy, a shortage of 58.22 quintal, excess stock of 3.16 quintal of raw rice". Accordingly, the above demand was raised.

4. At the first appeal stage, the ACST worked out the occasional suppression at Rs.54,301/- and determined the suppression for the whole year at Rs.2,20,000/-. Accordingly, the ACST, by an order dated 4th October 2006, reduced the demand to Rs.20,183/-.

5. As regards Question No.(I), Mr. Jagabandhu Sahoo, learned Senior Advocate for the Assessee-Dealer points out that the Tribunal did accept the Assessee-Dealer's explanation regarding shortage 110 quintals. However, shortage of quintal 58.22 of boiled rice and excess of quintal 3.16 of raw rice was held to be

established. It was observed "So, we accept it as suppression". There was no milling of paddy during those days and therefore, the only conclusion that could be drawn was that the Dealer had suppressed purchase of nearly 100 quintal of paddy, got nearly 62 quintal of raw rice. There was an estimate drawn of the suppression and ultimately, the demand of Rs.72,725/- as proposed by the STO was restored.

6. As regards Question No.(I), Mr. Sahoo relies on the decision of this Court dated 20th June 2022 in STREV No.109 of 2008 ***(M/s. Radhakeshav Rice Mill Pvt. Ltd. v. State of Odisha)***. In the facts of that case, it was held that the enhancement on the basis of eye-estimation would not be proper. It was also observed that "such eye-estimation is not a proper method while taking measurement of bags of paddy without real weighment being done at the time of inspection, the fact which was rightly appreciated by the ACST."

7. In the present case too, the Tribunal appears to have proceeded basically on certain assumptions about suppression without there being actual material to support such drawing of inference. Although, it is sought to be contended on behalf of the Department that there was no 'enhancement' inasmuch as the Tribunal merely upheld the order of the STO, the fact is that the appeal by the Assessee-Dealer, had been partly allowed by the ACST and the demand was reduced. When the Tribunal therefore restored the order of the STO the demand was enhanced beyond the amount as determined by the ACST.

8. On a careful consideration of the documents on record and having considered the submissions of the learned counsel for the parties, the Court is of the view that there was no justification for the demand raised by the STO on account of suppression or of discrepancy of excess stock of paddy, shortage and excess stock of raw rice, shortage of boiled rice and further discrepancies of paddy.

9. In other words, there was no justification for the Tribunal to have simply restored the order of the STO overlooking the reasoned order of the ACST in appeal. Question No.(I) is accordingly answered in favour of the Assessee and against the Department by holding that there was sufficient explanation available for the shortfall of 100 quintal of boiled rice.

10. In view of the answer to Question No. I, the other two Questions framed by the Court have been rendered academic and are not answered as such.

11. The STREV is accordingly allowed.

12. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin