IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 39 of 2011

State of Orissa, represented by the Commissioner of Sales Tax	....	***Petitioner***
		Mr. S.K. Pradhan, Addl. Standing Counsel

-versus-

M/s. Haryana Trading Co.	...	***Opposite Parties***
		Mr. S. Lal, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

<u>Order No.</u> **<u>ORDER</u>**
28.06.2022

05. 1. The present revision petition arises from an order dated 12th January, 2011 passed by the Orissa Sales Tax Tribunal, Full Bench, Cuttack (Tribunal) in S.A. Nos. 455 of 2000-01 and 617 of 2000-01. One was the appeal by the Assessee and the other by the Department against the order dated 30th June, 1999 of the Assistant Commissioner of Sales Tax (ACST), Sambalpur Range, Sambalpur modifying the assessment of sales tax by the Sales Tax Officer, Sambalpur (STO).

2. While admitting this petition on 21st January, 2013 the following questions were framed for consideration:

> "(i) Whether on the facts and in the circumstances of the case, the enhancement of suppression by five times against the established suppression of Rs.43,99,196/- was justified when assessment was

> made based on best of judgment of assessing officer after rejection of books of account ?
>
> (ii) Whether under the facts and in the circumstances of the case, the enhancement could have been five times of suppression, when suppression was to the tune of Rs.43,99,196/- within a span of two and half months during the assessment year in question, i.e. 1996-97 ?

3. At the outset, it must be noticed that the manner in which the questions are framed does not correctly reflect the fact that the Tribunal had reduced the enhancement from five times to two times the established suppression. The question therefore, should have been whether such reduction of the enhancement from five times to two times by the Tribunal was justified in law.

4. This Court has heard learned counsel for the parties. The relevant portion of order of the Tribunal reads as under:

> "7. We perused the orders of both the forums below. It appeared that the assessing officer had received two numbers of fraud reports against the appellant-dealer. He estimated the value of the sale suppression of the goods by the appellant-dealer for Rs.2,19,97,988.00. He enhanced the GTO of the appellant by two times of the alleged suppression. Considering the nature and volume of business of the appellant and the number of fraud case reports received against him, we held that the order of the ld. ACST to enhance the GTO of the appellant-dealer by two times of the alleged suppression for Rs.87,99,196/- was just and proper. Hence we did not feel it proper to interfere in the said order."

5. The discretion exercised by the Tribunal in the facts of the case as explained by it cannot be said to be arbitrary or unreasonable warranting interference. The questions framed are accordingly answered in favour of the Assessee and against the Department.

6. The revision petition is disposed of. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.