IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20731 of 2012

M/s. Eternit Everest Ltd., Cuttack .... ***Petitioner***

Mr. Sidhartha Ray, Advocate

-versus-

Commissioner of Commercial Taxes, Orissa, Cuttack and another .... ***Opposite Parties***

Mr. Sunil Mishra, Additional Standing Counsel
For the Income Tax Department

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
31.10.2022

Order No.

04. 1. The challenge in the present writ petition is to the imposition of penalty on the Petitioner by an order dated 12th June, 2012 under Section 65(1) of the Orissa Value Added Tax Act, 2004 (OVAT Act) read with Rule 73 of the OVAT Rules.

2. At the outset, Mr. Sidhartha Ray, learned counsel appearing for the Petitioner sought to rely on an order dated 4th December 2021, passed by this Court in W.P.(C) No.12180 of 2012 (***M/s. Koshala Udyog v. Commissioner of Commercial Taxes, Odisha***) where the penalty order was quashed since the mandatory requirement of a

reasonable opportunity of being heard to the dealer was not afforded in terms of Section 65 (2) (b) of the OVAT Act.

3. However, Mr. Sunil Mishra, learned Additional Standing Counsel appearing for the Department referred to the counter affidavit filed in the present case, wherein Para-7(vi) it was specifically stated that on 28th December, 2011 the Sales Tax Officer had issued a second show cause notice to the dealer as to why penalty should not be imposed for non-submission of the audit report during the stipulated period under the statute.

4. The Court notes that there is no rejoinder affidavit filed to contradict the above averment of the Department. It may be mentioned there the copy of the aforementioned notice dated 26th December, 2011 has in fact been enclosed with their counter affidavit as Annexure-C/2.

5. In these circumstances, the Court is unable to agree with the submissions of Mr. Ray, learned counsel for the Petitioner that the order passed by this Court in ***M/s. Koshala Udyog*** (*supra*) would apply in the facts of present case.

6. There is, therefore, no procedural infraction of the requirement under Section 65(2) (b) of the OVAT Act in the present case. The Court notes that it is the case of the Department that no reply was received on the second show cause notice. With there being no rejoinder to contradict this averment, the Court proceeds on the

basis that despite the second show cause notice, the Petitioner chose not to reply. Consequently, the order passed by this Court in ***M/s. Koshala Udyog*** (*supra*) will not assist the case of the Petitioner.

7. There being no other ground on which the penalty order has been challenged, the present writ petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera