IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.508 of 2008

M/s. Kalinga Tiles	....	***Petitioner***
		Mr. R.P. Kar, Advocate

-versus-

The State of Orissa represented by the Commissioner of Sales Tax, Orissa, Cuttack	....	***Opposite Party***
		Mr. S.S. Padhy, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
20.06.2022

Order No.

04. 1. Admit.

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

> "Was the Tribunal justified in setting aside the order of the ACST in a cross appeal by the Department and restoring the order of the Assessing Officer?

3. The present revision petition arises from an order dated 29th January 2008 passed by the Orissa Sales Tax Tribunal, Cuttack in SA No.998 of 2006-07, which in turn arose out of an order dated 8th June 2006 passed by the Assistant Commissioner of Sales Tax (ACST) reducing the assessment framed under Section 12 (4) of the Orissa Sales Tax Act, 1947 (OST Act) for the year 2004-05 by the Sales Tax Officer (STO), Bhubaneswar-II Circle from Rs.3,61,463/- to Rs.2,13,255/-.

4. The background facts are that the Dealer deals in marbles, glazed tiles and other types of tiles on wholesale and retail basis. The Petitioner who is the proprietrix of the concern was registered under

the OST Act with effect from 3rd February, 2004. For the year 2004-05, she returned a gross turnover of Rs.31,53,705.50/- and taxable turnover of Rs.23,58,106.76/-. Sales tax and surcharge amounting to Rs.3,19,185/- was also paid.

5. A fraud case report was submitted by the STO, Investigation Unit on 22nd June 2004 regarding sales and purchase suppression. Cash of Rs.41,220/- was found during the visit of the inspecting officers on 14th May 2004 for which no cash or credit memo had been issued. On verification of the physical stock, discrepancy was found in respect of ten items of goods. The inspecting team also found purchase suppression of Rs.11,704/- and sales suppression of Rs.1,22,288/-. Certain documents were also picked up by the inspecting team. In the detailed report submitted by the team, sale suppression amounting to Rs.5,58,469/- was determined.

6. Taking into account the fact that the business was only four months old on the date of inspection, the STO proceeded to complete the assessment on best judgment basis and estimated the suppression of sales as Rs.27,98,197/- i.e. nearly five times the actually detected suppression.

7. In an appeal by the Assessee the ACST, by an order dated 8th June 2006, limited the enhancement of taxable turnover to thrice the actual suppression and the tax payable was accordingly calculated on that basis. While the Assessee went further in appeal before the Tribunal seeking further relief, the Department filed a cross appeal against the order of the ACST. The Tribunal has in the impugned order held that the ACST was not justified in reducing the

enhancement to three times the actual suppression and has thus restored the order of the STO.

8. This Court has heard learned counsel for the parties.

9. The Tribunal appears to have overlooked the fact that the Assessee had only conducted four months of business in the year in question and that was one factor that weighed with the ACST in reducing the enhancement of the taxable turnover to thrice the actual amount of suppression.

10. In the considered view of the Court, since this was a new venture and it is possible that the Assessee was not fully aware of all the legal requirements, the view taken by the ACST enhancing the taxable turnover to three times the actual suppression did not call for interference. It could not be said to be arbitrary or unreasonable.

11. Consequently, this Court restores the order of the ACST to file and sets aside the impugned order of the Tribunal. The question framed is accordingly answered in favour of the Assessee and against the Department. The revision petition is disposed of in the above terms.

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

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin