**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**STREV No.88 of 2013**

***State of Odisha*** .... ***Petitioner***

Mr. S. K. Pradhan, Standing Counsel

*-versus-*

***M/s. Sidheswar Rice Mill (P) Ltd.*** .... ***Opp. Party***

**CORAM:**
**THE CHIEF JUSTICE**
**JUSTICE R.K.PATTANAIK**

**ORDER**

**Order No.** **06.07.2022**

02. 1. For over 9 years now the petition has not been listed even once. In other words, for 9 years now no notice has been gone to the Opposite Party.

2. The present petition arises out of an assessment order dated 8th March, 2010 for the period 1st April 2008 to 31st March, 2009. The only question urged before the Tribunal was whether the reduction by the DCST of the demand under Section 43 of the OVAT Act was justified?

3. In para 7 of the impugned order, the Tribunal held as under:

> " Heard the learned SR-I of the revenue as well as the learned counsel for the dealer and also gone through the impugned orders of both the lower forums. The learned AO estimated the suppression at Rs.3,81,843.00 as per the shortage pointed out in the report and enhanced the turnover by a margin of Rs.16,00,000.00, which resulted in extra demand. The said assessment order was passed U/s.43 of the OVAT Act. The first appellate forum added the actual suppression to the turnover, i.e. Rs.3,81,843.00, which resulted in reduction of demand and the same is

> now under challenge from the side of the revenue. The provision of the OVAT Act does not speak about any enhancement of the turnover after the tax audit and the actual suppression amount has to be added. But being the fact finding Tribunal, it is my duty to point out that the authorities cannot directly make an assessment U/s.43 of the OVAT Act without completing the assessment either U/s.39,40 or 42 of the OVAT Act, which has been mentioned in Sec.43(1) of the OVAT Act. Perused the impugned orders of both the lower forums and it is forthcoming that there is no whisper in their order that the dealer has already been assessed U/s.39,40 or 42 of the OVAT Act. Rules 50(1) of the OVAT Rules also supplement the same. So, both the forums below have committed error in assessing the dealer U/s.43 of the OVAT Act, which is not justified. Hence, the matter has been remanded back to the learned AO to make fresh assessment as per provisions of the OVAT Act."

4. This Court has in ***M/s. Keshab Automobiles, Jajpur v. State of Odisha (Commercial Taxes)*** (order dated 1st December, 2021 in STREV No. 64 of 2016) arrived at the same conclusion as the Tribunal has in the above passage. Consequently, the Court is not inclined to entertain the revision petition as no substantial question of law arises. The revision petition is dismissed as such.

***(Dr. S. Muralidhar)***
***Chief Justice***

***(R.K. Pattanaik)***
***Judge***

KC Bisoi