IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 520 of 2008

M/s. Sabitri Industries .... ***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate

-versus-

State of Odisha, represented by the Commissioner of Sales Tax ... ***Opposite Party***

Mr. Sunil Mishra, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No.	**ORDER** **21.06.2022**
03.	1. The present revision petition by the Assessee arises from an order dated 10th April, 2008 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in S.A. No.357 of 2006-07 whereby the Assessee's appeal was dismissed and the order dated 27th February, 2006 passed by the Assistant Commissioner of Sales Tax (ACST), Cuttack-I Range confirming the assessment made under Section 12(8) of the Orissa Sales Tax Act, 1947 (OST Act) for the accounting year 2001-02 raising a demand of Rs.1,94,748/- and penalty of Rs.1,39,941.54 was affirmed. 2. The background facts are that the Petitioner had purchased paper and other materials from within and outside the State of Odisha and had prepared exercise khata. The original assessment was completed by raising a demand of Rs.25,048/-. Thereafter, it

was reopened under Section 12(8) of the OST Act on the basis of a fraud case report submitted by the Vigilance Department, according to which the Assessee had procured goods worth Rs.5,36,875/- from one Sri Ramesh Kumar Sikaria of Guwahati but had failed to reflect it in the purchase register. The explanation offered by the Assessee was that he had given a personal loan of Rs.5 lakhs to Mr. Sikaria and had recovered back the principal amount together with interest in an aggregate sum of Rs.5,36,875/.

3. However, the Assessing Officer rejected the said contention and termed the loan transaction as purchase suppression. Accordingly, the gross taxable turnover (GTO) was enhanced by Rs.21,72,150/- which was four times the alleged suppression amount. On this basis, the tax amount was recomputed and penalty was also imposed.

4. The Assessee then went before the ACST which was rejected. Thereafter, the Assessee went before the Tribunal which by the impugned order had rejected the second appeal.

5. Admit.

6. The following question of law has been framed for consideration:

> "Whether the Tribunal, the ACST and the STO were justified in proceeding on the basis that the alleged loan transaction of the Assessee was in fact an instance of suppression of purchases?"

7. It may be mentioned at the outset that in the impugned order, the enhancement was restricted by the Tribunal to the actual alleged suppression i.e. a sum of Rs.5,36,875/-. The penalty had one and a half times of the tax due and was asked to be added to the extra tax demand.

8. This Court has heard the submissions of Mr. Jagabandhu Sahoo, Senior Advocate appearing for the Petitioner and Mr. Sunil Mishra, learned Addl. Standing Counsel for the Department.

9. Mr. Sahoo, learned Senior Counsel relied on the decisions of Allahabad High Court in the case of ***Mittal and Company v. Commissioner of Sales Tax (1988) 69 STC 42 (All.)*** and ***K.V. Mohamedv. Sales Tax Officer, Cuttack-II, East Circle (1998) 109 STC 530 (Ori)***. It is submitted that there cannot be an inference that a loan transaction is actually an instance of purchase suppression without there being any material in support of such inference. It is further pointed out that both in the books of the Assessee as well as Mr. Sikaria the transactions were reflected as contended by the Assessee and this could not have been ignored by the authorities.

10. Mr. Sunil Mishra, leaned Additional Standing Counsel on the other hand supported the impugned orders of the authorities and submitted that there was nothing to show that the Assessee was ever authorized to carry on the business of giving loans and

therefore, the inference drawn that the purchase suppression was justified.

11. It is seen from the impugned order of the Tribunal that a letter was produced from Mr. Sikaria and placed before the Tribunal in which the statement of the account of the Assessee as appearing in the books of Mr. Sikaria was enclosed. It is further seen that on the part of the Assessee, material was placed to substantiate the contentions that the transaction was in fact a loan transaction. In ***Mittal and Company*** *(supra)*, it was rightly pointed out that although the initial onus was on the Assessee to show that no sale was made, the question arose as to how the Assessee is expected to discharge that onus. As rightly pointed out "for establishing a negative fact, no evidence may be adduced". Once the Assessee had denied the factum of sales within U.P. in that case, "the onus was shifted to the Revenue to disclose the contention of the Assessee". Since in that case the Revenue failed to disprove the Assessee's contention, the addition made to the taxable turnover presuming sales, was set aside.

12. As far as the present case is concerned again, the Assessee cannot be expected to negatively prove that there was no purchase suppression. The Assessee in fact placed materials to show that the transaction was a loan transaction. If the Department was to doubt it, it had the onus then shifted to the Department to show that there was in fact the transaction which mimicked purchase suppression. With the Department not having discharged the onus, the

authorities below including the Tribunal, the ACST and the STO were in error in proceeding on a presumption that it was a case of purchase suppression.

13. Consequently, the Court answers the question framed in favour of the Assessee and against the Department and sets aside the impugned orders of the Tribunal, the ACST and the STO.

14. The revision petition is allowed in the above terms. No order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.