IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 4 of 2013

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

Mr. Sunil Mishra, Addl. Standing Counsel

-versus-

M/s. Abirchand Uttamchand ... ***Opposite Party***

Mr. Sunil Mishra, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER

Order No. **13.07.2022**

Misc. Case No.12 of 2013

04. 1. For the reasons stated therein, the application for condonation of delay in filing the present revision petition is allowed. The delay is condoned.

2. The Misc. Case is accordingly disposed of.

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3. The Revenue has filed this revision petition questioning an order dated 28th July, 2012 passed by the Orissa Sales Tax Tribunal, Cuttack Bench, Cuttack (Tribunal) allowing the Assessee's appeal in S.A. No.13 (ET) of 2010-11 and setting aside the order dated 22nd July 2009 of the Assistant Commissioner of Sales Tax (ACST) and the corresponding order of the Sales Tax Officer (STO) raising an extra demand of Rs.1,22,326/- on the Assessee for the year 2003-04.

4. The only ground on which the extra demand was raised was that the Dealer had not filed an option under Rule 33 of the Orissa Entry Tax Rules, 1999 (OET Rules) in Form E-14 to pay in lieu of the tax payable under the Rules, an amount specified in sub-Rule (2).

5. The Tribunal has noted that the Dealer exercised the option not at the time of filing the returns but on 31st March 2004, i.e., the last date before the close of the year in question. It was sought to be contended by the Department that since the option was not exercised at the time of the filing of the return, the Dealer was not eligible to concessional rate of tax @1.5% and tax had to be paid @ 2%. The Tribunal relied on the wording of Rule 33 (3) and came to the conclusion that the Dealer "need not to be declared eligible to avail the concession."

6. It may be noted at the outset that Rule 33 of the OET Rules has itself now been omitted with effect from 28th February 2011. Therefore, the impugned order of the Tribunal is unlikely to constitute a precedent for other similar cases in future. Nevertheless, it is seen that from the wording of Rule 33(2) of the OET Rules, that there is nothing therein to indicate that if the Dealer did not exercise the option at the time of filing the return, he would be precluded from exercising such option at any time thereafter before the close of the year in question. Rule 33 (2) of the OET Rules reads as under:

"**33. Option for specified amount of tax.**

(1) Notwithstanding anything contained in these rules, a dealer may submit his option in Form E14 to the assessing authority to pay in lieu of the tax payable under these rules an amount specified in sub-rule (2) for such period as indicated in the option, subject to the following conditions: -

(i) that the dealer must be registered under the Sales Tax Rules, and

(ii) that he is not dealing with any goods specified in Part III of the Schedule to the Act.

(2) The dealer exercising option under sub-rule (1) shall pay along with the returns under Sales Tax Rules an amount for the period covered under the said return, at the rate of, -

(i) 1% of total purchases of all goods if the dealer is not dealing with any goods specified in Part II of the Schedule to the Act; and

(ii) 1.5% of total purchases otherwise.

Explanation. –
For the purpose of this sub-rule the word "***purchases***" means total amount of purchases made by the dealer for the period as reflected in the books of accounts maintained under Sales Tax Act.

(3) If the dealer exercising option under sub rule (1) becomes ineligible for doing so any time after furnishing the option then the said option shall be deemed to have been withdrawn from the date he becomes ineligible.

(4) The dealer exercising option under sub rule (1) and paying tax under sub rule (2) shall be

deemed to have discharged his liability under this rule"

7. It appears to the Court that in the absence of any express words in Rule 33 (2) which mandate the exercise of option only at the time of filing of returns and at no other time, it is not possible to agree with the STO and the ACST that failure by the Assessee in the present case to exercise the option under Rule 33 (1) at the time of filing return would preclude him from doing so at a later point in time but before the end of the financial year thus, making him ineligible for the concessional rate of tax.

8. Consequently, no substantial questions of law arise from the impugned order of the Tribunal. The revision petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.