

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.65 of 2012

M/s. Balgopal Food Products Pvt. Petitioner

Mr. Sidhartha Ray, Senior Advocate

-versus-

State of Odisha

.... Opposite Party

Mr. S.S. Padhy, ASC

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

ORDER

11.07.2022

Order No.

06.

1. The challenge the present revision petition by the Assessee is to an order dated 30th March, 2012 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in S.A. No.136 (V) of 2011-12. By the impugned order, the Tribunal disposed of the appeal filed by the Assessee for the tax period 1st April, 2005 to 30th November, 2006 and remanded the matter to the Asst. Commissioner of Sales Tax, Sambalpur for making a fresh assessment in terms of the observations of the Tribunal.

2. The background facts are that the Assessee is an SSI unit engaged in the manufacture of rice bran oil from rice bran. Originally, for the period in question, the Assessee was assessed under Section 42 of the OVAT Act, 2004. On receipt of an audit visit report (AVR), the assessment was reopened under Section 43 of the OVAT Act alleging escapement of tax. As per the AVR, the dealer had claimed input tax credit (ITC) illegally by showing the yield of bran oil to be very low and there also alleged discrepancy

in the stocks. The percentage of rice bran oil as claimed by the Assessee was 16.10% for the period 1st April 2005 to 31st March, 2006 and 14.44 % for the period 1st April, 2006 till 30th November, 2006. However, in the assessment order dated 20th October, 2009 passed by the Assistant Commissioner of Sales Tax (ACST), it was noted that two other oil solvent units had yields of 20.85% and 22.10% respectively. Consequently, the average has taken 20% and applied to the Assessee and on that basis an additional demand was raised.

3. After the Assessee's appeal was dismissed by the Deputy Commissioner Sales Tax (Appeal) (DCST) the Assessee went before the Tribunal with the aforementioned appeal. In the impugned order dated 30th March, 2012 the Tribunal held that the finding of the ACST in determining the yield as 20% to have 'no logic'. It was held that the said finding was not supported by any scientific calculation. The ACST had simply decided the matter on the basis of the certificates issued by two units in Balasore. As regards the Assessee claiming the yield to be 16.10% for 2005-06 and 14.44% for the current year, the Tribunal found that this was also 'not supported by any logic'. It is in the above circumstances that the matter was remanded to the ACST 'to make fresh assessment as per above observation i.e. the age of the extracting oil machine and the quality of the rice bran used during the relevant period and to determine the average percentage of yield and to complete the assessment within three months of receipt of this order and the dealer is to appear before him within one month of receipt of this order.'

4. While admitting this revision petition on 5th February, 2013, the following question of law was framed for consideration:

“1. Whether on the facts and in the circumstances of the case, the Full Bench of the Odisha Sales Tax Tribunal, being the final fact-finding authority under Section 78 of the OVAT Act, was justified in not deciding the percentage of yield of rice bran oil from the evidence available on record and there being no scope for further enquiry, ought to have remanded the case to the assessing authority especially when there is no suppression of sale on the part of the dealer-assessee?”

5. This Court has heard the submissions of Mr. Sidhartha Ray, learned Senior Counsel for the Petitioner and Mr. S.S. Padhy, learned ASC for the Department.

6. Mr. Ray submitted that the remand by the Tribunal of the matter to the ACST was unnecessary since all the materials were already available before the Tribunal. Relying on the decision in ***Siksha ‘O’Anusandhan v. Commissioner of Income Tax (2011) 336 ITR 112 (Ori)*** he contended that once all the materials were available on record the Tribunal should have disposed of the case on merits by taking such materials into consideration.

7. In the present case, the Court finds that the Tribunal noted two things: that there was no logic or materials to support the decision of the ACST to fix the yield percentage of price bran oil for the Petitioner at 20% for both the periods i.e. 2005-06 and the current year. Equally the Tribunal also found that the Petitioner's claim that the yield was 16.10% and 14.44% for the two periods respectively was also not supported by any logic or scientific materials.

8. Although, counsel for the Petitioner contends that the Petitioner did place on record all the materials in his possession, it is evident that the Department was had not placed any materials on record in support of its contention. In the circumstances, requiring the ACST to undertake the exercise afresh after permitting the materials in support of either case to come on record appears to be the correct course of action for the Tribunal to have adopted. This is an exercise to determine facts which are not already available and which are required to be examined before arriving at a decision on the claim of the Assessee regarding the percentage and quality of rice bran oil. Consequently, the Court is unable to find any error having been committed by the Tribunal in that regard.

9. Therefore, the question framed is answered in favour of the Department and against the Assessee. In other words, the impugned order of the Tribunal is not interfered with. It is clarified that Assessing Officer i.e. ACST will approach the entire issue of afresh uninfluenced by the earlier decision taken by the ACST or

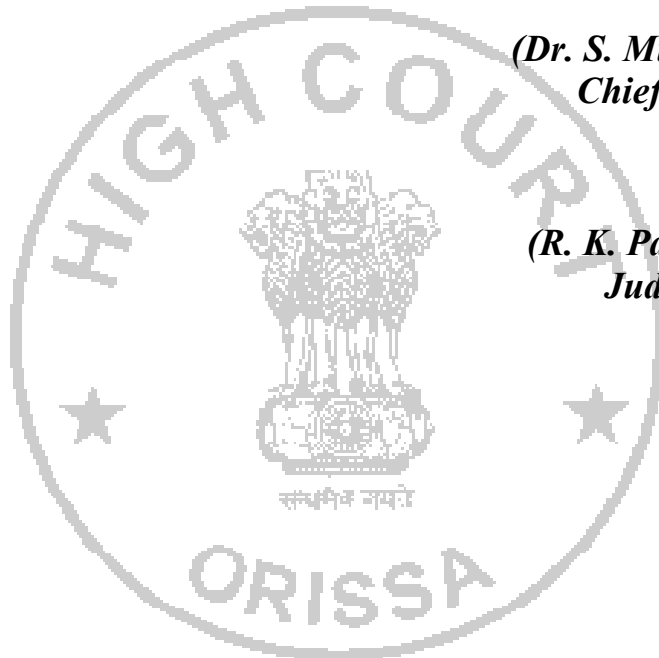
observations on merits by the Tribunal. The fresh exercise be completed by the ACST within period of four months from today.

10. The revision petition is disposed of in the above terms. A copy of this order be delivered forthwith to the ACST concerned.

11. An urgent certified copy of this order be issued as per Rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge



TUDU