IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.21 of 2012

M/s. Hindustan Unilever Ltd. .... ***Petitioner***
Mr. N. Paikray, Advocate

-versus-

State of Odisha .... ***Opp. Party***
Mr. S. Mishra, Sr. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

<u>ORDER</u>
05.07.2022

<u>Order No.</u>

05. 1. While admitting the petition on 12th November, 2012 and staying further proceeding, the following question was framed by this Court for consideration.

> "Whether the Tribunal is justified in remanding the matter for fresh assessment on the face of the uncontroverted fact that the assessment was completed without issuing any statutory notice under the provisions of the OET Act by the assessing authority?"

2. The operative portion of the order of the Tribunal read as under:

> "As discussed above, we are of the considered opinion that both the cases are fit for remand as no opportunity was given to the dealer before the assessment orders were passed under E.T. Act. Hence, we have got no hesitation in remanding back the cases to the learned STO for fresh assessment after giving opportunity of being heard to the dealer and the learned STO is to pass the assessment as per the observation made by this Tribunal in the earlier paragraph for both assessment periods. So, both the appeals were partly allowed and the impugned orders passed by the learned ACST are set-aside."

3. Learned counsel for the Petitioner relied on the decision of this Court in ***Ram Kishan Rajkumar v. Assessing Authority, Cuttack-I West Circle, Cuttack and another (2005) 139 STC 450*** to urge that prior notice to the Assessee under the OET Act before finalizing the assessment was mandatory.

4. It is seen that the Tribunal has in the impugned order acknowledged the above legal position and has accordingly remanded the matter to the STO for passing a fresh assessment order "after giving opportunity of being heard to the dealer". This is the relief granted even in ***Ram Kishan Rajkumar v. Assessing Authority (supra)***. Consequently, the Court is unable to agree that the Tribunal has committed any legal error in setting aside the assessment order and remanding the matter to the STO for fresh assessment order after giving the Petitioner an opportunity being heard. Consequently, the question framed is answered in favour of the Department and against the Assessee. In other words, the impugned order passed by the Tribunal calls for no interference.

5. The revision petition is dismissed.

6. The interim order passed earlier stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

KC Bisoi