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IN THE HIGH COURT OF ORISSA AT CUTTACK

OTC No.1 of 2009

M/s. Agarawal Spices & Food Processors Pvt. Ltd., Cuttack .... ***Appellant***

Mr. Jagabandhu Sahoo, Senior Advocate
assisted by Ms. K. Sahoo, Advocate

-versus-

Commissioner of Commercial Tax, Cuttack and others .... ***Respondent***

Mr. Sunil Mishra, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
DR. JUSTICE S. K. PANIGRAHI

ORDER
26.07.2022

Order No.	***Dr. S. Muralidhar, CJ.***
05.	1. The challenge in the present appeal is to an order dated 15th January, 2009 passed by the Commissioner of Commercial Taxes, Orissa (CST) in Revision Case No.SU-16/2008-09 whereby the order dated 5th November, 2007 and subsequent corrigendum order dated 5th January, 2008 of the Special Additional Commissioner of Sales Tax (Central Zone) (Special, Additional CST) were quashed.

2. Although this appeal was admitted, no question of law was framed at that stage. The short question of law that arises for consideration in the present appeal is as under:

> *"Whether in exercise of the power under Section 79(1) of the Orissa Value Added Tax Act, 2004 (OVAT Act), the Commissioner can exercise the revisional power to revise an order passed by a delegate of the*

Commissioner exercising powers under Section 79(2) of the OVAT Act? "

3. The background facts are that the Appellant is a registered Dealer under the OVAT Act dealing in manufacturing and selling of different kinds of spices, condiments, papad and black salt. The business premises of the Appellant Dealer was visited by the officials of Vigilance Central Division, Cuttack on 28th October, 2006. It was detected that the Dealer was not colleting tax on sale of black salt. The Dealer stated that he was not aware whether the said product was a taxable item. Nevertheless, he agreed and offered to pay tax in the sum of Rs.1,73,918/- @ 12.5 %. However, the Dealer preferred a revision petition under Section 79(2) of the OVAT Act, which was heard and disposed of by the Special, Additional CST (Central Zone) by the order dated 5th November, 2007. Following the decision of the Allahabad High Court in ***M/s. Maqsood Mohammad v. State of U.P., 41 STC 324*** and holding that the black salt or Kalanamak is a species of edible salt, the revisional authority concluded that the collection of tax was illegal and directed its refund. By the corrigendum order dated 5th January 2008, the money receipt issued to the Dealer was quashed and the refund was directed.

4. It appears that the CST, exercising powers under Section 79(1) of the OVAT Act decided to suo motu revise the above order of the Special, Additional CST and issue notice to the Appellant. One of the preliminary objections raised by learned counsel for the Dealer before the CST was that no further suo motu revision would lie once the power has been exercised by a revisional authority after being delegated such power by the Commissioner. In respect of such contention, reliance was placed on the decisions

of this Court in ***J. K. Corp. Limited v. Sales Tax Officer, Koraput II Circle, Rayagada, (1999) 115 STC 681 (Ori.)*** and ***Orient Paper Mills v. State of Orissa, (1988) 70 STC 333 (Ori.).***

5. However, in the impugned order, the CST observed that the provisions of the OVAT Act concerning revision are differently worded from the corresponding provisions in the repealed Orissa Sales Tax Act, 1947 (OST Act.) and on making a comparative analysis, came to the conclusion that CST could on his own motion revise any order passed by an Additional CST.

6. As far as the merit is concerned, it was held that black salt was not the same as common salt and was not exempted from sales tax. On both the above grounds, therefore, the CST proceeded to quash the order passed by the Special, Additional CST.

7. This Court has heard the submissions of Mr. Jagabandhu Sahoo, learned Senior Counsel appearing for the Appellant and Mr. Sunil Mishra, learned Additional Standing Counsel for the Department.

8. In ***Orient Paper Mills*** *(supra),* this Court had occasion to first consider the scope of the powers of the delegatee vis-a-vis the powers of the delegating officer. It must be noticed at the outset that the above case arose under the OST Act and the corresponding provisions of the Orissa Sales Tax Rules, 1947 (OST Rules). It was held that under Rule 80, the CST did have suo motu power to revise an order of a Sales Tax Officer (STO). There was however an exception provided in Section 23(4)(d) of the OST Act, according to which, the Commissioner could delegate his revisional power to another person appointed under Section 3 (3) such as, Additional Commissioner or a Deputy Commissioner.

It was concluded by this Court on analysis of the provisions as under:

> *"8.….Rule 80 is a substantive quasi-judicial power given to the Commissioner to be exercised in general on his own motion to correct errors prejudicial to the interest of the Revenue. Such a general, substantive and all pervasive quasi-judicial function could be contemplated in the statute but not under the Rules framed thereunder, particularly when the rule making power does not authorise for framing of such a rule. Rule 80 is, therefore, an excessive delegation of substantive quasi-judicial power in favour of the Commissioner which ex facie seems unsupportable."*

9. Subsequently, in ***J. K. Corp. Limited*** *(supra),* the same question was addressed by this Court and it was concluded in para 9 as under:

> *"9. The Commissioner admittedly does not intend to exercise power delegated, i.e., the power of hearing revision applications under section 23(4)(a) read with rule 79. That power has already been exercised by the delegatee. The Commissioner intends to exercise the power of revision under rule 80. Exercise of power under rule 80 is not same as exercised by him under rule 79. It is to be noted here that the Legislature in its wisdom put a seal of finality on all orders passed under sub-section (4) of section 23 of the Act."*

10. In the instant case, in the impugned order, the CST has noticed the provisions of the OST Act and the corresponding provisions of the OVAT Act, but failed to notice that while Rule 119 of the OVAT Rules talks of the revisions by the Commissioner suo motu of orders passed by an Additional Commissioner, it does not include, as was done under Rule 80 of the OST Rules, the power to revise an order of "Special, Additional CST". In other words, the OVAT Rules do not permit revision by the CST of an order of

Special, Additional CST. In any event, even under the OST Rules, in view of the aforementioned decisions, the power of the CST to revise the order of Special, Additional CST was not recognized by this Court.

11. In that view of the matter, the Court has no hesitation in answering the question framed in the negative i.e. in favour of the Dealer and against the Department by holding that in exercise of the suo motu power under Section 79(1) of the OVAT Act, it is not open to the CST to revise an order passed in revision by his own delegatee i.e. the Special, Additional CST in exercise of the powers under Section 79(2) of the OVAT Act.

12. The impugned order dated 15th January, 2009 of the CST is accordingly hereby set aside.

13. The appeal is allowed, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(Dr. S. K. Panigrahi)
Judge

M. Panda.