IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.70 of 2012

M/s. Orissa Plasto Pipes Pvt. Ltd .... ***Petitioner***

Mr. U. Ch. Beura, Advocate

-versus-

State of Odisha .... ***Opposite Party***

Mr. S.S. Padhy, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
11.07.2022

Order No.

05. 1. Admit. The following question of law is framed for consideration:

"Should the Petitioner have been given one more opportunity for appearing before the Tribunal in the appeal which was apparently decided ex-parte by the impugned order?"

2. The present petition challenges an order dated 18th January, 2010 passed by the Orissa Sales Tax Tribunal ('Tribunal'), Cuttack dismissing the Petitioner's Assessee Second Appeal No.2235 of 2004-05 directed against the order dated 17th August, 2004 of the Asst. Commissioner Sales Tax (ACST) for the year 2001-02 confirming the extra demand raised by the Sales Tax Officer (STO) in proceedings under Section 12(4) of the Orissa Sales Tax Act, 1947.

3. Although counsel for the Petitioner urges the Court to consider the question whether the Department was justified in subjecting PVC pipes produced by the Petitioner to tax at 12% under the

‘residual’ entry and not under the Entry 140 pertaining to PVC pipes or alternatively Entry 136 of the rate chart appended in List-C of the OST Act, the Court does not propose to examine that question in the present petition since the Court is of the view that the Petitioner ought to have been one more opportunity to present its case before the Tribunal. It is noticed that the impugned order was passed by the Tribunal in the absence of the Petitioner Assessee and it is but fair that the Assessee should be given an opportunity of presenting its appeal once again before the Tribunal.

4. Consequently, while answering the question in the affirmative i.e. in favour of the Assessee and against the Department, this Court sets aside the impugned order of the Tribunal on the above short ground and remands S.A. No.2235 of 2004-05 to the file of the Tribunal for a fresh hearing and decision in accordance with law. The aforementioned appeal will be listed before the Tribunal on 24th August, 2022, on which date, the Petitioner through its authorized representative shall remain present before the Tribunal. A copy of this order be sent to the Tribunal forthwith. The Court clarifies that it has not expressed any view on merits.

5. The revision petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

TUDU