AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK
STREV No. 63 of 2011

M/s. Kalinga Timber, Jagatpur, Cuttack	....	***Petitioner***
	-versus-	
State of Odisha, represented by the Commissioner of Sales Tax	....	***Opposite Party***

Advocates, appeared in this case :

For Petitioner	:	Mr. Jagabandhu Sahoo Senior Advocate
For Opposite Party	:	Mr. S.K. Pradhan Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

JUDGMENT
05.07.2022

Dr. S. Muralidhar, CJ.

1. The present revision petition by the Assessee arises from an order dated 19th November, 2010 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) dismissing the Assessee's appeal in S.A. No.1955 of 2005-06 for the period 2001-02.

2. By the impugned order the Tribunal affirmed the order dated 18th November, 2005 passed by the Assistant Commissioner of Sales Tax (ACST), Cuttack Range-II, Cuttack in Appeal No.AA 498/CUII of 2004-05. The ACST had dismissed the Assessee's appeal against the assessment order passed by the Sales Tax

Officer, Cuttack II Circle, Cuttack (STO) for the aforementioned period.

3. Admit. The following questions of law are framed for consideration by this Court:

> "(a) Whether sale of size wood by the petitioner against declaration Form IV amounting to Rs.12,07,731.00 to a registered dealer namely M/s. Mayur Electronics Ceramics Pvt. Ltd. will not be eligible to concessional rate of tax @ 4% under Entry 81 of List C of the Schedule of rates under Section 5(1) of the Orissa Sales Tax Act.
>
> (b) Whether subsequent change in use of goods purchased against declaration Form IV by the registered purchasing dealer will disentitle the petitioner's claim of concessional rate of tax under the aforesaid Entry 81 under the OST Act."

4. The background facts are that the Petitioner is a registered dealer under the Orissa Sales Tax Act, 1947 (OST Act). The Petitioner had sold size wood valued at Rs.12,07,731/- to another registered dealer, namely, M/s. Mayur Electronics Ceramics Pvt. Ltd. (hereafter 'Mayur') against declaration Form IV. For the said sale of size wood, the Petitioner claimed concessional rate of tax @ 4% as against the declaration in Form IV furnished by the purchasing dealer under Entry 81 of List-C of the Schedule of rates notified by the State Government being SRO No.149/2001 under Section 5 (1) of the Orissa Entry Tax Act, 1999 (OET Act). The STO noted that the verification of the declaration form revealed that they were not true declaration forms as they

mentioned packing of goods which had been deleted from Form IV with effect from 1st April, 2001. Since the goods were subject to tax at the first point of sale, it became the duty of the seller to check the declaration form and the registration certificate of the purchasing dealer prior to the sale. Therefore, the declaration in Form IV was disallowed.

5. Aggrieved, the Assessee went in appeal before the ACST, who by an order dated 18th November, 2005 dismissed the appeal. It was concluded that the selling dealer was not entitled to sell the packing materials for sale against Form IV since they stood excluded from that benefit with effect from 1st April, 2001. This order was concurred with by the Tribunal by the impugned order. The Tribunal noted that the "Appellant did not dispute" that the goods intended to be used as packing materials were excluded from the concessional rate of tax with effect from 1st April, 2001.

6. This Court has heard the submissions of Mr. Jagabandhu Sahoo, learned Senior Advocate for the Petitioner and Mr. S.K. Pradhan, learned Additional Standing Counsel for the Opposite Party (Department).

7. The declaration in Form IV furnished by the purchasing dealer to the Petitioner reads as under:

> "I/We ………. hereby declare that the goods purchased by me/us in cash memo/bill No. dated the ………from ……………shall be used in the manufacture/processing of goods for sale/in mining/generation or distribution of electricity or any form of power.

Dealer/Authorized Agent."

Thus, in the above declaration the purchasing dealer disclosed that the intention behind purchasing the size wood from the Petitioner was for manufacturing/ processing of goods for sale in mining/generation or distribution of electricity or any form of power. There was no mention of the goods having been purchased for being used as packing materials. As pointed out, even assuming the purchasing dealer was going to use the goods so purchased for any other purpose i.e. a purpose other than that disclosed in the above declaration in Form IV, the Revenue's interest would not be prejudiced since in any event the purchasing dealer would be liable to pay the differential rate of tax as per the 2^{nd} proviso to Section 5 (1) of the OST Act.

8. In ***Tilakraj Mediratta v. State of Orissa (1992) 86 STC 453 (Orissa)*** this Court explained that once the buying/purchasing dealer furnishes the declaration in Form IV that he intends to use the size goods for manufacture/processing of goods for sale, the legal obligation of the selling dealer ceases. Any contravention by the purchasing dealer of the above declaration would result in the purchasing dealer being made liable and not the selling dealer.

9. Applying the ratio of the above decision to the case on hand, it is seen that the declaration in Form IV does not disclose the intention of the purchasing dealer to use the size goods purchased as 'packing materials'. Consequently, the selling dealer cannot be saddled with any liability of tax. If indeed, the Department finds that the purchasing dealer has used the purchased goods for the

purpose other than that disclosed in the declaration form, it would be open to the Department to proceed against the purchasing dealer. It is, therefore, not justified on the part of the Department to pass on that liability to the selling dealer.

10. For the aforementioned reasons, the questions are answered in favour of the Assessee and against the Department by holding that:

(i) the sale of size goods by the Petitioner against the declaration in Form IV to the registered dealer is eligible for concessional rate of tax @ 4% under Entry 81 of Schedule 'C' of rates under Section 5 (1) of the OST Act.

(ii) a subsequent change in the use of goods purchased against declaration in Form IV by the purchasing dealer will not disentitle the selling dealer's claim for concessional rate of tax.

11. The impugned order of the Tribunal and the corresponding orders of the ACST and the STO are hereby set aside as regards the above questions. The revision petition is allowed, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.