IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.12 of 2015

M/s. Jagdamba Polymers Pvt. Ltd., Balasore .... ***Petitioner***

Mr. Kartik Kurmy, Advocate

-versus-

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

Mr. S. K. Pradhan, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
06.12.2022

Order No.

06. 1. Two questions have been urged by the Assessee-Dealer in the present revision petition arising from an order dated 29th January, 2015 passed by the Orissa Sales Tax Tribunal (Tribunal) in S.A. No.215 (ET)/2013-14 filed by the Petitioner for the period 1st April, 2008 to 30th September, 2011. The said questions read as under:

> "(i) Whether levy under Section 3 of the Odisha Entry Tax Act, 1999 is attracted on scheduled goods imported from outside the territory of India?
>
> (ii) Whether in the facts and circumstances of the case levy of penalty U/s.10(2) of the Act is warranted?"

2. As far as the first question is concerned, the issue now stands settled by the decision dated 9th October 2017 of the Supreme Court of India in ***State of Kerala v. Fr. William Fernandez, (2021) 11 SCC 705.*** Consequently, the Court declines to frame question No.(i) as urged.

3. As far as the question No. (ii) is concerned, with the legal position having been settled only in October 2017, most of the

Dealers-Assessees were under *bona fide* impression that Entry Tax would not payable on goods imported into India. Therefore, it could reasonably be contended that till such time there was no willful or deliberate attempt by the Dealer-Assessee to waive payment of Entry Tax.

4. The Court notes that under Section 10 (2) of the OET Act, there is an element of discretion in the Assessing Authority to levy penalty where the escapement or under assessment of tax "is without any reasonable cause." Since the Court is satisfied that the non-payment of Entry Tax on imported goods by the Petitioner, cannot be said to be without reasonable basis, the Court is of the view that in the present case the levy of penalty was not justified.

5. The question is accordingly answered in the negative i.e., in favour of the Petitioner and against the Department. The impugned Assessment order in so far as it imposes penalty on the Petitioner is hereby set aside and as the corresponding orders of the First Appellate Authority and the Tribunal.

6. The revision petition is allowed in the above terms.

7. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

S. K. Guin