IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.100 of 2013

M/s. Kripal Alloys Steel (P) Ltd. .... ***Petitioner***
Bargarh

Mr. M. Agarwal, Advocate

-versus-

State of Odisha .... ***Opp. Party***

Mr. S. K. Pradhan, Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

ORDER
06.07.2022

Order No.

05. 1. This is a revision petition by the Assessee against an order dated 6th June, 2013 passed by the Odisha Sales Tax Tribunal (Tribunal) in S.A. No.2(C) of 2009-10 for the period 2003-04.

2. While admitting the present revision petition, by order dated 18th August, 2014, the following questions of law were framed for consideration:

> "(i) Whether in the facts and circumstances of the case, the Division Bench of the Odisha Sales Tax Tribunal was justified in not arriving at a finding that in absence of any explanation by the department for belated service of the order of assessment beyond seven months from the date of assessment, the impugned order of assessment was ante dated and was barred by limitation as per sub-rule (7) of the CST (O) Rules, 1957?
>
> (ii) Whether in the facts and circumstances of the case, the Division Bench of the Odisha Sales Tax Tribunal was justified in not following the ration of the decision of Hon'ble Supreme Court in the

case of *State of A.P. vs. M. Ramakishtaiah & Co., (1994) 93 STC 406 (SC)*?"

3. On the same day, an interim order was passed staying the assessment order dated 31st March, 2007 subject to the Petitioner depositing 50% of the demand including any previous payment and/or deposit made earlier.

4. The factual position as regard the impugned assessment order dated 31st March, 2007 is that although it was purportedly passed on 31st March, 2007, the last day of the period of assessment, copy of the said order was stated to be dispatched by memo dated 14th September, 2007 and served on the Assessee only on 14th October, 2007 i.e. after expiry of more than six months after the assessment order was passed.

5. The categorical submission of the Assessee was that the assessment order was back dated to bring it within the period of limitation for making the assessment and that it was therefore actually ante-dated.

6. No convincing explanation has been forthcoming from the department as to the delay in dispatching the assessment order which was purportedly passed on 31st March, 2007. That the Assessee should be served a copy thereof only six months later does not appear to be justified.

7. In ***State of A.P. vs. M. Ramakishtaiah & Co. (1994) 93 STC 406 (SC)*** when there was a delay of 10 months in serving upon

the Assessee a copy of assessment order, the Supreme Court quashed it and all consequential proceedings thereto.

8. Consequently, the question (i) framed by the Court are answered in the negative by holding that in the absence of any explanation for the delay in service of the assessment order on the Assessee, the Tribunal ought to have held the assessment to be barred by limitation in terms of Rule 12(7) of the CST (Orissa) (Rules), 1957. Question (ii) is also answered in the negative and in favour of the Assessee and against the department. The impugned order of the Tribunal and the corresponding orders of the STO and ACST are accordingly set aside.

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

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

KC Bisoi