IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.75 of 2013

M/s. Swastik Jewellery .... ***Petitioner***
Mr. T.K. Satapathy, 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.

06. 1. This is the Assessee's revision petition against the order dated 6th May, 2013 passed by the Orissa Sales Tax Tribunal (Tribunal) allowing S.A. No.27(ET) of 2002-03 filed by the Department against an order dated 15th March, 2012 passed by the Deputy Commissioner of Sales Tax, (DCST) Cuttack-1 Range deleting the demand of Rs.83,156/- raised by the Sales Tax Officer (STO) under Section 9C of the Odisha Entry Tax Act, 1999 (OET Act) for the period from 1st April, 2005 to 28th February, 2009.

2. While admitting the present petition on 9th October, 2015, the following questions of law were framed for consideration.

> "B. Whether on the facts and in the circumstances of the case, the assessment order suffers vice of infirmity whereby the assessing authority has shifted the point of levy of entry tax, i.e. from manufacturer (*karigar*) to the point of selling, i.e. trader-petitioner; and in such eventuality, the Tribunal committed gross error of law in restoring the assessment order?

> D. Whether on the facts and in the circumstances of the case, in absence of service of notice in Form E30 prescribed under Rule 15B of the Odisha Entry Tax Rules accompanied with audit visit report in Form E27 by the assessing authority, the assessment framed under Section 9C of the Odisha Entry Tax Act, 1999 can be held to be valid and thereby the assessing authority has acted within his jurisdiction?"

On the same date, the operation of the impugned order was stayed by this Court.

3. The background facts are that the Assessee is a registered dealer engaged in the business of purchase and sale of gold and silver ornaments including decorative silver ornaments. The Assessee receives old and used ornaments from the customers/purchasers and gives them to local *karigars* who in turn re-make and repair the jewellery.

4. It appears that an audit team being constituted by the sales tax department visited the business premises of the Petitioner on 18th February, 2009 after issuing notice under Section 41 of the Odisha Value Added Tax Act, 2004 (OVAT Act) read with Rule 44 of the OVAT Rules, 2005. The Sales Tax Officer (STO) in exercise of powers under Section 42 of the OVAT Act issued notice of the assessment to the Petitioner enclosing a copy of the Audit Visit Report (AVR) in Form VAT-303.

5. The Assessee states that in the impugned assessment order dated 31st October, 2009 it was surprised to note that a demand of Rs.83,256/- had been raised under Section 9C of the OET Act

when in fact, no notice in the statutory form as required under the OET Act had ever been issued to the Petitioner consequent upon the audit visit.

6. The above assessment order was assailed by the Petitioner before the DCST. By the order dated 15th March, 2012, the DCST allowed the appeal. It is seen from the order dated 15th March, 2012 of the DCST that the case of the Assessee that there was non-compliance of the procedural requirements of Section 9C of the OET Act was noticed. In this context, the following observations of the DCST are relevant:

> "On perusal of the assessment order, it is seen that the learned assessing officer has initiated assessment proceeding U/s.9C of the OET Act for the tax period 1.4.05 to 28.2.09. But no reference has been given to any audit visit report. As per section 9C of the OET Act, audit visit report is mandatory for initiation of proceeding under the relevant section. It is further seen that no adverse material have been confronted to the dealer."

7. Aggrieved by the order of the DCST allowing the appeal of the Assessee and deleting demand raised by the AO/STO, the Department went in appeal before the Tribunal. In the impugned order, the Tribunal observed as under:

> "As envisaged the goods entered into local area is a subject to levy of the Entry Tax. But in the instant case in support of his contention that the business was confined to local area are not supported by evidences. As mentioned in the assessment order the 'karigar' makes new ornaments out of the gold and silver. But on examination of the books of account submitted

> before the learned STO there is no mention about the quantum of old gold/old silver received only the amount is mentioned. Since the 'karigar' is not a registered dealer the evidence as to the payment of Entry Tax on the finished product has not been submitted. Statement in Form E-1 in support of the payment of Entry Tax inside the local area has also been submitted which prompts me to belief the levy of Entry Tax as well as the penalty imposed u/s.9(C)(5) of the OET Act are justified."

8. Mr. T.K. Satapathy, learned counsel for the Assessee points that when no statutory notice under Section 9C of the OET Act was issued to the Assessee, there was no occasion for it to produce evidence to disclose what quantum of old gold/old silver ornaments were received.

9. Learned counsel for the Department is unable to dispute the aforementioned observations in the order of the DCST that no notice to the Assessee under Section 9C of the OET Act was issued enclosing a copy of the AVR.

10. Without the basic material on the basis of which the demand was raised under the OET Act provided to the Assessee, it cannot be expected that the Assessee would be able to meet the queries raised on the work done by the *karigars*. Consequently, neither the levy of entry tax nor the consequential penalty is sustainable in law.

11. Consequently, the questions framed by this Court are answered in favour of the Assessee and against the Department by holding that the Tribunal erred in restoring the assessment order and further that in the absence of service of notice in Form E-30 in terms of Rule 15B of the OET Rules accompanied by the AVR in Form E27, the assessment framed under Section 9C of the OET Act is not valid.

12. The revision petition is disposed of in the above terms. In other words, the impugned order of the STO and the Tribunal are hereby set aside and the order of the DCST is restored.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

KC Bisoi