IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.8 of 2016

M/s. Dharitri Enterprises .... ***Petitioner***
Mr. Madhablal Agarwal, Advocate

-versus-

State of Odisha .... ***Opposite Party***
Mr. S.K. Pradhan, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
07.12.2022

Order No.

07. 1. The following questions have been framed by this Court for consideration in the present revision petition arising from an order dated 4th December, 2015 passed by the Odisha Sales Tax Tribunal, Cuttack (Tribunal) in S.A. No. 328(V)/2014-15 filed by the present Petitioner-Assessee:

> "I. Whether on the facts and in the circumstances of the case the petitioner being a works contractor the Tribunal was right in taxing the entire gross receipt of the Petitioner without allowing deduction towards labour, services and other charges?
>
> II. Whether on the facts and in the circumstances of the case the Tribunal is justified and right in holding that the item "Electro Chlorinator water system" is liable to taxed @ 12.5% resorting to residuary entry of Part III instead of specific entries under Part II of Schedule B taxable @4%?"

2. As far as question II is concerned, the product in respect of which work order was issued in favour of the Petitioner-Assessee for Supply, Installation, Testing and Commissioning was an "Electro Chlorinator System". The question before the Authorities was

whether this Electro Chlorinator System can be regarded as 'centrifugal monoblock and submersible pumps and pump sets' as described in Serial No. 29 of Part-II of the Odisha Value Added Tax (OVAT Act) and taxable at 4% or whether it was an unspecified item covered under Part-III of Schedule-B of the OVAT Act liable to be taxed @ 12%?

3. The relevant entry at Serial No. 29 reads as under:

> "Sl.No.29 Centrifugal, Monobloc and submersible pumps and pump sets for handling water operated electrically or otherwise and parts and accessories thereof".

4. While it is argued by Mr. Kar, learned counsel for the Petitioner, that the Electro chlorinator system is essentially performing the same task as a 'centrifugal, monobloc and submersible pump', it is not in doubt that the said system does not perform only that function. It is comprised of several components, one of which acts as a 'pump'. Otherwise, the essential function of the said system is to convert salt water into potable water. In other words, it is a unique product/system that performs a specific function. Only one component of that system is 'pump'. In the circumstances, the Court is unable to agree with the submission that the said product would be covered under Serial No. 29 of Part-II and would be taxable @ 4%. Consequently, as far as question II is concerned, it is answered in the affirmative i.e. in favour of the Department and against the Petitioner-Assessee. The Court, therefore, declines to interfere with the impugned order of the Tribunal as far as question II is concerned.

5. Now turning to question I, it is seen that although the Petitioner-Assessee had raised a ground both before the First Appellate

Authority as well as the Tribunal that the work order issued in favour of the Assessee was in the form of a works contract and that the value/bill amount of the said work order included components of labour and service charges which were required to be excluded from the gross turnover to arrive at the taxable turnover, this aspect does not appear to have been addressed either by the First Appellate Authority or the Tribunal.

6. For the aforementioned reason, the Court directs remand of the matter to the Assessing Authority i.e. State Tax Officer, Balasore Circle for examining the above limited question viz., whether the entire gross receipts of the Petitioner, without allowing deduction towards labour, service and other charges should have been brought to tax?

7. For the above limited purpose, the matter will be listed before the State Tax Officer, Balasore Circle on 1st February, 2023 on which date the Petitioner will appear with all the books of accounts and relevant documents for the period 2007-08 and 2008-09.

8. The STREV is disposed of in the above terms. A copy of this order be sent forthwith by the Registry to the State Tax Officer, Balasore Circle.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

AKS/Laxmikant