AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 72 of 2016

M/s. GOLD-EN-GOLD	....	***Petitioner***
		Mrs. Kananbala Roy Choudhury, Advocate

-versus-

State of Odisha, represented by the Commissioner of Sales Tax	...	***Opposite Party***
		Mr. S.K. Pradhan, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

Order No.

ORDER
08.12.2022

Dr. S. Muralidhar, CJ.

06. 1. While admitting this revision petition, on 27th March, 2017 the following questions were framed by this Court for consideration:

> (i) Whether on the facts and in the circumstances of the case, the Tribunal has erred in law by not taking cognizance of the expression "may", "reasonable cause", "tax assessed" and "tax additionally assessed" as provided under Sub-section (2) of Section 10 of the OET Act while confirming the imposition of penalty by the Assessing Authority and confirmed by the 1st Appellate Authority ?
>
> (ii) Whether on the facts and in the circumstances of the case, when there is no additional tax has been assessed or no tax is payable under that circumstances, the Tribunal is justified by confirming the imposition of penalty U/s. 10(2) of the OET Act ?

2. On the issue whether the Assessing Authority has a discretion under Section 10(2) of the Orissa Entry Tax Act, 1999 (OET Act) to impose penalty under that provision, the issue appears to be decided

by the judgment of this Court in ***National Aluminum Company Limited vs. Deputy Commissioner of Commercial Taxes 2021 (I) OLR 828*** which concerned the interpretation of Section 43 (2) of the Orissa Value Added Tax Act, 2004 (OVAT Act) which corresponds to Section 10(2) of the OET Act.

3. Factually, however, it is seen that in the present case, the Assessee was a jeweller, who started business only on 13th July, 2010. On the first occasion, when it was pointed by the Officer of the Enforcement Wing that on the jewellery purchased from outside Odisha i.e. Mumbai, entry tax was required to be paid, the Petitioner filed a revised return and immediately deposited the differential tax amount on 15th January, 2013. It is in this context that it was pleaded on behalf of the Petitioner dealer that it had not evaded the payment of entry tax without any reasonable cause and, therefore, no penalty should be imposed on it.

4. A perusal of the assessment order dated 11th July, 2013 reveals that the Assessing Officer (AO) has after reproducing the text of Section 10(2) of the OET Act merely used the very words of the provision as far as determination of the issue is concerned. The relevant portion of the assessment order reads as under:

> "…If the circumstances involved in the present case will be taken into account, it is clearly discerned that the non-payment of Entry Tax on the turnover of purchase of scheduled goods is without any reasonable cause and the same is simply attributable to commission of an offence involving evasion of Entry Tax, penal action U/s 10(2) of the OET (Amendment) Act is attracted. Accordingly, I imposed penalty of Rs.6,85,924/- i.e. twice the amount of tax additionally assessed."

5. In coming to the above conclusion, the AO does not appear to have applied his mind to the facts and circumstances narrated above i.e. the dealer having commenced business only on 13th July, 2010 and paying of the differential tax once attention was drawn to the fact that entry tax had to be paid on the jewellery purchased from Mumbai. Whether these factors constituted 'reasonable cause' for the purpose of Section 10 (2) of the OET Act, was not considered by the AO.

6. Considering the long lapse of time, the Court does not consider it appropriate to remand the matter to the AO for the above purpose. The Court is satisfied that the dealer had demonstrated reasonable cause for not paying the requisite entry tax in the first instance. This is not a case where a penalty under Section 10 (2) of the OET Act is warranted.

7. For the aforementioned reasons, the impugned assessment order and the corresponding orders of the 1st Appellate Authority and the Tribunal insofar as penalty is concerned, are hereby set aside. Accordingly, the questions framed are answered in favour of the Assessee dealer and against the Department.

8. The revision petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Jena/Secy.