IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.65 of 2014

M/s. Orissa Plasto Pipe Pvt. Ltd.	....	***Petitioner***

Mr. U.C. Behura, Advocate

-versus-

State of Odisha represented by the Commissioner of Sales Tax, Odisha	....	***Opposite Party***

Mr. Sunil Mishra, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
28.11.2022

Order No.

04. 1. Admit.

2. The following question of law is framed for consideration:

> Whether under the facts and circumstances of the case, the Tribunal was justified in confirming the levy of entry tax where goods were manufactured in one local area and sold within the local area?

3. In the present case, the factual background is that the Petitioner-Assessee manufactures PVC pipes using PVC resin as raw material. For the period 1st April 2005 to 31st December 2007, the Sales Tax Officer (STO) passed an assessment order on 2nd June 2008 under Section 9-C of the Odisha Entry Tax Act (OET Act) on the basis of an audit visit report (AVR) which appeared to indicate that the Petitioner had not paid entry tax on the sale of its finished product under Section 26 of the OET Act. It was found that the Petitioner had sold scheduled goods to the tune of Rs.73,50,466/- inside the State of Odisha, on which, ET @ 1% had not been

collected. On this basis, the STO assessed the Petitioner to tax for a sum of Rs.2, 20, 513/- inclusive of penalty under Section 9-C (5) of the OET Act.

4. Before the first appellate authority, the Petitioner contended that goods were sold within the local area i.e., Cuttack Municipal area and therefore, there was no occasion to collect entry tax. However, the Deputy Commissioner of Sales Tax (DCST) upheld the order of assessment of the STO. Thereafter, the Petitioner went before the Odisha Sales Tax Tribunal, Cuttack (Tribunal) with S.A. No.99 (ET)/2012-13. By the impugned order dated 31st December 2013, the Tribunal dismissed the appeal on the basis of Section 26 of the OET Act relying on the judgment of this Court in OJC No.3395 of 2000 (***M/s Indian Metals & Ferro Alloys Corporation of Orissa v. State of Orissa***).

5. Section 26 of the OET Act only envisages collection of entry tax equal to the tax payable on the value of the finished products under Section 3 of the Act from the buying dealer either directly or through an intermediary "only if the scheduled goods sold are intended for entry into any local area of the State for the purposes of consumption, use or sale". Section 26 does not envisage the situation prevalent here i.e., manufacture taking place in a local area and consumption within the local area. Consequently, Section 26 of the OET Act can have no application in the circumstances of the present case.

6. Learned counsel for the Department then seeks to contend that there is no document produced to show that the Assessee had in fact manufactured the goods in question in a local area and it had also been sold within the local area. However, this was not put in issue at all at any stage of the case before the Tribunal. If the Department was seeking to levy entry tax, then on the above basis, the Assessee ought to have been put on notice that he should produce proof that he had actually manufactured the goods in the local area.

7. Consequently, the Court is not in agreement with the conclusion reached by the Tribunal in the present case. The question framed is accordingly answered in the negative, i.e. in favour of the Petitioner-Assessee and against the Department. The impugned order of the Tribunal and the corresponding orders of the DCST and STO are hereby set aside.

8. The revision petition is allowed in the above terms with no order as to costs.

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

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin