IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4456 of 2013

M/s. Pankaj Sales .... ***Petitioners***

Mr. Jnanesh Mohanty, Advocate

-versus-

Commissioner, Commercial Taxes, Orissa and others .... ***Opposite Parties***

Mr. S.K. Pradhan, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
06.07.2022

Order No.

06. 1. The challenge in the present petition is to an order dated 27th November 2012, passed by the Orissa Sales Tax Tribunal ('Tribunal') in S.A. No.266 (VAT) of 2011-12.

2. While admitting this writ petition, by the order dated 13th July, 2015 the following order was passed:

> "The writ petition is admitted only on the issue of penalty imposed. The amount of tax demanded, shall be deposited, if not deposited, within a period of four weeks.
>
> Issue notice.
>
> Learned counsel for the Revenue accepts notice. Extra copies of the writ petition be served on him within three days."

3. It is seen from the impugned order of the Tribunal that the assessment of the Petitioner was completed under Section 42 of the Orissa Value Added Tax Act, 2004 (OVAT Act). Once it is an audit

assessment, based on the audit visit report, no discretion is vested in the Assessing Officer to impose an amount of penalty less than what is provided under Section 42(5) of the OVAT Act.

4. This legal position has been settled by this Court in its decision in ***Jindal Stainless Ltd. v. State of Orissa 2013(1) ILR- CUT 223***, which has been reiterated yesterday by this Court in its decision dated 5th July, 2022 in STREV No.69 of 2012 ***(State of Odisha v. M/s. Chandrakant Jayantilal)***.

5. In that view of the matter, the impugned order to the extent of imposing penalty twice the amount of the tax in terms of Section 42(5) of the OVAT Act does not call for interference.

6. The writ petition is dismissed.

7. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S. Behera