IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8236 of 2017

M/s. Sree Industry, Balasore .... ***Petitioner***
Mr. Bhabani Prasad Mohanty, Advocate

-versus-

The Sales Tax Officer, Balasore Circle, Balasore .... ***Opposite Party***
Mr. S.K. Pradhan, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
08.12.2022

Order No.

05. 1. The challenge in the present petition is to the assessment order dated 27th January, 2017 passed by the Sales Tax Officer, Balasore Circle, Balasore under Section 43 of the Odisha Value Added Tax Act, 2004 (OVAT Act) for the period 1st April, 2013 to 30th June, 2016.

2. The ground on which impugned assessment order has been challenged, is that there is no satisfaction recorded by the Assessing Officer (AO) that there was an escapement of tax as provided in Section 43 of the OVAT Act. The order-sheet of the AO enclosed with the writ petition as Annexure-4 merely refers to the tax evasion report and directs issuance of notice in VAT-307, E-32 and Form-IV.

3. As explained by this Court in ***Indure Ltd. v. Commissioner of Sales Tax (2006) 148 STC 61 (Ori)***, it is not enough if the AO refers to the tax evasion report or an audit report, but has to independently

apply his mind and record his satisfaction that there has been an escapement of tax. That is the mandatory minimum requirement of Section 43 of the OVAT Act.

4. Despite notice having been issued in the present petition way back on 19th June, 2017, till date no counter affidavit has been filed by the Department to dispute any of the facts or the documents enclosed with the writ petition. Therefore, the Court proceeds on the basis of the undisputed averment and the position emerging from the order-sheet copy enclosed at Annexure-4, that the AO indeed has not independently applied his mind and recorded his satisfaction, as is the jurisdictional requirement to justify reopening of the assessment under Section 43 of the OVAT Act.

5. Consequently, the impugned assessment order and the consequential demand are hereby quashed.

6. The writ petition is allowed. No order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

MRS/Laxmikant