IN THE HIGH COURT OF ORISSA AT CUTTACK

T. Rev. No.106 of 2001

State of Orissa, represented by the Commissioner of Sales Tax, Cuttack	....	***Petitioner***
		Mr. S. S. Padhy, ASC

-versus-

M/s. Orient Paper Mills Ltd., Sambalpur	....	***Opposite Party***
		Mr. K. K. Sahoo, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
18.07.2022

Order No.

13. 1. This revision petition by the State arises from an order dated 24th April, 1986 passed by the Orissa Sales Tax Tribunal (Tribunal) in Second Appeal Nos.64 to 66(C) of 1979-80.

2. The questions sought to be urged by the State for consideration by this Court read as under:

> "*i. Whether the Tribunal is justified in partially allowing the appeal when it came to a finding that books of account maintained by the dealer did not give correct picture of its activities?*
>
> *ii. Whether the Tribunal is justified in deleting the enhancement for all the impugned years basing on the fresh evidence under Rule 61 of the O.S.T. Rules?"*

3. The background facts are that the Opposite Party-Assessee is engaged in carrying on the business of manufacturing and selling paper. It is registered both under the Orissa Sales Tax Act, 1947 (OST Act) and Central Sales Tax Act (CST Act). The Sales Tax Officer (STO) picked up the returns filed by the Assessee for three years i.e. 1973-74, 1974-75 and 1975-76 and on the basis of best judgment assessment, raised demands for the three years respectively. The Assessee then filed appeals before the Assistant Commissioner of Sales Tax, Sambalpur Range, Sambalpur (ACST). While sustaining the rejection of books of accounts and adoption of the best judgment assessment, the ACST allowed the appeals by reducing the estimated turnover and thereby the demands.

4. The Assessee preferred appeals as did the State before the Tribunal. The order of assessment was set aside by the Tribunal and the matter remanded to the ACST for a fresh hearing. Pursuant to an order dated 16th August, 1990 of this Court in SJC Nos.58 to 67 of 1981 and 85 to 90 of 1981, the case was reheard by the ACST. For the second time, the ACST held in favour of the Assessee and the State went before the Tribunal essentially on the finding of the ACST that there was no suppression in the figures of production given in the Assessee's balance sheet and the alleged stock of bamboo. The Tribunal held against the State by observing as under:

> "*Considering the facts placed before us and as explained and in absence of any other materials establishing suppression having brought to record, we do not find any illegality in the observation of the A.C.S.T. that there is no suppression in so far as the shortage of bamboo stock recorded at the time of stock taking.*"

5. The Tribunal negatived the plea of the State as regards the conversion ratio converting the running feet into Metric Ton by observing as under:

> *"From the above discussion it is now concluded that the revised conversation ratio being not applicable to the year in question, converting the running feet into MT on that basis and alleging suppression of bamboos and consequent sale suppression of paper is not at all justified. The dealer having recorded the weight in terms of MT after weighment of bamboo in the mill premises has consigned from the lease out forest and there being no discrepancy detected for established conversion ratio and consequent enhancement of turnover on this count are now deleted."*

6. Learned Additional Standing Counsel for the State sought to contend that once the Tribunal accepted that the Assessee has not maintained its books of account in the regular course of business, it could not have declined to draw an adverse inference against the Assessee on mere presumption.

7. The Court is unable to agree with the above submissions. The Tribunal undertook a very detailed exercise and came to the conclusion regarding lack of discrepancy in the exercise of converting running feet into Metric Ton. In other words, there was no material to support the contention of the State that there was any suppression of bamboos. A very detailed discussion appears to have been undertaken by the Tribunal and the findings are purely factual.

8. In the circumstances, the Court is not persuaded that any error has been committed by the Tribunal. Further, the deletion of the

enhancement for the three years was again based on facts with that the evidence having been discussed in detail by the ACST and the Tribunal.

9. Consequently, the Court declines to frame the questions as urged by the Department.

10. The revision petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda