THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.65 of 2017

M/s. V.A. Narasimha Moorty & Sons .... ***Petitioner***
Mr. Jagabandhu Sahoo, Senior Advocate
with Ms.Kajal Sahoo, Advocate

-versus-

State of Odisha .... ***Opposite Party***
Mr. Susanta Kumar Pradhan,
ASC for CT & GST Organization

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
08.12.2022

Order No.

M. S. Raman, J.

06. 1. The petitioner, a partnership firm, assailed Order dated 18.05.2017 in Second Appeal No.57(C) of 2015-16 passed by the learned Odisha Sales Tax Tribunal, Cuttack directed against Order dated 30.04.2015 of the Additional Commissioner of Sales Tax, (Appeal), South Zone, Berhampur in connection with Audit Assessment framed under Rule 12(3) of the Central Sales Tax (Odisha) Rules, 1957 (in short referred to as, "CST(O) Rules") by the Joint Commissioner of Sales Tax, Ganjam Range, Berhampur pertaining to tax periods from 01.07.2007 to 31.03.2011.

2. While entertaining the revision petition, this Court *vide* Order dated 28th November, 2017 framed the following questions of law:

> *"A) Whether in view of production of 'H' Forms and export documents including Bill of Lading in respect of claim under Section 5(3) and 5(4) of the CST Act, it is lawful and proper for the First Appellate Authority to remand the matter to the Assessing Authority for fresh assessment?*
>
> *B) Whether in absence of appeal or cross objection by the State and in view of Circular dated 20.04.2015 of the Commissioner of Commercial Taxes, Odisha the learned Tribunal is justified to render findings for reconsideration on the issue of imposition of penalty under Section 12(3)(g) of the CST(O) Rules, 1957?"*

3. The First Appellate Authority has assigned the following reason for disallowing the claim of the petitioner-dealer, as penultimate seller, for exemption from payment of Central sales tax on the transactions of sale in course of export to Indian Exporters under Section 5(3) of the Central Sales Tax Act, 1956 (for short referred to as "CST Act"):

> "*** *At the appeal hearing stage the dealer appellant appeared and furnished supporting documents like bill of lading, purchase orders towards claims of exemption of export sales amounting to Rs.3,32,99,562/- but failed to comply the objections raised by the learned Assessing Officer in the orders of assessment by not furnishing the agreement copies or sale contract or purchase order of the foreign buyer with the Indian Exporter for want of which the learned Assessing Officer disallowed the claims of exemption of sale invoking provision of Section 5(3) of the CST Act. Further, the dealer-appellant has been allowed sufficient opportunity for production of copies of agreement between Indian Exporter and Foreign Buyer but the dealer appellant failed to furnish such copies of agreement. Hence, in the absence of supporting documentary evidences the transaction of*

export sale claiming exemption of tax as per provisions of Section 5(3) of the CST Act could not be considered as true and correct and the transaction is treated as deemed sale under the CST Act and is taxed at the appropriate rate."

However, after recording that there was no intention to evade the tax on the part of the petitioner, the First Appellate Authority has deleted the imposition of penalty under Rule 12(3)(g) of the CST (O) Rules.

4. The learned Odisha Sales Tax Tribunal in second appeal being preferred by the petitioner-assessee while declining to interfere with the order of disallowance of exemption under Section 5(3) of the CST Act, shown indulgence in the order of deletion of penalty imposed under Rule 12(3)(g) of the CST (O) Rules. The learned Tribunal having set aside the orders of the First Appellate Authority remitted the matter to the Assessing Authority for fresh assessment.

5. The facts, the contentions and the questions of law raised in the present matter are identical with the case of ***General Traders Vrs. State of Odisha, STREV No.64 of 2017***.

6. Both the items are taken up together for hearing today being conceded by counsel for both the sides.

7. Judgment has been delivered in the case of ***General Traders v. State of Odisha*** *(supra)* today.

8. The instant matter is, therefore, disposed of in the same terms as in the Judgment rendered by this Court in the case of ***General Traders v. State of Odisha,*** *(supra)*. In other words, the questions framed are answered in favour of the Assessee and against the Department and the Order dated 18.05.2017 of the Tribunal and the corresponding

orders of the First Appellate Authority and Assessing Authority to the above extent are hereby set aside. The sales tax revision petition is allowed, but, in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

Laxmikant