IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.43 of 2015

M/s. Bata Furniture .... ***Petitioner***

Mr. Bijay Panda, Advocate

-versus-

State of Odisha & Others .... ***Opposite Parties***

Mr. Susanta Kumar Pradhan, ASC for CT & GST Organization

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
06.12.2022

Order No.

M. S. Raman, J.

04. 1. The Petitioner being aggrieved by dismissal of second appeal bearing No.196(VAT) of 2014-15 vide order dated 30th July, 2015 passed by the learned Sales Tax Tribunal, approached this Court under Section 80 of the Odisha Value Added Tax Act, 2004 by way of Sales Tax Revision.

2. While issuing notice, this Court vide order dated 5th January, 2015 framed the following questions of law:-

> *"This Sales Tax Revision is admitted on the following substantial question of law?*
>
> *(a) Whether in the facts and circumstances of the case, the Tribunal was legally correct without proper verification of details produced held that the dealer had not produced any evidence on the business transactions and the alleged that purchase suppressions was not accounted in the books of*

account even though was not confronted to arrive at the quantity suppression if any made?
(d)Whether in the facts and circumstances of the case, the forums below had detected any escapement of transactions out of returns if any made and found in the records except on the report of their vigilance wing and held that the assessment is correctly made invoking Sec.43 of the OVAT Act?
(e)Whether in the facts and circumstances of the case, the imposition of penalty U/s. 43(2) of the OVAT Act is legally valid when the entire transactions were reflected in the quarterly returns, audited books accounts and no discrepancy found in it or rejected?"

3. Heard Mr. Bijay Panda, learned counsel for the Petitioner and Mr. Susanta Kumar Pradhan, learned Additional Standing Counsel for CT & GST Organization.

4. Assessment was framed by the Deputy Commissioner of Sales Tax, Puri Circle, Puri on 10.01.2014 under Section 43 of the OVAT Act for the period 01.04.2012 to 31.03.2013 raising a demand to the tune of Rs.3,52,989/-. Said Assessment was undertaken pursuant to Tax Evasion Report No.3, dated 31st January, 2013 submitted by the Deputy Commissioner of Sales Tax, Vigilance, Bhubaneswar Division. On the basis of admission before the Vigilance Officials by the Petitioner discrepancy in physical stock was ascertained, and the tax liability has been determined. In the Assessment besides component of tax to the tune of Rs.1,17,663/-, penalty at twice the amount of tax so determined has been imposed under Section 43(2) of the OVAT Act.

5. Against the said Assessment order, the Petitioner filed appeal under Section 77 of the OVAT Act. Though before the Appellate Authority the Petitioner stated to have furnished copies of purchase

invoices and sale invoices, the appeal was dismissed as the Petitioner did not "furnish detail stock inventory for which the alleged suppressions as detected and reported by the Vigilance officials could not be proved otherwise".

6. Being aggrieved, the Petitioner carried the matter before the Odisha Sales Tax Tribunal by way of second appeal under Section 78 of the OVAT Act. Laying stress on the admission of the Petitioner before the Vigilance Team during inspection, the learned Odisha Sales Tax Tribunal dismissed the second appeal. Hence the petitioner approached this Court in the present revision.

7. Mr. Bijay Panda, learned Counsel for the Petitioner has submitted that all the statutory authorities including the Tribunal have proceeded on the basis of 'admission' by the Petitioner before the Vigilance Team without taking into consideration the documents/evidence produced at a later stage. He further went on to submit that though written note of submission was filed before the learned Tribunal, the same was brushed aside. In the said written submission as also ground of second appeal, the Petitioner has explained each and every transaction. Nonetheless, the Tribunal, being final fact finding authority, without appreciating the merit of the matter, dismissed the second appeal.

8. Mr. Bijay Panda, counsel taken this Court to the Assessment Order, where the following is recorded:

> *"It is alleged in the tax revision that the dealer did not possess any purchase invoices in support of the stocks kept for resell which were noted down on the date of visit. The dealer admitted before the vigilance officials that those stocks are his out of account purchases. Out of account stock having sale value of 20,39,580/- has been alleged."*

9. The First Appellate Order contains the following observation:

> *"It is alleged in the tax revision that the dealer did not possess any purchase invoices in support of the stocks kept for resell which were noted down on the date of visit. The dealer admitted before the vigilance officials that those stocks are his out of account purchases valued at Rs.20,39,580/- and considered as purchase suppression".*

10. The learned Odisha Sales Tax Tribunal in similar fashion recorded the following:

> *"Besides, the dealer has alleged the vigilance team has overvalued the goods detected as out of account,. The dealer stated that he has purchased wooden goods from the local unregistered carpenters though purchases voucher do not show the actual value of goods. Before this forum the dealer has submitted the copies of some of the documents whose authenticity is original is not ascertainable. We find that the dealer has admitted the out of account at the stage of investigation of vigilance team and failed to substantiate evidence to refuse the charges out of account purchases and sale of goods at the assessment and the appeal stage for which the assessment has been confirmed before this forum also he was not able to substantiate documentary evidence to refuse the charges leveled against him."*

11. Mr. Bijay Panda, learned Advocate submitted that though the learned Tribunal recorded the fact that documents were produced before it, in subsequent sentence in the same paragraph it has held otherwise. Having enclosed copy of the written submission filed before the Sales Tax Tribunal to the present revision petition, Mr. Panda, counsel for the Petitioner stated that the Petitioner has placed on record the date-wise bill with number, name of selling dealer, description of goods, quantity, rate and amount and brought to the notice of the Tribunal that the detected stock as alleged are supported by copies of purchase bills. So it was incorrect on the part

of the Tribunal to say that the Petitioner-dealer failed to substantiate allegation of suppression.

12. Mr. Susanta Kumar Pradhan, learned Additional Standing Counsel for CT&GST Organisation supported the orders passed by the authorities and submitted that all the fact finding authorities having come to just conclusion no question of law arises out of the order of the Tribunal which does not warrant intervention of this Court.

13. Perusal of the written submission as enclosed to the revision petition as Annexure-4 series, it is apparent that the Petitioner has disclosed the details of purchase bills with reference to detected stock. It is also ascertained from record of the learned Odisha Sales Tax Tribunal as made available to this Court that the Petitioner had supplied such details. Perusal of grounds of second appeal filed before the learned Tribunal also contains the details of purchase bills relating to subject matter of dispute. The Tribunal could have examined the details of purchase bills with reference to books of account and records of the authorities. It appears from the order of the learned Tribunal that it has passed slipshod order without even verifying the documents furnished before it. The Tribunal under the aforesaid premises should have considered the veracity of contention of the Petitioner-dealer. Therefore, this Court finds the order of the Tribunal vulnerable and non-consideration material on record would render finding of fact perverse and thereby it raises question of law.

14. This Court in the context of suppression of stock in the case of *M/s.Gupta Distributors, Cuttack Vs. State of Odisha*, *STREV No.2 of 2008 vide order dated 22nd March, 2022* observed as follows:

> *"The main charge against the assessee was regarding unexplained shortage of stock. As explained by this Court in Laxminarayan Sawalram Vs. State of Odisha (order dated 20th July, 1971 in O.J.C No.286 of 1968), unless the Department was further able to show that the suppressed stocks were sold by the assessee there cannot be an automatic enhancement of taxable turnover."*

15. Mere availability of stock cannot alone be a ground for conclusion that there is purchase suppression. Value Added Tax is levied on the sale of goods save and except under certain circumstances purchase attracts levy of VAT. Present alleged transactions are subject to VAT on sale of goods. Assessment Order, Appellate Order and Second Appellate Order indicate that all the authorities have proceeded on the basis of "admission" before the Vigilance Officials during the course of inspection.

This Court in *Srei International Finance Limited Vs. State of Odisha & Others, (2008) 16 VST 193 (Ori)* held as follows:

> *"If a person, is not liable within the four corners of statute to pay tax on any transaction, he cannot be assessed to tax merely because he previously admitted his liability on a wrong notion. Liability to pay tax has always to be imposed by law, it cannot be imposed on admission."*

In *Yadurish Rai Jhunjhunwala Vrs. CST, (1987) 67 STC 381 (All)*, it has been observed that if explanation is not furnished during inspection but the same is furnished at the time of Assessment such evidence cannot be brushed aside, if there is no other material on which the books of account could be rejected.

In the case at hand, it is seen that information with regard to detected purchases alleged to have not been accounted for by the Department has been furnished by the Petitioner-dealer with specific reference to bill number, date, name of the seller, *etc*. Such evidence produced before the Tribunal could not have been discarded. In such view of the matter, this Court is satisfied that the Petitioner was not given fair opportunity to substantiate its claim. Therefore, the order of the Tribunal impugned herein is liable to be set aside.

16. For the reason stated above, the order dated 30th July, 2015 passed in S.A. No.196 (VAT) of 2014-15 by the Odisha Sales Tax Tribunal is hereby set aside and the matter is remanded to the said Tribunal for hearing afresh. For the said purpose, the Petitioner shall appear before the Tribunal on 1st February, 2023 for directions and the Tribunal shall do well to consider the documents produced by the Petitioner and after hearing both sides shall pass appropriate orders not later than six months from the date of appearance.

17. With the aforesaid observation, the STREV is, accordingly, disposed of.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

Laxmikant