IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 58 of 2018

M/s. Rukmani Motors, Mayurbhanj .... ***Petitioner***

Mr. Prakash Kumar Jena, Advocate

-versus-

State of Odisha, represented by the Commissioner of Sales Tax .... ***Opposite Party***

Mr. Sunil Mishra, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
15.12.2022

Order No.

24. 1. The present revision petition filed by the Assessee was admitted by this Court on 13th August, 2018 and the following question was framed for consideration:

> "Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in reversing ITC to the tune of Rs.3,05,789.00 on the allegation of sale price being less than the purchase price without taking into consideration the provisions of Section 20(8-a) of the OVAT Act which provides that where sale price of any taxable goods, for any reason, is less than the purchase price of the said goods, the input tax credit on purchase of such goods shall be allowed only to the extent of the output tax payable on the sale of such goods?"

2. On a subsequent date, i.e., on 27th November, 2019 the following order was passed by this Court:

"Learned counsel for the petitioner contended that in view of the provisions of Section 20 (8-a) of the OVAT Act which reads as under:

"(8-a) Where sale price of any taxable goods, for any reason, is less than the purchase price of the said goods, the input tax credit on purchase of such goods shall be allowed only to the extent of the output tax payable on the sale of such goods and in such case if the input tax credit has been availed in excess of the output tax paid or payable, it shall be reversed in the manner prescribed."

read with sub-rule (6) of Rule 14 of the OVAT Rules which reads as under:

"(6) In the case of sale of goods in the manner referred to in-sub-rule (5), which results in output tax less than the corresponding input tax paid on the purchase of such goods, the input tax creditable for the tax period shall be reversed as calculated in Annexure-VI of Form VAT-201."

this procedure prescribed has not been followed as per Annexure-VI of Form VAT-201.

Learned counsel for the Revenue-opposite party will give reply to it by the next date.

The matter to come up on 11.12.2019."

3. Having heard learned counsel for the parties, it appears to the Court that the Orissa Sales Tax Tribunal ('Tribunal') has in the impugned order not considered the applicability of Section 20(8-a) of the Orissa Value Added Tax Act, 2004 (OVAT Act) read with Rule-14(6) of the OVAT Rules. Although there is a mention of the provision, there is no discussion on its applicability.

4. It may be noted here that the First Appellate Authority had accepted the plea of the Assessee but the Tribunal reversed it in an appeal filed by the Department.

5. In view of the fact that the applicability of the above Section 20(8-a) of the OVAT Act and Rule-14(6) of the OVAT Rules has not been discussed by the Tribunal, this Court sets aside the order dated 25th January, 2018 passed by the Tribunal, Cuttack and restores the S.A. No.203(V) of 2014-15 filed by the State to the file of the Tribunal, where it will now be listed for directions on 16th January, 2023 on which date, the Assessee will remain present through an authorized representative. The Tribunal is requested to dispose of the said appeal preferably within a period of six months thereafter.

6. The revision petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera