IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 463 of 2008

M/s. Orissa State Co-operative Marketing Federation Ltd. .... ***Petitioner***

Mr. T.K. Satapathy, Advocate

-versus-

State of Orissa .... ***Opposite Party***

Mr. Sidharth Shankar Padhy, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

Order No.

ORDER
20.06.2022

04. 1. Admit.

2. The following question is framed for consideration by this Court:

> "Is the Assessee liable to be heard again by the Orissa Sales Tax Tribunal (OSTT) on account of its inability to appear before it for bonafide reasons?"

3. The present revision petition arises from an order dated 3rd October 2007, passed by the Orissa Sales Tax Tribunal in S.A. No.1691 of 2001-02 whereby, the appeal by the present Petitioner was heard in its absence by the Tribunal thereby affirming the order dated 30th October 2001 of the Assistance Commissioner of Sales Tax (ACST) Cuttack-I Range, Cuttack which in turn confirmed the assessment order dated 27th February 1999, passed by the Sales Tax Officer (STO) Cuttack under Section 12(4) of the Orissa Sales Tax Act for the year 1995-96 raising a demand of Rs.3,46,921/-.

4. The impugned order of the Tribunal notes in Para-6 "We have heard the State only. We have no occasion to hear the dealer as it having chosen not to contest the case has been set exparte". As it

transpires even before the ACST, the dealer's appeal was dismissed on account of its non-appearance.

5. Mr. T.K. Satapathy, learned counsel for the Assessee refers to the telegram sent to the Tribunal by the dealer and the receipt of the said telegram sent by the dealer seeking time to appear and make submissions.

6. The tax effect being over Rs. 4Lakhs and the dealer having furnished as explanation for non-appearance before the Tribunal, which appears to be a plausible one, this Court is of the view that the dealer should be given one more opportunity to be heard by the Tribunal in its appeal.

7. For the aforementioned reasons, the impugned order dated 3rd October 2007 of the Tribunal is hereby set aside and S.A. No.1691 of 2001-02 is restored to the file of the Tribunal to be listed there for direction on 18th July, 2022. It is made clear that on that date, the dealer through its authorized representative must remain present for the appeal to be taken up for fresh on merits uninfluenced by the earlier decision which has been set aside by this Court in the present order. The question framed is therefore answered in favour of the Assessee and against the Revenue in the above terms. It is clarified that no view has been expressed by this Court on merits.

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

9. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S. Behera