IN THE HIGH COURT OF ORISSA AT CUTTACK

STREVNo.473 of 2008

Smt. Usharani Mohanty, Prop. Of M/s. Jagannath Supply Syndicate, Puri	....	***Petitioner***
		Mr. B. Panda, Advocate
	-versus-	
State of Orissa, represented through the Commissioner of Sales Tax, Cuttack	....	***Opposite Party***
		Mr. S. S. Padhy, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
20.06.2022

Order No.

03. 1. The present revision petition arises from an order dated 5th November, 2007 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in S.A. No.2134 of 2003-04, whereby the appeal filed by the Petitioner-Dealer against the order dated 22nd August, 2003 of the Assistant Commissioner of Sales Tax, Puri (ACST) was dismissed. Consequently, the Assessment Order passed by the Sales Tax Officer (STO) passed under Section 12(4) of the Orissa Sales Tax Act, 1947 (OST Act) for the year 1999-2000 raising a demand of Rs.62,397/- on the Petitioner was upheld.

2. The Petitioner carries on business of sizing of wood and logs and their sales on retail basis. For the year in question, one of the issues that arose was whether the goods purchased by the Petitioner from

unregistered dealers could be held to be first point tax paid goods? In the impugned order, the Tribunal has after noticing Section 8 of the OST Act and the decision of this Court in ***M/s. Singal Trading & Company v. State of Orissa, (1988) 69 STC 329 (Ori)*** come to the following conclusion:

> "4.xxx xxx xxx.
>
> The law enunciated by Hon'ble High Court makes it abundantly clear that 'series' starts with a registered dealers and continues so long as the goods in question are being handled by successive registered dealers. Ultimately 'series' ends with the last registered dealer selling the goods to consumers or to an unregistered person. In the instant case, purchasing goods from unregistered dealers or unregistered persons makes it clear that the series as referred to Section 8 has already been terminated and a fresh series starts with the present dealer-appellant for which the dealer is liable to pay tax as because the purchase vouchers produced do not inspire confidence about the genuineness of the transactions and moreover, the transactions are fresh and disjoined as has been observed by the Hon'ble High Court. Of course the leaned counsel has made ample efforts by taking recourse to various decisions to draw support for furtherance of this case but their futile attempts in view of the specific provisions of OST Act having been explained by the Hon'ble High Court of Orissa. Those decisions referred to the learned counsel are with regard to two other provisions of some other State's sales tax law. It is not known whether the provisions are similar to the provisions of the OST Act. With these observation, we are not inclined to be guided by those decisions and we do hold that the authority below are just and proper in levying tax on those size wood and log which the dealer has sold in course of his business."

5. Mr. B. Panda, learned counsel for the Petitioner sought to place reliance on a recent decision dated 7th September, 2021 of this Court

in STREV No.20 of 2007 (***Akbari Continental Pvt. Ltd. v. State of Odisha***) to urge that notwithstanding that the purchases were made from unregistered dealers, the benefit of setting off the tax paid cannot be denied to the Petitioner. He also places reliance on the decision of the Madras High Court in ***Govindan and Company v. State of Tamil Nadu, (1975) 35 STC 50***, which was affirmed by the Supreme Court in ***State of Tamil Nadu v. Raman & Company (1974) 33 STC 1.***

4. The Court is unable to agree with the above submissions of Mr. Panda. To start with, it is seen that as far as the decision of the Madras High Court in ***Govindan and Company*** (*supra*) is concerned, it was held therein that to claim benefit of tax on the ground that the sales effected by the Assessees were second sales, they need not show that their sellers had in fact paid the tax at the first point. It was "enough for them to show that the earlier sales were taxable sales and the tax was really payable by their sellers."

5. In the present case with the sellers being unregistered dealers, the occasion to show that the earlier sales were taxable sales did not arise. To the same effect is the decision in ***M/s. Singal Trading & Company*** *(supra)*. In other words, while the Petitioner-Dealer may have purchased the goods from unregistered sellers, it had still to be shown that tax had actually been paid at an earlier point in time. In the present case that burden has not been discharged by the Petitioner and, therefore, the Tribunal was justified in negativing its plea.

6. For the aforementioned reasons, the Court is not satisfied that any substantial question of law arises for consideration from the impugned order of the Tribunal. The petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S. Behera