

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.2 of 2008

M/s. Gupta Distributors, Cuttack ***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate

-versus-

State of Orissa represented by ***Opposite Party***

Commissioner of Sales Tax, Cuttack-1

Mr. S.S. Padhy, Additional Standing Counsel

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

ORDER

22.03.2022

Order No.

- 07.
1. The present revision petition by the Assessee arises from an order dated 19th May, 2007 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in SA No.816-817 of 2000-01 for the year 1997-98. The aforementioned appeal by the Assessee before the Tribunal arose from an order dated 19th April, 2000 of the Assistant Commissioner of Sales Tax (ACST), Cuttack-I Range in Appeal No.AA 136-CUI.W.99-2000.
2. While the first appellate authority reduced the enhancement of the taxable turnover for the year in question, as ordered by the Sales Tax Officer (STO) by the assessment order dated 27th February, 1999, from Rs.30,79,000/- to Rs.15,39,000/- thereby reducing the demand from Rs.3,38,048/- to Rs.1,40,930/-, the Tribunal has in the impugned order restored the order of the STO holding the reduction in enhancement by the ACST to be unwarranted.

3. While admitting the present revision petition on 20th February 2008, this Court framed the following question of law for consideration:

“Whether in the facts and circumstances of the case the enhancement of turnover in the absence of any material to establish that goods found short have been sold is lawful and valid as per the ratio of *Mahabir Rice Mill v. State of Orissa 1983 54 STC 218 (Ori)*?”

4. This Court has heard the submissions of Mr. Jagabandhu Sahoo, learned Senior Counsel appearing for the Petitioner and Mr. S.S. Padhy, learned Additional Standing Counsel for the Sales Tax Department.

5. The Court finds that the Tribunal has while discussing the judgment of the ACST noted that the ACST “has also vividly examined the alleged contents, explanation advanced by the dealer and agreed with the findings of the STO that the materials and documents furnished by the dealer are all managed and manufactured after the detection was made, which is based on afterthought.” It was held that despite the ACST agreeing with the findings of the STO, it reduced the enhancement by 50% “without assigning any cognate reason”.

6. However, on perusal of the order of the ACST, the Court finds that the order is an elaborate one discussing in detail the fraud reports on the basis of which the enhancement was sought to be made. In particular, the ACST appears to have carefully analyzed the materials placed on record and found that explanation was available for at least 50% of the so called sale suppression. It is

on that basis that the enhancement as ordered by the STO was reduced by almost 50%. The order of the ACST when read carefully does not give impression that it was done in a flippant manner or without discussing the evidence. On the contrary, the discussion is elaborate and involves very minute analysis of the entire evidence. The Court is therefore not able to concur with the Tribunal for reversing the order of the ACST and restoring the order of the STO as far as the enhancement of taxable turnover is concerned.

7. The main charge against the Assessee was regarding unexplained shortage of stocks. As explained by this Court in *Laxminarayan Sawalram v. State of Orissa* (order dated 20th July, 1971 in OJC No.286 of 1968), unless the Department is further able to show that the suppressed stocks were sold by the Assessee, there cannot be an automatic enhancement of the taxable turnover.

8. For the aforementioned reasons, the Court is unable to sustain the reasoning of the Tribunal for restoring the order of the STO and reversing the order of the ACST. The question framed by this Court is answered in the negative by holding that the enhancement of turnover, in the absence of any material to establish that the goods found short have been sold, is neither lawful nor valid and is contrary to the law explained by the Court in *Mahabir Rice Mills* (*supra*). The question is accordingly answered in favour of the Assessee and against the Department.

Accordingly, the order of the Tribunal is set aside and the order of the ACST is restored to file.

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

10. Urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

M. Panda

