IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 44 of 2016

M/s. System House Corporation, Bhubaneswar .... ***Petitioner***

Mr. C.R. Das, Advocate

-versus-

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

Mr. S.K. Pradhan, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
08.12.2022

Order No.

09. 1. The following two questions were framed for consideration by this Court by the order dated 19th October, 2016 in the present revision petition which arises from an order dated 29th February, 2016 in S.A. No.136(ET) of 2014-15 of the Orissa Sales Tax Tribunal ('Tribunal') for the tax period 1st April, 2005 to 31st March, 2011:

> "(i) Whether in the facts and circumstances of the case, the Division Bench, Odisha Sales Tax, Tribunal is right in law to confirm demand of Entry Tax, on the goods purchased from the unregistered dealer of the local area, in which, it has been utilized/incorporated in the execution of the works contract?
>
> (ii) Whether, the Division Bench, Odisha Sales Tax Tribunal is right in law to levy entry tax on freight

> charges incurred in transporting the goods to different work sites after its purchase and such freight charges being not incidental to purchase?"

2. As far as Question No.(i) is concerned, it is sought to be factually demonstrated by the Petitioner that all the purchases of the goods were within the local area and, therefore, entry tax was not leviable. In support of this contention, reliance is placed on the decision dated 28th November, 2022 of this Court in STREV No.65 of 2014 (***M/s. Orissa Plasto Pipe Pvt. Ltd. v. State of Odisha***).

3. However, considering that the above details were obviously not examined by the Assessing Authority and correspondingly neither by the First Appellate Authority or the Tribunal, although raised before the Tribunal, the Court considers it appropriate to set aside the impugned orders of the Tribunal, First Appellate Authority and Assessing Authority on this issue and remands the matter to the Assessing Authority to once again consider all the materials placed along with the written submissions of the Petitioner before the Tribunal and as set out in the present petition.

4. As far as Question No.(ii) is concerned, the contention of the Petitioner is that the freight charges were not incidental to the purchase of the goods but were incurred only while transporting the purchased goods to the work sites. This again has to be demonstrated factually before the Assessing Authority. Therefore, this issue also is remanded to the Assessing Authority for a fresh determination on the basis of the materials produced by the Petitioner.

5. Consequently, as regards both the questions framed, the impugned assessment order and corresponding orders of the First Appellate Authority and Tribunal are hereby set aside and the matter is remanded to the Assessing Authority, i.e., the State Tax Officer, Bhubaneswar-I Circle Bhubaneswar for determination in accordance with law.

6. The matter will now be listed before the said State Tax Officer, Bhubaneswar-I Circle, Bhubaneswar on 1st February, 2023 and the Assessee will appear through an authorized representative with all the necessary materials/documents in his possession relevant to the above two questions.

7. Accordingly, the STREV is disposed of in the above terms.

8. An urgent certified copy of this order be issued as per rules. A copy of this order be sent forthwith by the Registry to the State Tax Officer, Bhubaneswar-I Circle, Bhubaneswar.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera