IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 36 of 2017

Duro Pipes Pvt. Ltd.	....	***Petitioner***

Mr. C.R. Das, Advocate

-versus-

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

Mr. Sunil Mishra, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

<u>ORDER</u>
14.12.2022

<u>Order No.</u>

05. 1. While admitting this revision petition on 20th July, 2017 following questions were framed for consideration by this Court:

> I) Whether, on the facts and circumstances of the case, the Division Bench, Odisha Sales Tax Tribunal is right in law to order for imposition of penalty under Rule 12(3)(g) of CST(O) Rules, on short payment of admitted tax of Rs.1,51,500.00 as being assessed is just and proper, more so when separate mechanism has been provided under Rule 8 and 8A of the CST(O) Rules for levy of interest and penalty respectively?
>
> II) Whether, on the facts and circumstances the Division Bench, Odisha Sales Tax Tribunal is right in law to order for imposition of penalty under Rule 12(3)(g) of CST(O) Rules, in respect of differential tax of Rs.8,401.00 for non-submission declaration

form-C, more so when the Commissioner of Sales Tax has issued a circular for non-imposing penalty in such circumstances?

III) Whether, on the facts and circumstances the Division Bench, Odisha Sales Tax Tribunal is right in law to hold, there is an attempt on the part of the petitioner in defrauding the revenue and to be tarnished as a fraudulent dealer due to nonpayment of a part of the declared admitted tax?

2. As far as Question No.II is concerned, it is not in dispute that it stands answered in favour of the Assessee and against the Department by virtue of the circular dated 20th April, 2015 of the Commercial Taxes Department which has been referred to and applied by this Court in the judgment dated 8th December, 2022 in *STREV No. 64 of 2017 (M/s. General Traders, Berhampur v. State of Odisha)*. Consequently, question No. II is answered in favour of the Assessee and against the Department.

3. As far as question No.I is concerned, in view of Section 9 (2B) of the Central Sales Tax, 1956 (CST Act) read with Rule 8 of the CST (O) Rules, 1957 the impugned order of the Tribunal is set aside and the matter is remanded to the Assessing Officer i.e. State Tax Officer, CT & GST, Bhubaneswar-III Circle, Bhubaneswar for a fresh determination of the issue in accordance with law. In other words, the order of the JCST (Appeal) is restored to file.

4. In view of the above answers to question Nos. I and II there is no need to answer question No.III.

5. The revision petition is disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Jena/Secy.