IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.136 of 2014

M/s. Srawan Lime Product .... ***Petitioner***
Mr. Siddhartha Ray, Advocate

-versus-

State of Odisha .... ***Opposite Party***
Mr. Susant Kumar Pradhan,
Addl. Standing Counsel for CT & GST

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
24.11.2022

Order No.

06.

1. Heard.
2. Admit.
3. The following question of law is framed for consideration:

   "Whether the Orissa Sales Tax Tribunal is justified in approving the action of the Assessing Authority who reopened the assessment for the year 1998-99 at the behest of the A.G. Audit without application of its own mind?"

4. In the present case, it is seen that the Assessing Officer reopened the assessment for the period 1998-99 only on the basis of the audit report without independently recording his opinion that there existed materials justifying the reopening of the assessment.

5. In identical circumstances in ***The Indure Limited v. Commissioner of Sales Tax MANU/OR/0144/2006***, this Court quashed the reassessment order under Section 12(8) of Orissa Sales Tax Act, 1947 (OST, Act). It may be mentioned here that

the judgment of this Court in ***The Indure Limited*** *(supra)* was affirmed by the Supreme Court, by dismissing the Department's Special Leave Petition against the said judgment.

6. In the present case, the Tribunal has in the impugned order dated 18th February, 2014 in S.A. No. 56 of 2007-08 filed by the Assessee sought to distinguish the ***The Indure Limited*** *(supra)* only on the basis that the Assessee appeared pursuant to the notice issued under Section 12(8) of the OST Act, and participated in the proceedings. That can hardly be the reason to distinguish the applicability of the aforementioned judgment. The mere participation by the Assessee, pursuant to the notice under Section 12(8) of the OST Act would not prevent the Assessee from questioning the tenability of those proceedings on the grounds as raised in ***The Indure Limited*** (*supra*).

7. For the aforementioned reasons, the aforementioned question is answered in favour of the Assessee and against the Department and the impugned order of the Orissa Sales Tax Tribunal and the corresponding orders of the 1st Appellate Authority and Assessing Officer are hereby set aside.

8. The STREV is allowed in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

Aks/Laxmikant