IN THE HIGH COURT OF ORISSA AT CUTTACK

TREV No.43 of 2002

M/s. Shree Vishnu Traders, Rourkela .... ***Petitioner***

Mr. M. Agarwal, Advocate

-versus-

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

Mr. Sunil Mishra, ASC

CORAM:
THE CHIEF JUSTICE
DR. JUSTICE S. K. PANIGRAHI

ORDER
25.07.2022

Order No.

05. 1. The following question was framed by this Court by its order dated 21st April, 2008 for consideration while admitting the revision petition.

> *"Whether in the facts and in the circumstances of the case, the Tribunal was justified in confirming the decision of the Assistant Commissioner refusing to give adjustment of the sum of Rs.83,257.00 paid by the Petitioner at the check gate during the year 1989-90 as against the tax demand for the year 1990-91 by not following the Rule 36 of the OST Rules and the decision of this Hon'ble Court reported in 67 STC 193 (Chhatriya Trading Co. & anr. Vrs State of Orissa.)?"*

2. It is the case of the Assessee that since it had paid Rs.83,257/- at the check gates as tax during earlier year i.e. 1989-90, and such payment must be adjusted against the tax payable for the current year i.e. 1990-91. Learned counsel for the Petitioner relies on the last proviso to Rule 36 of the Orissa Sales Tax Rules, 1947 and also the decision of this Court in ***Chhatriya Trading Co. v. State of Orissa, (1987) 67 STC 193 (Ori.).***

3. The Court finds that the relevant passage of the above decision which talks of payment made at the check gates to be adjusted against the payment which is owed pursuant to the assessment, has been made in the context of payments of same year and not an earlier year. In other words, as rightly observed by Assistant Commissioner of Sales Tax in the present case, there was no provision that permits tax paid for the earlier period to be adjusted against the payment of tax for the current year. Obviously, if any excess payment has been made in the earlier year, it will be open to the Assessee to claim refund of such excess payment. Here, obviously, there was no such claim for refund, which had been determined to be payable to the Assessee. If the refund amount had already been determined, it would have been possible to consider whether it could be directed to be adjusted against the current liability. Here, since no such refund of the excess payment of tax for the earlier year has been applied for or determined, that question does not arise.

4. Consequently, the question framed is answered against the Assessee and in favour of the Department.

5. The petition is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(Dr. S. K. Panigrahi)
Judge

M. Panda