IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.78 of 2004

M/s. Indera Garments, Rourkela	....	***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate

-versus-

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

Mr. Sidharth Shankar Padhy, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
16.03.2022

Order No.

08. 1. Admit.

2. The following two questions are framed for consideration:

(i) Whether in the facts and circumstances of the case, there being realization of tax under Rule-94 of the Orissa Sales Tax Rules (OST Rules) from the transporter in respect of the consignment notes dated 22nd June, 1994 at the Chaksuliapada check post and whether it can again be taxed on the ground that it constituted suppression on the part of the Petitioner?

(ii) Whether the rate of sales tax in respect of sale of Hosiery woolen garments is exigible to tax at the rate of 12% under Entry-103 of the taxable list or under Entry-22 of the taxable list?

3. The brief background facts as far as the above questions are concerned are that the Petitioner is a dealer carrying on business in readymade garments, hosiery, woollen goods and sun glasses

etc. In the year 1994-95, while readymade garments were being plied from Calcutta to Rourkela, the trucks were intercepted by the Sales Tax Vigilance wing of Balasore Division at the Chaksuliapada check post. The dealer's transport agent allegedly failed to produce the relevant documents leading to the collection of tax at the check post in respect of two way bills, in terms of Rule 94 of the OST Rules.

4. In the course of the assessment, the Sales Tax Officer (STO) in his order dated 15^{th} November, 1995 held that notwithstanding the payment of tax by the transporter, the transaction covered by the above two way bills should be considered to have been 'suppressed' by the Dealer i.e. the Petitioner and on that basis the taxable turnover was enhanced by almost Rs.20 lakhs leading to a consequential enhanced demand of Rs.7,26,532.64.

5. The above order of the Assessing Officer (AO) was confirmed by the 1^{st} Appellate Authority viz., Assistant Commissioner of Sales Tax, Sundergarh Range, Rourkela (ACST) by the order dated 30^{th} November, 1996. The further appeal by the Dealer was dismissed by the Orissa Sales Tax Tribunal, Cuttack ('Tribunal') by its order dated 10^{th} November, 2003 in S.A. No.2419 of 1996-97.

6. This Court has heard the submissions of Mr. Jagabandhu Sahoo, learned Senior Counsel appearing for the Petitioner, and Mr. Sidharth Shankar Padhy, learned Additional Standing Counsel for the Department.

7. Mr. Sahoo referred to the decision of this Court in ***Sri Vinayak Store v. Sales Tax Officer, [1992] 86 STC 423(Ori)*** and contended that it was incumbent on the Department to have given credit, at the time of assessment, to the tax already paid by the transporter at the check post in terms of Rule 94 of the OST Rules.

8. In the present case, the transporter has already admittedly paid tax at the check post under Rule 94 of the OST Rules. There is no reason why the said payment of tax should not have been given credit for while determining the tax payable by the Dealer. There is merit in the contention that the same transaction cannot by subject to sales tax twice over, one at the hands of the transporter and another at the hands of the Dealer.

9. In that view of the matter, the enhancement of the taxable turnover of the Assessee-Dealer in the manner it has been done by the STO in the Assessment Order dated 15th November, 1995 cannot be sustained and is hereby deleted.

10. Question (i) framed by this Court is answered in the negative, i.e. in favour of the Petitioner-Assessee and against the Department by holding that the same transactions covered by the two consignment notes in question cannot be treated as suppression on the part of the Dealer and cannot be taxed twice over.

11. Turning now to the question (ii), it is seen that the amount involved is not substantial. Consequently, leaving the question

open for decision in some other appropriate case, the Court declines to answer it in the present revision petition.

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

13. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda