IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 99 of 2013

AFR

M/s.Kripal Alloys Steel(P) Ltd., Bargarh	....	***Petitioner***

Mr. Sumit Lal, Advocate

-versus-

State of Orissa represented through Commissioner of Sales Tax, Orissa	....	***Opposite Parties***

Mr. S.S.Padhy,Addl.Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No. **ORDER**
18.07.2022

Dr.S.Muralidhar, C.J.

05. 1. The present revision petition arises from an order dated 6th June, 2013, passed by the Orissa Sales Tax Tribunal, (Tribunal) dismissing the petitions in S.A. No. 190(ET) of 2009-10 for the year 2004-05.

2. One of the pleas raised by the Petitioners was that the assessment order had been framed on 31st March, 2008 but the assessment order was issued only on 17th November, 2008 and therefore, the assessment itself was time barred in terms of the proviso to Section 12(7) of the Orissa Sales Tax Act, 1947(OST Act) as it applied to

the Orissa Entry Tax Act, 1955(OET Act) in terms of Rule 34 of the Orissa Entry Tax Rules, 1999(OET Rules).

3. The Tribunal did not accept this plea and proceeded on the basis that the date of framing the order was sufficient to bring it within limitation.

4. Admit. The following questions of law are framed for consideration:

> (i) Whether in the facts and circumstances of the case, the Division Bench of the Odisha Sales Tax Tribunal was justified in not arriving at a finding that in absence of any explanation by the department for belated service of the order of assessment beyond seven months from the date of assessment, the impugned order of assessment was ante dated and was barred by limitation as per proviso(ii) of sub-section 7 of Section 12 of Orissa Sales Tax Act, 1947 applicable to Orissa Entry Tax Act as per Rule34 of OET Rules as it was an order of assessment under the OST Act for the year 2004-05?
>
> (ii)Whether in the facts and circumstances of the case, the Division Bench of the Orissa Sales Tax Tribunal was justified in not following the ratio decision of the decision of Hon'ble Supreme Court in the case State of *A.P. Vs. M.Ramakishtaiah & Co. reported in (1994) 93 STC 406(SC)*?"

5. Mr. S.S.Padhy, learned Standing Counsel appearing for the Department, contends that under Section 7(3) of the OET Act as stood at the relevant time, there was no period of limitation prescribed for completion of the assessment and therefore, the

contention of the Assessee in that regard ought to be rejected. He further pointed out that once the assessment order was passed on 31st March, 2008 it should be held that the assessment was within time many events.

6. Admittedly, the assessment order was issued only on 17th November, 2008 and therefore, the question of it being communicated to the Assessee prior to that date did not arise. Unless the order was actually communicated to the Assessee it could not be said to be an effective order passed in terms of Section 7(3) of the OET Act as it then stood. The decision of the Supreme Court in ***State of A.P. v. M.Ramakishtaiah & Co.(1994) 93 STC 406(SC)*** supports the contention of the Assessee in this regard.

7. The period of limitation as set out in Section 12(7) of the OST Act is made applicable to the corresponding provisions in the OET Act by virtue of Rule 34 of the OET Rules which states that for any other matters not specified in these Rules, the provisions of the OST Act and rules made there under would *'mutatis mutandis'* apply. The OET Act being silent on the period within which the assessment order has to be passed, the provisions of the OST Act would, in terms of Rule 34 of the OET Rules, straightway apply.

8. In the context of a similar questions that arose under the CST (Orissa Rules) 1957 involving the same Assessee, this Court has by its order dated 6th July, 2022 in STREV No. 100 of 2013 *(M/s. Kripal Alloys Steel (P) Ltd. Bargarh v. State of Odisha*), held the assessment in terms of Rule 12 (7) of the CST (Orissa) Rules, 1957

to be time barred. In the said order this Court referred to the decision of the Supreme Court of India in ***State of A.P. v. M. Ramakishtaiah & Co***.*(supra)*.

9. By the same analogy, in the present case it cannot be said that the assessment order was passed within the time stipulated on a reading of Section 7(3) of the OST Act as it then stood with Rule 34 of the OET Rules. Consequently, the two questions framed are answered in favour of the Assessee and against the Department and the impugned order of the Tribunal is accordingly set aside.

10. The revision petition is allowed in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge

Kabita