IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.57 of 2011

M/s. Immidisetty Ramakrishniah Sons, China Bazar, Berhampur	....	***Petitioner***
		Mr. S.Kanungo, Advocate

-versus-

State of Orissa represented by the Commissioner of Commercial Taxes, Orissa, Cuttack	....	***Opp. Party***
		Mr. Sunil Mishra, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

<u>ORDER</u>
28.06.2022

<u>Order No.</u>

07. 1. While admitting the present revision petition of the Assessee on 28th August, 2015, this Court framed following questions for consideration:

> "1. Whether under the facts and circumstances of the case the Tribunal is correct in law by observing that the cash discount which has been received by the Petitioner in shape of Credit Note issued by the Manufacturer is includable in the sale turnover?
>
> 2.Whether under the facts and circumstances of the case the Tribunal is correct in law by observing that the cash discount which has been received by the petitioner by way of issuing Credit Note by the Manufacturer is includable in the sale turnover of the petitioner without considering such cash discount which has not been issued for a particular purchase or sale?"

2. The Petitioner is a partnership Firm and carries on a business in A.C. Sheets, Cement, Sugar, Mustard grains,

ram dal rice bran, edible oil etc. It is registered under the Orissa Value Added Tax Act, 2004 (OVAT). For the tax period 1st April, 2005 to 30th November, 2007, the Sales Tax Officer (STO) completed the assessment proceedings on 31st July, 2008 and enhanced the taxable turnover by Rs.1,000,000/-and the gross turnover by Rs.1,79,187/- . On the ground that cash discount in the shape of Credit Note was received by the Petitioner, the STO raised an extra demand of Rs.31,396,72/- and penalty of Rs.62,793,44/-.

3. The above order has upheld by the ACST and by the Tribunal by the impugned order.

4. One submission made by the learned counsel for the Petitioner, in reiteration of the submission made before the Tribunal, was that there was no column in the form in question which allowed disclosure of the cash discount received by way of Credit Note. Learned counsel for the Department, on the other hand, drew attention to Rule 7 (2) of the OVAT Rules which reads as follows:

> "7. Adjustment of sale price or tax relation to a taxable sale, issue of credit note and debit note.-
>
> (2) Credit note or debit note as referred to in sub rule (1) shall be issued within six months following the tax period, during which the original sale had taken place."

5. Anyway, nothing prevented the Petitioner from disclosing the cash discount in the taxable turnover. Consequently, the conclusion reached by the ACST which has been upheld by the Tribunal calls for no interference. The questions framed are answered in favour of the Department and against the Assessee.

6. The revision petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

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