

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.9 of 2015

M/s. K. Satyanarayan Subudhi ***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate assisted by
Ms. Kajal Sahoo, Advocate

-versus-

State of Odisha ***Opposite Party***

Mr. S. K. Pradhan, Additional Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN**

Order No.

**ORDER
06.12.2022**

10. 1. While admitting the present revision petition on 23rd November 2015, the following questions were framed for consideration:

“(i) Whether levy of tax at the rate of 12.5% on lime powder under part III, Schedule B is just and proper?

(ii) Whether upholding suppression of Rs.6,11,962/-, merely on the plea of assumption due to absence of appellant can be sustained in law?”

2. As far as the first question is concerned, the relevant entry in Part III of the Schedule B to the Odisha Value Added Tax Act, 2004 (OVAT Act) i.e., Entry 80 in Part II Schedule B reads as ‘Ores and Minerals’ and the rate of tax is 4%. For all other items, the residual entry is attracted and the tax rate is 12.5%.

3. Considering that the Petitioner is dealing in lime powder which is obviously a derivative of a mineral, the question of treating it under the residual entry does not arise. Consequently, lime powder ought

to have been taxed only with reference to Entry No.80 of Schedule B Part II of the OVAT Act and taxed accordingly.

4. The question No.(i) is accordingly answered in the negative i.e., in favour of the Assessee-Dealer and against the Department and it is directed that the rate of tax on lime powder would be 4%.

5. As far as question No.(ii) is concerned, it is plain that there a conclusion regarding suppression cannot be based only on the admission of the Dealer. This Court in ***SREI International Finance Ltd. v. State of Orissa [2008] 16 VST 193 (Ori.)*** *inter alia* observed that “if a person is not liable, within the four corners of statute, to pay tax on any transaction, he cannot be assessed to tax merely because he previously admitted his liability on a wrong notion. Liability to pay tax has always to be imposed by law: it cannot be imposed on admission. Article 265 of the Constitution is very clear on this point.”

6. Consequently, this question is also answered in the negative i.e., in favour of the Petitioner-Dealer and against the Department.

7. Additionally, it would be noted that the original assessment in the present case was a self-assessment and the demand was created in the reassessment proceedings under Section 43 of the OVAT Act. In view of the decision of this Court dated 1st December 2021 in STREV No.64 of 2016 read with a subsequent order dated 8th April, 2022 in STREV No.64 of 2016 (***M/s. Keshab Automobiles v. State of Odisha***), which has been affirmed by the Supreme Court of India in ***Deputy Commissioner of Sales Tax v. M/s. Rathi Steel and Power Limited*** by order dated 13th July, 2022 in Special Leave to

Appeal (C) No.9912 of 2022, the impugned order cannot be sustained even on that ground.

8. For the aforementioned reasons, the impugned order of the Tribunal dated 10th November 2014 is hereby set aside and the revision petition is allowed in the above terms. LCR be returned forthwith.

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

S. K. Guin

