IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23965 of 2017

M/s. Mahaveer Cashew	....	***Petitioner***
		Mr. R. P. Kar, Advocate

-versus-

Commissioner of Sales Tax, Odisha & Others	....	***Opposite Parties***
		Mr. S.K. Pradhan, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
08.12.2022

Order No.

04. 1. The challenge in the present writ petition is to an order dated 8th September, 2017 passed by the Additional Commissioner of Sales Tax (Appeal), South Zone, Berhampur dismissing the Petitioner's Revision Case No.GA(S) 67/2015-16, thereby upholding the levy of tax and penalty by the Sales Tax Officer (STO), Enforcement Range, Berhampur vide money receipt dated 17th August, 2015.

2. The background facts of the case are that the Petitioner is engaged in manufacturing and processing of Cashew Kernel from raw cashew nut. On 17th August, 2015 at around 3.40 P.M. the STO, Enforcement Range, Berhampur intercepted a goods vehicle loaded with Cashew Kernel at N.H-5, Rambha. On verification, it was found that the vehicle was loaded with 22 bags (each weighing 50 kgs. totaling 1100 kgs.) of Cashew Kernel. The driver of vehicle was one Sri Deepak Kumar Mishra. When asked, he failed to produce

supporting documents like sale invoice, challan, waybill. He further stated that the goods belonged to the Petitioner. The driver's statement was recorded in which he admitted that owner/manager of the Petitioner had directed the Cashew Kernel to be unloaded at Prayagi, Ganjam. It was stated that the owner had not given him any document relating to the goods.

3. On the basis of the above statement which was recorded in writing, a show-cause notice under Section 74(5) of the Odisha Value Added Tax Act, 2004 (OVAT Act) was issued to the Petitioner fixing the date as 18th August, 2015. It appears that at 6.00 P.M. on 17th August, 2015, the owner also appeared and admitted to the mistake of not issuing the invoice/challan/waybill in support of the Cashew Kernel and opted to pay the tax and penalty. Accordingly, the said amount of Rs.79,200/- was collected and a money receipt was issued.

4. While directing notice to issue in the present writ petition on 11th December, 2017, the Lower Court Record (LCR) was called for.

5. Although counter affidavit has not been filed, Mr. Susanta Kumar Pradhan, learned Additional Standing Counsel for the State has produced the original record which shows that the driver was issued a show-cause notice under Section 74(5) of the OVAT Act and he also gave the statement which was reduced to writing. In the said statement an endorsement was obtained from the owner of the goods, i.e., Smt. Minarani Panda, the proprietrix of the Petitioner.

6. It was urged by Mr. R.P. Kar, learned counsel for the Petitioner, that without notice to Smt. Minarani Panda, the owner, the

authorities could not have proceeded to raise any demand. The fact remains that Section 74(5) of the OVAT Act envisages "the driver or person-in-charge of goods" being provided a reasonable opportunity of being heard and for the Officer-in-charge of the check-post or barrier to hold "such enquiry as he may deem fit" before imposing penalty.

7. In the present case, it does appear that statement of the driver was recorded and signed by the driver. It also bears endorsement of the owner.

8. Mr. R.P. Kar, learned counsel for the Petitioner submitted that since this was an intra-State movement of goods, in terms of Rule 80(1)(iii) of the OVAT Rules, there was no requirement that the consignment had to be accompanied by a waybill. He, accordingly, submitted that irrespective of the statement of the driver not contesting the penalty amount, this Court should interfere in the matter since the demand was not justified.

9. The authorities could not be faulted for demanding from the driver documents in respect of the consignment being carried in the truck in question. From the original record, it does appear that the requirement of Section 74(5) of the OVAT Act stood fulfilled in the present case. Notice was indeed issued to the driver. The statement of the driver was recorded where he did not contest liability arising from non-production of the relevant papers in support of movement of goods.

10. In the light of the statement of the driver where he does not mention about the transfer being an intra-State transfer, the officers

cannot be faulted in proceeding to make a demand of penalty from the driver which was apparently paid. In the circumstances, the Court is not inclined to interfere with the impugned order.

11. The writ petition is, accordingly, dismissed.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

MRS/Laxmikant