IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 461 of 2008

M/s. Anand Collection .... ***Petitioner***

Mr. R. Ghosh, Advocate

-versus-

State of Orissa represented by Commissioner of Sales Tax, Cuttack-1 .... ***Opposite Parties***

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

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No. **ORDER**
11.05.2022

04. 1. This revision petition by the Assessee is for the year 1998-99 and arises from an order dated 20th August, 2007 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in S.A. No. 1056/2000-01 whereby the appeal filed by the Department was allowed and order dated 30th June, 2000 of the Asst. Commissioner of Sales Tax (ACST), Sambalpur Range, Sambalpur allowing the Assessee's appeal was set aside. Thereby the Tribunal restored the assessment order dated 27th December, 2009 passed by the Sales Tax Officer (STO) raising an extra demand of Rs.65,014/- on the alleged ground of suppression of purchases.

2. Admit. The following question of law is framed for consideration:

"Was the Tribunal justified in restoring the order of the STO on the ground of suppression of purchases by the assessee and therefore concluding that goods were short sold?"

3. The Petitioner deals in readymade garments, hosiery goods and leather goods and undertakes retail sales. The Assessee is registered as a dealer under the Odisha Sales Tax Act, 1947 ('OST Act').

4. For the year 1998-99, the Assessee was served with a notice under Section 12 (4) of the OST Act. Apparently, a fraud case report was received from the Circle Inspector of Sales Tax (IST) that the dealer had suppressed purchase of readymade garments to the tune of Rs. 73,834/-. Taking into account the nature of the business, the STO took the profit margin at 20%. Further after taking note of the alleged purchase suppression detected by the Circle IST enhanced the gross turnover of the dealer by Rs.8,86,008/- resulting in a demand of Rs. 1,28,995.34 which included the tax and surcharge.

5. The ACST allowed the appeal of the Assessee by an order dated 7th September, 2000. The ACST noticed that the relevant entries in respect of the items of physical stock of goods as recorded by the IST had been duly accounted for by the Assessee in its purchase register. Accordingly, the charge of suppression leveled against the dealer was refuted and the enhancement made by the STO was deleted.

6. In the appeal filed by the Department, the Tribunal proceeded on the basis that the report submitted by the IST during the course of his visit to the business premises of the dealer could not be discarded. The Tribunal observed that the dealer had not responded

to the notice issued by the IST to produce of the books of accounts. Accordingly, the order of the ACST was set aside and the order of the STO was restored.

7. Having heard learned counsel for the parties, the Court is of the view that even though the Petitioner may not have produced the books of accounts before the IST, the ACST did call for an examine the entries therein. There was no basis for the Tribunal to conclude that the books produced by the Assessee at the appellate stage were not to be accepted.

8. Recently, this Court an order dated 22nd March, 2022 in STREV No. 2 of 2008 (***M/s. Gupta Distributors, Cuttack-vs. State of Orissa represented by Commissioner of Sales Tax, Cuttack-1***) in similar circumstances held that the enhancement of turnover 'in the absence of any material to establish that goods found short have been sold is neither lawful nor valid.' Reliance was placed of the earlier decision of this Court in ***Mahabir Rice Mill v. State of Orissa (1983) 54 STC 218 (Ori)***.

9. In the present case, this Court is not satisfied that there was sufficient material for the STO to have enhanced the taxable turnover of the Petitioner on the alleged ground of suppression of purchases. Accordingly, the impugned order of the Tribunal as well as the order of the STO are hereby set aside and the order of the ACST is restored to file.

10. The question framed is accordingly answered in the negative i.e. in favour of the Assessee and against the Department.

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

12. An urgent certified copy be issued as per Rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge

Kabita/