IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.9 of 2016

M/s. Laxmi Narayan Bhandar, Cuttack	....	***Petitioner***
		Mr. Sumit Lal, Advocate
	-versus-	
State of Odisha	....	***Opposite Party***
		Mr. S.K. Pradhan, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
07.12.2022

Order No.

10. 1. Two questions were framed by this Court for consideration in the present revision petition while admitting it on 20th November, 2017:

> *"(1) Whether in the facts and circumstances of the case, the learned Authorities below are justified in not accepting the reversal made by the Petitioner in the returns when the same were submitted prior to reassessment and determining the CTO and TTO without giving credit to the tax paid upon such reversal?*
>
> *(2) Whether in the facts and circumstances of the case, the learned Authorities below are justified in levying penalty in absence of any finding with regard to the malafide intention of the Petitioner to evade or avoid tax or any allegation with regard to suppression of purchase or sales or both or contravention of any provisions of Act?"*

2. As far as question (1) is concerned, it appears that in course of re-assessment, the Assessee filed revised returns reversing the Input Tax Credit (ITC) wrongfully claimed earlier. The question that arose was whether the Assessing Authority should accept this reversal of entries and, therefore, not raise any demand against the Petitioner in the re-assessment proceeding? Admittedly, the revised returns were

filed beyond the statutory limitation period of three months as provided under Section 33 (4) of the Odisha Value Added Tax Act, 2004 (OVAT Act). The proviso to Section 33(5) of the OVAT Act imposes a bar on accepting voluntary disclosure which is made "after receipt of the notice for tax audit under this Act, or as a result of such audit".

3. In the present case, the wrongful ITC was detected in course of audit and it is only the result of such audit report that the Petitioner sought to reverse the ITC wrongfully claimed by filing the revised returns. Consequently, on a combined reading of Section 33(4) and Section 33(5) of the OVAT Act, it is plain that the Authorities could not have accepted the reversal of the ITC wrongfully claimed by the Petitioner. In other words, the impugned order of the Tribunal upholding the demand does not call for interference. Question (1) is, accordingly, answered in the affirmative, i.e., in favour of the Department and against the Assessee.

4. In view of the answer to question (1), question (2) is also answered in favour of the Department and against the Assessee.

5. The revision petition is, accordingly, dismissed.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

MRS/Laxmikant