IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.59 of 2016

M/s. S. B. Enterprises, Bhubaneswar .... ***Petitioner***

Mr. C. R. Das, Advocate

-versus-

State of Odisha .... ***Opposite Party***

Mr. S. K. Pradhan, ASC for Revenue Department

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
08.12.2022

Order No.

05. 1. The following questions were framed in the present revision petition by an order dated 25th November, 2016:

> "I. Whether on the facts and circumstances of the case, the Division Bench, Odisha Sales Tax Tribunal was right in law in holding that imposition of penalty under Section-42(5) of the Act on short payment of admitted tax as being due is just and proper.
>
> II. Whether on the facts and circumstances the Division Bench, Odisha Sales Tax Tribunal is right in law, in sustaining the order of penalty levied under Section 42(5) of the OVAT Act in respect of short payment of admitted tax or Rs.94,636.00 for the period 02.12.2006 to 30.04.2011."

2. Learned counsel for the Petitioner-Assessee contended that the short payment is because of the 'admitted tax' and, therefore, that does not satisfy the requirement of Section 42(4) read with Section 42(5) of the Odisha Value Added Tax Act, 2004 (OVAT Act) inasmuch as this was not the amount of tax 'assessed' under Section 42(3) or 42(4) of the OVAT Act.

3. According to the Petitioner, since it was only the admitted tax liability that was determined as payable, there was no occasion to levy penalty under Section 42(5) of the OVAT Act.

4. The Court is unable to agree with the above submissions. A perusal of the impugned assessment order shows that it was indeed an assessment made under Section 42(4) of the OVAT Act. There is a clear finding in the said order that audit revealed under-collection of VAT compared to the figures disclosed in the return. A complete reading of the order does indicate that this was an assessment of the tax due to be paid by the dealer thereby satisfying the requirement of both Sections 42(4) as well as 42(5) of the OVAT Act.

5. The issue in question (I) is no longer *res integra* and has been decided by this Court in its decision dated 5th July, 2022 in STREV No.69 of 2012 (***State of Odisha v. M/s. Chandrakanta Jayantilal***) clarifying that the penalty under Section 42(5) of the OVAT Act is automatic and does not provide for any discretion to the Assessing Authority.

6. In that view of the matter, both the questions I and II are answered in favour of the Department and against the Assessee.

7. Accordingly, the STREV is dismissed. The interim order passed earlier stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda