IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No. 2829 of 2022

Nibash Sahoo .... Petitioner
Mr. Nalini Kanta Sahoo, Advocate

-Versus-

State of Odisha .... Opposite Party
Mr. Sitikanta Mishra, ASC

CORAM:
JUSTICE R.K.PATTANAIK

Order No. ORDER
29.11.2022

07. 1. Heard Mr. Sahoo, learned counsel for the petitioner and Mr. Mishra learned counsel for the State-opposite party.

2. Instant petition under Section 482 of Cr.P.C. is filed by the petitioner assailing the impugned order dated 6th September, 2022 passed in Criminal Revision No.168 of 2022 by the 2nd Additional Sessions Judge, Cuttack, corresponding to CMC No. 10 of 2022 before the learned JMFC(R), Cuttack whereby an application for release of the seized Tobacco products in his favour was declined.

3. Mr. Sahoo, learned counsel for the petitioner submits that the original tax invoices were produced before the court of learned JMFC(R), Cuttack but despite that its veracity was doubted and release of the Tobacco products was rejected. Against such an order under Annexure-3, according to Mr. Sahoo, learned counsel for the petitioner, a revision was carried to the learned Sessions court. It is submitted that the learned Sessions court in Criminal Revision No.168 of 2022 by the impugned order under Annexure-1 confirmed the

rejection order for release passed in M.C. Case No. 10 of 20222 by the learned JMFC(R), Cuttack. It is contended that the learned revisional court also committed illegality as the original documents had been produced but without any ground or justification confirmed the order of the learned JMFC(R), Cuttack i.e. Anneuxre-3 which is, therefore, not tenable in law.

4. Mr. Mishra, learned counsel for the State on the other hand justifies the orders of the learned courts below under Annexure-3 & 4.

5. The impugned order under Anneuxre-3 confirms Annexure-4 It is made to suggest that the petitioner submitted tax invoices/bills of the seized articles, however, learned JMFC(R),Cuttack entertained doubt with regard to its veracity and observed that the names mentioned in the bills do not match with the seized items.

6. Mr. Sahoo, learned counsel for the petitioner submits that there has been compliance of Section 20(b) of the Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production Supply and Distribution) Act, 2003 which is also evident from Annexure-3 and therefore, under the above circumstances, there was no reason or justification on the part of the learned courts below to reject the prayer for release of the seized products.

7. The Court finds that there has been no detailed enquiry conducted by the court of first instance before rejecting the tax invoices/bills submitted by the petitioner while demanding for custody and release of the Tobacco products in his favour. The said aspect was also not examined by the learned Sessions court before confirming the order under Annexure-3. The Court is of the view that since the petitioner approached with all the invoices/ bills in respect of seized articles, it was the bounden duty of the learned JMFC(R), Cuttack to

examine the same and if necessary to hold an enquiry to find out and ascertain its veracity which has not been accomplished. There is no other ground except the fact that the tax invoices of the seized items did not match with the seizure lists as narrated in the order of rejection. Of course, it has been held that the chemical examination report is not yet received by the Court. In any view of the matter, since the seizure has been shown against the petitioner and from whom the recovery was made with regard to Tobacco products and he came forward with tax invoices/bills for its temporary custody, the learned JMFC(R), Cuttack should have examined it followed by an enquiry to find out authenticity of the documents. The revisional court also failed in its duty while dealing with the matter. Thus, the Court is of the opinion that fresh examination is required by the learned J.M.F.C. with regard to the claim of the petitioner and if it is necessary to hold an enquiry for final determination and just conclusion in the matter which would serve the purpose and meet the ends of justice.

8. Accordingly, it is ordered.

9. In the result, CRLMC stands allowed. Consequently, the impugned order under Annexure-4 in Criminal Revision No. 168 of 2022 passed by the learned 2nd Additional Sessions Judge, Cuttack is hereby quashed.

10. As a necessary corollary, for the reasons stated herein above, the matter is remitted back to the court of learned JMFC(R), Cuttack by restoring Misc. Case No. 10 of 2022 for consideration vis-a-vis the claim of the petitioner and a decision thereon afresh. The learned JMFC(R), Cuttack is directed to examine all the tax invoices/bills submitted by the petitioner submitted while demanding custody of the seized Tobacco products and hold an enquiry if necessary and

then to pass a reasoned order in respect thereof and the entire exercise to be accomplished within a fortnight from the date of receipt of a copy of the above order.

11. Urgent certified copy of this order be issued as per rules.

(R.K.Pattanaik)
Judge