IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 20 of 2017

Jay Kishan Dasmall Jute Products (P) Ltd. .... ***Petitioners***

Mr. Dayananda Mohapatra, Advocate

-versus-

Assessing Authority-cum-Sales Tax Officer, Balasore .... ***Opposite Party***

Mr. S.K. Pradhan, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
05.01.2023

Order No.

06. 1. The present revision petition by the Assessee arises from an order dated 23rd February, 2016 passed by the Odisha Sales Tax Tribunal, Cuttack (Tribunal) dismissing the Assessee's S.A. No.129 (ET) of 2014-15.

2. While admitting this revision petition by the order dated 24th April, 2017 the following questions were framed for consideration by this Court:

> "(i) As to whether the imposition of freight charges at the rate of one percent of the purchased value on overall turn over on the basis of the market value without examining the individual vouchers and considering the contention of the Petitioner that the purchased materials at the market rate is inclusive of freight charges sustainable in the eye of law.

> (ii) As to whether the imposition of penalty in absence of any mala fide or intentional of evading taxes is justified in the eye of law?"

3. Mr. Dayananda Mohapatra, learned counsel for the Petitioner submits that although the question has not been urged or framed by this Court, the Assessee would like to urge the validity of the audit assessment under Section 9-C of the Orissa Entry Tax Act, 1999 (OET Act) on account of delay in submission of the audit visit report (AVR). It is pointed out that the issue stands covered in favour of the Assessee and against the Department by the order of this Court dated 5th July, 2022 in STREV No.69 of 2012 ***(State of Odisha v. M/s. Chandrakanta Jayantilal, Cuttack)*** and since it goes to the root of the matter, it ought to have been examined even if it has not been formally raised by the Assessee.

4. The Court finds that this indeed is an audit assessment under Section 9-C of the OET Act and at the relevant point in time, the decision of this Court in ***M/s. Chandrakanta Jayantilal, Cuttack*** *(supra)* was not available and, therefore, perhaps the issue was not raised by the Assessee. That does not however mean that it cannot be raised a subsequent stage since it is a jurisdictional issue.

5. Since the Tribunal also had no occasion to examine the issue, the Court considers it appropriate to direct as under:

(i) The impugned order of the Tribunal dated 23rd February, 2016 in S.A. No.129 (ET) of 2014-15 is set aside and S.A. No.129(ET) of 2014-15 is restored to the file of the Tribunal for a fresh decision.

(ii) Among other issues to be examined by the Tribunal in terms of the memorandum of appeal filed by the Petitioner, it will also examine whether the audit assessment is invalid on account of the delay in submission of the AVR in terms of Section 9-C (5) of the OET Act and in light of the decision of this Court in ***M/s. Chandrakanta Jayantilal, Cuttack*** *(supra)*.

(iii) The Tribunal will also re-examine the issue concerning freight charges after examining the vouchers produced by the Petitioner which form part of the record.

(iv) The above appeal will be listed before the Tribunal on 1st March, 2023 on which date the Petitioner will appear through an authorized representative. The Tribunal is requested to proceed with the appeal and dispose it of in accordance with law after hearing the parties preferably within a period of six months thereafter.

6. The Court clarifies that it has not expressed any view in the matter.

7. The revision petition is accordingly disposed of. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S.Raman)
Judge

S.K. Jena/Secy.