(2022) 04 OHC CK 0145

In the Orissa High Court

Case No : STREV No. 347 Of 2008

M/s. Prasad Jewellery — APPELLANT

Vs

State Of Orissa — RESPONDENT

Date of Decision : 25-04-2022

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 12(4), 12(8)

Citation : (2022) 04 OHC CK 0145

Hon'ble Judges : Dr. S. Muralidhar, CJ;R.K. Pattanaik, J

Bench : Division Bench

Advocate : Kajal Sahoo, Sunil Mishra

Final Decision : Disposed Of

Judgement

1. While admitting this revision petition by an order dated 31st August 2009, the following question of law was framed:

"Whether in the facts and circumstances of the case, the alleged shortage of gold ornaments (10.200gms.) and alleged purchase suppression of Gems in absence of any evidence of sale of such goods per se lead to sale suppression in view of various judgments of this Hon'ble Court?

2. The present petition arises from an order dated 14th September 2007, passed by the Orissa Sales Tax Tribunal (Tribunal) in S.A. No.812 of 2002-03. The said appeal was by the State of Orissa against an order dated 26th June, 2002 of the Assistant Commissioner of Sales Tax (ACST), Sundargarh Range, Rourkela, whereby the original order of assessment dated 5th August 1996, passed by the Sales Tax Officer (STO), Rourkela-I Circle, was modified to delete the enhancement of the taxable turnover by Rs.17Lakhs on the ground of alleged shortage of gold ornaments and alleged suppression of purchase of gems. It appears that the initial assessment was under Section 12(4) of the Orissa Sales Tax Act, 1947 (OST Act) during which there were two reports considered by the STO. A third report led to re-assessment under Section 12 (8) of the OST

Act and this was challenged before the ACST by the Assessee.

3. In the order dated 26th June 2002, the ACST inter alia, observed as under:

"The first two reports were considered in the original assessment by enhancing the returned turnovers by Rs.2,70,000/-. Then the third report is received belatedly for which 12(8) proceedings initiated. The date of visit as per the 3rd report falls in between the dates of visit according to the first two reports. While disposing of the first two reports in the original assessment proceeding the LAO considered enhancement to the extent of Rs.2,70,000/- upon estimation of all probable suppressions for the entire period. As such a sum of Rs.2,67,300/- has been fixed for all such probable suppressions. As per the 3rd report, according to the LAO, the suppression to the extent of Rs.11,000/- could be established which is well within the above probable suppressions limit of Rs.2,67,300.00."

4. When the State then took the matter further in appeal before the Tribunal, it did not agree with the conclusions of the ACST on the basis that the 3rd report according to the Tribunal was a separate report "wherefrom clear cases of suppression have been unearthed".

5. Having heard learned counsels for the parties, the Court is of the view that the Tribunal has failed to give reasons why the order of the STO enhancing the taxable turnover by Rs.17lakhs should be restored and the order of the ACST deleting the said enhancement was being set aside.

6. In cases of suppression of purchase of gems or shortage of gold ornaments, the burden is on the Department to prove such shortage/suppression. This Court in Mahabir Rice Mill v. State of Orissa (1983) 54 STC 218 (Ori) held that there has to be some credible material to establish that goods have been found short sold or that has been a suppression in the matter of purchase of gems. The Court is unable to find any such material produced by the Department to substantiate the conclusions in the impugned order of the Tribunal.

7. Consequently, the question framed by this Court is answered by holding that there could not have been any enhancement in the taxable turnover in the absence of evidence of shortage of gold ornaments or suppression of purchase of gems. In other words, the question is answered in favour of the Assessee and against the Department.

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

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