



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.289 of 2015

*M/s.Hindustan Tyre House,
Sambalpur*

.....

Petitioner

*Mr. R.P. Kar, Sr. Advocate
along with Mr. B.P. Mohanty,
Advocate*

Vs.

*Dy. Commissioner of Sales Tax,
Sambalpur*

.....

Opposite Party

Mr. S. Das, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

02.05.2024

Order No.

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This matter is taken up by hybrid mode.

2. Heard Mr. R.P. Kar, learned Senior Counsel along with Mr. B.P. Mohanty, learned counsel appearing for the petitioner and Mr. S. Das, learned Additional Standing Counsel appearing for the opposite party.

3. The petitioner has filed this writ petition seeking to quash the order of assessment/reassessment dated 29.09.2014 passed by the opposite party in Form VAT 312 under Annexure-3 as well as the notice of demand in Form VAT 313 under Annexure-4 and the notice issued by the opposite party in Form 307 under Annexure-1, and further to issue direction restraining the opposite party from collecting the tax and penalty as involved in the order of assessment along with the demand notice under Annexure-3 & 4 respectively.

4. Mr. R.P. Kar, learned Senior Counsel along with Mr. B.P. Mohanty, learned counsel appearing for the petitioner brings to the notice of this Court the docket note of Annexure-2, the order sheet maintained by the opposite party, which states that “A fraud case report has been received from DCST, Vigilance, Sambalpur in respect of the above dealer



and period, which suggests sale suppression. If approved notice in VAT-307 will be issued to dealer. Put up for order”. It is further contended that on the basis of fraud case, if the authority proposed to take steps and issue notice, he should have formed opinion as required under Section 43 of the OVAT Act. Without forming opinion, issuance of demand notice to the petitioner under Annexure-4 and the order of assessment/reassessment dated 29.09.2014 under Annexure-3 cannot be sustained in the eye of law.

5. Mr. S. Das, learned Additional Standing Counsel appearing for the opposite party contended that in view of provisions contained in Section 98(1) of the OVAT Act, the order of assessment/reassessment dated 29.09.2014 passed by the opposite party is well justified, which does not warrant interference of this Court.

6. This Court considered the contentions raised by learned counsel for the parties and went through the records. Section 98 (1) of the OVAT Act reads as follows:

“98. Assessment proceedings, etc. not to be invalid on certain grounds.-

(1) No return, assessment, appeal, rectification, notice, summons or other proceedings accepted, made, issued or taken, or purported to have been accepted, made, issued or taken in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return, assessment, appeal, rectification, notice, summons or other proceedings, if such return, assessment, appeal, rectification, notice or other proceedings are, in substance and effect, in conformity with or according to the intents, purposes and requirements of this Act.”

As it appears, the docket note clearly mentions that when a fraud case report has been received from DCST, Vigilance, Sambalpur in respect of the petitioner-dealer and the period in question and follow up action, i.e., assessment/reassessment has been made, in that case Section 43 of the OVAT Act is required to be complied with, which speaks that opinion has to be formed by the Assessing Authority before passing the order and, as such, no opinion has been formed by the Assessing Authority while dealing with the fraud case, as stated in the docket note. Learned Senior Counsel appearing for the petitioner has placed reliance on



Indure Ltd. v. Commissioner of Sales Tax, (2006) 148 STC 61 (Ori), wherein this Court has held that it is not enough if the Assessing Officer refers to the tax evasion report or an audit report, but has to independently apply his mind and record his satisfaction that there has been an escapement of tax. That is the mandatory minimum requirement of Section 43 of the OVAT Act.

7. In view of the above principle of law laid down by this Court, since the Assessing Authority has not formed opinion, as required under Section 43 of the OVAT Act, the order of assessment/reassessment dated 29.09.2014 passed by the opposite party in Form VAT 312 under Annexure-3 and the demand notice in Form VAT 313 under Annexure-4 cannot be sustained in the eye of law. Thereby, the same are liable to be quashed and are hereby quashed. Accordingly, this Court remits the matter to the Assessing Authority for making fresh adjudication and passing appropriate order in accordance with law after giving opportunity of hearing to the petitioner.

8. With the above observation and direction, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Alok