IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.131 of 2008

State of Orissa represented by the Commissioner of Sales Tax, Orissa, Cuttack	....	***Petitioner***

Mr. Sunil Mishra, Additional Standing Counsel

-versus-

M/s. Bhagwati Steel Industries	....	***Opposite Party***

Mr. M. Agarwalla, Advocate along with
Mr. A. Kedia, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
13.04.2022

Order No.

07. 1. After the Orissa Sales Tax Tribunal, Cuttack (Tribunal) by an order dated 18th October 1995 declined to refer the questions as urged by the Department for consideration by this Court under Section 24 (1) of the Orissa Sales Tax Act, 1947, for the year 1984-85, the present petition has been filed by the Department.

2. On 29th June 1999, the Court famed the following questions of law for consideration:

> (i) Whether in the facts and circumstances of the case, the learned Sales Tax Tribunal is justified to treat Iron Scrap and rods and flats as the same commercial commodity for the purpose of taxation?
>
> (ii) Whether in the facts and circumstances of the case, the learned Sales Tax Tribunal is justified to exonerate the Assessee from the charges of contravention under Section 5(2)(A)(a)(ii) of the Orissa Sales Tax Act, 1947?

3. Mr. Sunil Mishra, learned Additional Standing Counsel for the Petitioner-Department points out that the order dated 3rd October 1994 of the Tribunal notes in paragraph-4 as under:

> "4. In this connection it is pertinent to mention that in the meanwhile the appeal filed by the dealer had already been disposed of by the Full Bench in their second appeal No.909 of 1987-88 dated 16.10.1992. The full bench of the Tribunal has allowed the appeal of the dealer in full. I also agree with the said order passed by the full bench of the Tribunal and accordingly I am inclined to dismiss the appeal filed by the State."

4. Mr. Mishra very frankly states that he does not have a copy of the aforementioned order dated 16th October 1992 and he is also unable to state whether the said order has been challenged.

5. In the absence of any challenge to the above order, no fault can be found with the Tribunal's order dated 3rd October 1994 declining to answer the question in favour of the Department.

6. Accordingly, the questions framed by this Court by the order dated 29th June 1999 are answered in the affirmative i.e. in favour of the Assessee and against the Department.

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

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

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin