IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14501 of 2005

M/s. Toshali Cement Pvt. Ltd., Koraput .... ***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate assisted by Mr. Ronit Ghose, Advocate

-versus-

Tax Recovery Officer, Koraput Circle, Jeypore and others .... ***Opposite Parties***

Mr. S. K. Pradhan, Additional Standing Counsel for Sales Tax Department

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER

21.11.2022

Order No.

18. 1. Learned Additional Standing Counsel for the State has today handed over a bunch of documents, which show that pursuant to the auction purchase by the Petitioner - M/s. Toshali Cement Pvt. Ltd. of the assets of M/s. Snehadhara Industries Ltd. (SIL), there was a handing over those assets to the Petitioner. This is not the same as showing that the Petitioner took over all the assets and liabilities of SIL in its entirety which is what is required to be demonstrated by the Department in terms of Section 19 (1) of the Orissa Sales Tax Act, 1947 (OST Act).

2. It its order dated 14th March, 2022 in W.P.(C) No.10451 of 2004 (***M/s. Toshali Cement Pvt. Ltd. v. State of Orissa)***, this Court had noted in respect of the same assessee, that an order had been passed on 27th October, 2003 by the Commissioner of Commercial Taxes, Orissa in Revision Case No.PU-250/03-04 directing the Department to "gather evidence regarding transfer of business in entirety to fasten liability on the Petitioner". In that case, it was

noticed that despite the six months' period having elapsed, no steps had been taken by the Department to gather evidence concerning the transfer of the business of SIL to the Petitioner 'in entirety'. In those circumstances, by the said order dated 14th March, 2022, the demand raised against the present Petitioner was quashed by the Court.

3. The position here is no different. The Department is unable to show that the entire liability of the erstwhile SIL was taken over by the Petitioner consequent on becoming the auction purchaser of some of the assets of SIL. This was the prerequisite of Section 19(1) of the OST Act which specifically requires the business of a dealer "liable to pay tax under this Act" to be "entirely transferred". The word 'entirely' would mean transfer of both assets and liabilities and not merely the purchase of some of the assets of the transferor company in a public auction by the transferee company.

4. Consequently, this Court quashes the notices dated 5th October, 2005 (Annexure-9), 25th October, 2006 (Annexure-11) and 9th November, 2005 (Annexure-13), which have been challenged in the present petition.

5. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda