IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.353 of 2008

M/s. Kalinga Colour Systems Pvt. Ltd., Sundergarh	....	***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate assisted by Ms. Kajal Sahoo, Advocate

-versus-

State of Odisha, represented by Commissioner of Sales Tax, Cuttack-1	....	***Opposite Party***

Mr. Sunil Mishra, Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
13.12.2022

Order No.

08. 1. The present revision petition arises from an order dated 31st July, 2007 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) dismissing the Petitioner's-Assessee's S.A. No.604/2002-03, which in turn questioned an order dated 30th May, 2002 passed by the Assistant Commissioner of Sales Tax, Cuttack-1 Range, (ACST) affirming the extra demand raised by the Sales Tax Officer (STO) by the assessment order dated 31st January, 2001 for the year 1999-2000.

2. While admitting the present revision petition on 18th May 2022, the following two questions were framed by this Court for consideration:

> "(i) Whether the activity of photography constitutes works contract involving deemed sale of goods under the Orissa Sales Tax Act, 1947 or the same constitutes a contract of work and labour?
>
> (ii) Whether in the facts and circumstances of the case, the order passed by the Orissa Sales Tax Tribunal holding the photography business constitutes the works contract can be sustained in law in view of judgment of this Court in the case of *M/s. Studio Sujata v. Commissioner of Sales Tax, 106 (2008) CLT 317*?"

3. On behalf of the Petitioner, Mr. Jagabandhu Sahoo, learned Senior Counsel placed extensive reliance on the judgment of this Court in ***M/s. Studio Sujata v. Commissioner of Sales Tax, (2008) 106 CLT 317*** where the activity of developing positives from negatives in a photo studio was held not to involve any element of sale. The decision in ***M/s. Studio Sujata*** *(supra)* was itself not available to the Assessing Authority when the original assessment was framed in the present case. Thereafter, there have been subsequent developments in the law including ***M/s. Larsen and Toubro v. State of Karnataka, (2014) 1 SCC 708*** and ***State of Karnataka v. M/s. Pro Lab, AIR 2015 SC 1098***.

4. The Court is of the view that the entire issue requires to be revisited in the light of the judgments of the Supreme Court referred to hereinbefore apart from the decision of this Court in ***M/s. Studio Sujata*** *(supra)*.

5. Consequently, while setting aside the impugned order of the learned Tribunal and the corresponding orders of the ACST and

STO, this Court remands the matter to the State Tax Officer, Cuttack-1 Central Circle, Cuttack for redetermination of the issue for the year 1999-2000. The matter will now be listed before the State Tax Officer on 1st February, 2023 on which date the Petitioner will remain present through an authorized representative.

6. The petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda