AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 6 of 2011

M/s. Abhaya Transformers and Swithchgears	....	***Petitioner***

-versus-

State of Odisha	....	***Opposite Party***

Advocates, appeared in this case :

For Petitioner	:	Mr. Jagabandhu Sahoo Senior Advocate
For Opposite Party	:	Mr. S.S. Padhy Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

JUDGMENT
05.07.2022

Dr. S. Muralidhar, CJ.

1. This revision petition arises from an order dated 1st November, 2010 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal). By the impugned order, the Tribunal dismissed the Petitioner's appeal bearing S.A. No.122 of 2008-09 for the year 2000-01 thereby affirming the assessment order passed by the Sales Tax Officer, Balasore Circle, Balasore (STO) raising a demand of Rs.1,15,877.00 in relation to the assessment made under Section 12(8) of the Orissa Sales Tax Act, 1947 (OST Act).

2. It was noted by the STO that the Assessee had accepted Form IV issued by the purchaser for repairing of a transformer. It was observed that since Form IV was made for purchase of goods at a concessional rate exclusively for the manufacturing purposes, utilizing of such form for repairing work, was not permissible. It was also noted that the provision for acceptance of Form IV in the case of works contract was introduced from 1st April, 2001. Therefore, the acceptance of Form IV for transfer of property of goods in a works contract for the period prior to 1st April, 2001 was not permissible.

3. By an order dated 28th September, 2012 while admitting the present petition, the following question was framed by this Court for consideration:

> "Whether the Petitioner is entitled to purchase goods for use in processing/manufacturing of transformers against declaration Form No.IV ?"

4. It may be noted at the outset that for an earlier period i.e. 1999-2000 in the Assessee's own case, the Tribunal in S.A. No.540 of 2007-08 has held as under:

> "….In the premises aforesaid, the transaction between the appellant and the Executive Engineer, Electrical Division, Balasore (NESCO) is to be held as works contract for repair of transformer. In absence of written agreement between the parties, it is to be held that the spare parts used in the repair of transformer is nothing but a separate sale made by the appellant to the Executive Engineer, Electrical Division, Balasore (NESCO), who has issued

> declaration in Form IV and such issuance of declaration in Form IV is therefore, valid in view of Entry 81 in List – C of the Rate Chart. True it is that the Government in Finance Department vide Resolution No.14687/F, dtd. 31.03.2001 published in SRO No.149/2001 has given effect to applicability of Entry 81 to purchases through leasing or works contract or hire purchases w.e.f. 01.04.2001. But such fact appended to the Entry 81 of List-C of the Rate Chart in the form of an explanation is only clarificatory in nature."

5. However, when it came to the year in question, the Tribunal appears to have taken an opposite view. However, in the impugned order the Tribunal did not choose to follow its own earlier order. It was concluded as under:

> "…So, the claim of acceptance of Form IV for transfer of property in goods in course of works contract is found contrary to the provisions of law as in force in case of works contract for the year 2000-2001 and the period prior to 01.04.2001."

6. This Court has heard the submission of Mr. Jagabandhu Sahoo, learned Senior Advocate appearing for the Petitioner and Mr. S.S. Padhy, learned Additional Standing Counsel for the Opposite Party (Department).

7. The definition of 'manufacture' as appearing in Section 2(ddd) of the OST Act is wide enough to include within its scope, repairing. The said provision reads as under:

> "2(ddd) "manufacture" , with all its grammatical variations and cognate expressions, means producing, extracting, altering, ornamenting, finishing or otherwise processing or adapting any

> goods, but shall not include such manufacturing process as the State Government may, by notification, specify from time to time;”

8. As pointed out by Mr. Sahoo, learned Senior Counsel for the Assessee, the Industries Department of the Government of Odisha has also identified repairing of the transformers to be an activity constituting manufacturing. Further, as explained in the decision of this Court in ***Tilakraj Mediratta v. State of Orissa (1992) 86 STC 453 (Orissa)*** it is the dealer, who issued Form IV who has to be proceeded against for any violation of the declaration. Further the Full Bench of this Court in ***Kalinga Builders Pvt. Ltd. v. CCT, Orissa 1999 (115) STC 81 (Ori) (FB)*** held that:

> “…execution of works contract involving use of material amounts to sale of such goods to the authority for which the benefit of use of declaration form for availing concession or exemption which are otherwise available to trades is also equally available to the works contractors.”

9. Once it is clear that the Department’s notification i.e. S.R.O. No.149 of 2001 was merely clarificatory, the Tribunal erred in holding that this is prospective in nature. The Court is satisfied therefore that the Tribunal has erred in proceeding to dismiss the appeal filed by the Petitioner.

10. The question framed is accordingly answered in favour of the Assessee and against the Department. The impugned orders of the Tribunal and the corresponding orders of the ACST and the STO are hereby set aside.

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

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.