IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV Nos. 62 and 63 of 2008

State of Odisha .... ***Petitioner***

Mr. Sunil Mishra, Addl. Standing Counsel

-versus-

M/s. Kandoi Automobiles (P) Ltd. ... ***Opposite Party***

Mr. Sidhartha Ray, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No. **ORDER**
26.04.2022

17. 1. The following question has been referred to by the Sales Tax Tribunal, Full Bench, Orissa, Cuttack (Tribunal) to this Court for a decision:

> "Whether in the facts and circumstances of the case, the Tribunal was justified in allowing exemption under Sl.No.30-FF, although the unit was duly registered under Section 9-C of the O.S.T. Act w.e.f. 11th September, 1985 and duly certified as SSI Unit bearing Registration Certificate No.9561 dated 4th April, 1985 granted by the General Manager of the District Industries Center, Cuttack ?"

2. The above question arises for the year 1988-89. The learned Sales Tax Officer, Cuttack (STO, Cuttack) had framed the original assessment order on 19th April, 1985 under Section 12(4) of the Orissa Sales Tax Act, 1947 (OST Act) read with Rule 5 of the

Orissa Additional Sales Tax Rules, 1975 (OAST Rules). The Opposite Party dealer was subject to tax levy of Rs.1,74,323/- under the OST Act and Rs.14,362/- under the OAST Rules.

3. Aggrieved by the above assessment order, the Opposite Party-Dealer filed two appeals before the Asst. Commissioner of Sales Tax (ACST); one under the OST Act and another under OSAT Rules. The assessment orders were set aside by the ACST with a direction to the STO to enquire into nature of the transaction i.e. whether it was in the nature of a works contract?

4. The State then approached the Tribunal which, by the order dated 19th April 1995, dismissed the appeals following the Full Bench decisions of the Tribunal in the Assessee's own case in SA Nos.2267-2268 of 1993-94, 2798-2799 of 1994-95 and 3558-3559 of 1993-94 for the years 1987-88, 1989-90 and 1990-91 respectively. The Tribunal came to the conclusion that the SSI Unit of the Assessee had commenced after 1st April, 1986 and therefore, SL No.30-FF of the list of goods exempted from the OST Act applied to the case of the Assessee especially when the term "manufacture" amounts to "processing of goods" as held in ***Shri Jagannath Industries v. State of Odisha (1995) 79 CLT 372***.

5. The reason why the reference was made has been set out in para 5 of the order of the Tribunal making the reference. *Inter alia* it was noted that the provisional registration certificate was granted to Assessee by the DIC on 4th April, 1985 and the registration

under the OST Act was granted on 11th September, 1985 for sale or manufacture or otherwise producing tyres in the course of business. According to the Tribunal, the fact of the above dates were not taken into account in passing the judgment dated 19th April, 1995.

6. A perusal of the order dated 19th April, 1995 reveals the fact that permanent registration was granted by the DIC on 10th November, 1986. In its capacity as an SSI Unit set up after 1st April 1986, the Assessee claimed exemption under Sl.No.30-FF of the list of exempted goods. Notwithstanding when it may have been granted provisional registration, since the permanent registration was granted only after 1st April, 1986, it is obvious that the Assessee claimed and was righty granted exemption under Sl.No.30-FF of the list of exempted goods. The registration under OST Act or the registration of the SSI Unit would not per se determine the eligibility for such exemption since the operation of the Assessee's commenced only in November, 1986. The fact further remains that the Full Bench decisions of the Tribunal in the Assessee's favour for the subsequent years have already become final since no challenge has admittedly been raised by the Department to those assessment orders.

7. Consequently, this Court is of the view that the Tribunal was justified in allowing the exemption to the Assessee under Sl.No.30-FF.

8. The question framed is answered in the affirmative i.e. in favour of the Assessee and against the Department.

9. The revision petitions are disposed of.

10. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.