IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV Nos.58, 56 and 57 of 2009

M/s. Star Chemical Industries, Sundargarh	....	***Petitioner***
		M/s. S. Ch. Lal and associates, Advocates

-versus-

State of Orissa, represented by the Commissioner of Sales Tax, Orissa	....	***Opposite Party***
		Mr. S. S. Padhy, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
29.06.2022

Order No.

03. 1. STREV Nos.56 and 57 of 2009 are taken up by a separate notice.

2. The present revision petitions by the Assessee arise from a common order dated 29th August, 2008 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in S.A. Nos.2918, 2919 and 2920 of 2004-05.

3. While admitting these revision petitions on 3rd March 2010, the following questions were framed for consideration by this Court:

> *i) Whether in the facts and circumstances of the case, the reopening of assessment under Section 12(8) made by the Sales Tax Officer solely being influenced by the AG Audit Report and the clarification issued by the Director of Industries in letter No.3 SS & RM 7/2K 6359 dated 24/28 May 2001 without independent application of mind is sustainable in law ?*
>
> *ii) Whether the reopening of the assessment completed under Section 12(4) is permissible by a change of opinion in respect of allowing the exemption from payment of tax under Entry 30 FFF(i)?*

iii) Whether the Sales Tax Officer can sit in judgment over the amended PMT and the eligibility certificates issued for claiming sales tax exemption under the tax exempted entry 30FFF(i)?

4. As far as question no.iii is concerned, the issue is no longer *res integra*.

5. Following the decision of the Supreme Court of India in ***Vadilal Chemicals Ltd v. State of Andhra Pradesh, [2005] 142 STC 76 (SC)***, this Court has in ***Bajrangballi Wire Products Pvt. Ltd. v. State of Orissa, [2021] 90 GSTR 343*** held that the Sales Tax Officer cannot sit in judgment over the amended PMT and eligibility certificate issued for claiming sales tax exemption.

6. In that view of the matter, question no.iii is answered in the negative i.e. in favour of the Assessee and against the Department.

7. It is not in dispute that in view of the answer to question no.iii as above, the other two question nos.i and ii are need not to be answered and they are kept open for decision in some other appropriate case. Accordingly, the impugned order of the Tribunal is hereby set aside.

8. The revision petitions are allowed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda