IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 184 of 2008

State of Orissa represented by the Commissioner of Sales Tax, Orissa, Cuttack	....	***Petitioner***

Mr. Sidharth Shankar Padhy,
Addl. Standing Counsel

-versus-

M/s. Ispat Alloys Ltd.	....	***Opposite Party***

None

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
27.04.2022

Order No.

03. 1. The present revision petition by the State arises from an order dated 26th July 1996 passed by the Full Bench of the Orissa Sales Tax Tribunal, Cuttack (Tribunal) by a majority of 2:1 rejecting the appeal S.A. No.12(C) of 1994-95 filed by the State against an order dated 28th February 1994, passed by the Assistant Commissioner of Sales Tax, Balasore Range (ACST) partly reducing the assessment made under Rule-10 of the Central Sales Tax (Orissa) Rules, for the year 1989-90.

2. The revision is before us pursuant to an order passed on 16th December 1996 by the Tribunal referring the following questions of law to this Court for its opinion:

> "1. Whether on the facts and in the circumstances of the case, the learned Tribunal, in majority view, is correct to hold the dispatch of goods from Balasore in Orissa to the outside State is in course

> of branch transfer but not in course of inter-State trade and commerce?
>
> 2. Whether on the facts and in the circumstances of the case, the observation of the learned Tribunal, in majority view, that the transaction in course of inter-State trade and commerce, is correct?
>
> 3. Whether on the facts and in the circumstances of the case, the learned Tribunal, in majority opinion, is correct to hold that there was no pre-existing contract on the basis of which the goods moved from Orissa to outside the State?
>
> 4. Whether on the facts and in the circumstances of the case, the learned Tribunal has properly appreciated the materials collected by the revenue as required U/S.6-A(2) of the Central Sales Tax Act, 1956 and the case laws relied on by the State?
>
> 5. Whether on the facts and circumstances of the case, deletion of penalty is warranted?"

3. Mr. Sidharth Shankar Padhy, learned Additional Standing Counsel appearing for the Department points out that the issue common to all the above questions is whether the dispatch of the goods from Balasore in Odisha to outside the State by the Assessee was in fact in course of branch transfer or in the course of inter-State trade and commerce?

4. A perusal of the majority view of the Tribunal in its order dated 26th July 1996 reveals that the ACST had undertaken a meticulous exercise of examining the transactions by perusing the stock transfer advice issued by the factory office. The ACST found that there indeed had been stock transfers in respect of several cities and even certain transactions of the Bombay branch squarely fell within the purview of branch transfer. The majority of the Tribunal was satisfied that the ACST had undertaken a detailed exercise in arriving at a factual conclusion that did not require interference.

5. Mr. Sidharth Shankar Padhy, learned Additional Standing Counsel, however, referred to the dissenting view of one of the Members of the Tribunal to urge that the documents reveal that there was perhaps an inter-State sale which was camouflaged as a branch transfer.

6. Having examined the order of the Tribunal including the majority and dissenting opinions and having considered the submissions of Mr. Padhy, the Court is not persuaded that majority of the Tribunal committed any legal error in agreeing with the ACST on the issue of branch transfers by the Assessee as claimed by it. This is by and large a factual determination and the view taken by the majority appears to be a plausible one. Consequently, the questions are answered in favour of the Assessee and against the Department and the aforementioned order dated 26th July 1996 of the Tribunal in S.A. No.12(C) of 1994-95 is not interfered with.

7. The STREV is disposed of in the above terms.

8. Urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S.K. Guin