IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.81 of 2011

State of Orissa, represented by Commissioner of Sales Tax, Orissa, Cuttack	....	***Petitioner***
		Mr. S. K. Pradhan, ASC
-versus-		
M/s. Tarini Minerals Pvt. Ltd., Keonjhar	....	***Opposite Party***
		None

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
28.06.2022

Order No.

03. 1. The following questions have been admitted for consideration by this Court in the present revision petition by the State by its order dated 2nd January, 2014:

> "III. Whether on the facts and in the circumstances of the case, the Sales Tax Tribunal has erroneously decided that the explanation to sub-section (1) of Section 26 having been brought by way of amendment with effect from 01.06.2004, the clarificatory explanation would not be applicable to the facts of the assessment year in question, i.e., 2001-02?
>
> IV. Whether on the facts and in the circumstances of the case, the explanation to sub-section (1) of Section 26 brought on the statute book by virtue of the Orissa Entry Tax (Amendment) Act, 2003, being clarificatory in nature, it would have retrospective operation; and the Sales Tax Tribunal erred in interpreting the said provision

by holding that the activity of extracting/producing minerals by the assessee-opposite party would not be treated to be "manufacture"?"

2. Section 26 of the Orissa Entry Tax Act, 1999 (OET Act) was amended with effect from 5th April, 2004 to provide that a person engaged in mining would be treated as manufacturer for the purposes of collection of Entry Tax from the buyers of goods and to deposit it in the Government treasury.

3. As far as the present case is concerned, the years in question are 2000-01 and 2001-02. The Assessee sold iron ore during the two years and did not pay Entry Tax on the sales turnover. The contention of the Assessee was that it was not the manufacturer and, therefore, not liable to pay Entry Tax. The Tribunal has noted that during both the years, the Assessee sold ore but not as a manufacturer. It was correctly noted that in mining mineral or ore is excavated and no new article is produced and, therefore, the mere mining of mineral or ore will not be treated as manufacture. In terms of Section 26 of the OET Act, a manufacturer of the scheduled goods is liable to collect Entry Tax for sale of those goods from the buyer. That being the position, during the years in question, there was no liability on the Petitioner to collect Entry Tax on its sale of iron ore. The amendment to Section 26 of the OET Act took effect only from 1st June, 2004. It was only by virtue of the amendment that the OET Act provided that manufacturer "shall include a person who is engaged in mining and sales of goods produced or

extracted therefrom." In other words, the Petitioner could not be deemed to be a manufacturer for the purposes of liability to pay Entry Tax prior to 1st June, 2004. This being a substantive change in the provision and not a procedural one, there could not be a presumption of retrospective applicability of such change prior to 1st June, 2004 unless the statute itself expressly stated so. Here, the amendment was only prospective and not expressly made retrospective.

4. Consequently, the questions framed are answered in favour of the Assessee and against the Department.

5. The revision petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda