IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 3 of 2012

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

Mr. Sunil Mishra, Addl. Standing Counsel

-versus-

M/s. Sree Mahavir Carbon Limited ... ***Opposite Party***

None

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No. **<u>ORDER</u>**
05.07.2022

05. 1. While admitting the present revision petition arising from an order dated 21st November, 2011 passed by the Orissa Sales Tax Tribunal, Cuttack (Tribunal) disposing of the Assessee's S.A. No.121(ET) of 2003-04, the following questions were framed for consideration by this Court by the order dated 5th August, 2015:

> "(i) Whether on the facts and in the circumstances of the case, tax is exigible under the Orissa Entry Tax Act, 1999, on the purchase value of scheduled goods, i.e. coal brought from outside the territory of India and into local area for the purpose of use, consumption or sale therein ?
>
> (ii) Whether on the facts and in the circumstances of the case, the Orissa Sales Tax Tribunal is correct in holding that "low ash metallurgical coke" would not fall within the scope of Entry 1 of Part 1 of Scheduled appended to the Orissa Entry Tax Act, 1999 ?"

2. As far as question No.(i) is concerned, it is covered in favour of the Department and against the Assessee by the judgment of the Supreme Court in ***State of Kerala v. Fr. William Fernandez (2017) SCC Online (SC) 1291*** where it has been held in para 123 as under:

> "123. In view of the foregoing discussions, we conclude that goods imported after having been released from customs barriers are not immuned from any kind of State taxation, which fall equally on other similar goods and the submission of the learned counsel for the petitioner that immunity from State taxation shall continue till it reaches in the premises where it is to be taken for consumption, sale and use cannot be accepted."

3. As far as question (ii) is concerned, it is seen from the impugned order of the Tribunal that prior to its amendment with effect from 5th February, 2004 Entry I in Part I of the Schedule of the OET Act read as "coal and coke". Therefore, irrespective of the subsequent amendment of the entry as "coal including coke and all its forms", the product imported by the Assessee which is low ash metallurgical coke still fell within the scope of the unamended Entry 1 of Part 1 of the Scheduled appended to the OET Act for the year in question i.e. 2000-01.

4. Consequently, the question framed is answered in the negative by holding that the Tribunal erred in holding that low ash metallurgical coke would not fall within the scope of Entry I Part I of the OET Act during the year in question i.e. 2000-01.

5. The revision petition is disposed of in the above terms. An urgent certified copy of this order be issues as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.