

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6089 of 2019

M/s. Bengal Energy Ltd., Cuttack ***Petitioner***
Mr. Jagabandhu Sahoo, Senior Advocate
assisted by Ms. Kajal Sahoo, Advocate
-versus-

Union of India and others ***Opposite Parties***
Mr. P. K. Panda, Senior Standing Counsel for
Opposite Parties 3 to 5

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
28.11.2022

Order No.

08. 1. The challenge in the present petition is to the Notification dated 13th April, 2017 and a circular of the same date in terms of which service tax was payable on Ocean freight for services provided by a person located in a non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India to the customs station in India.
2. In respect of the demand of GST on Ocean freight, the matter is covered in favour of the Assessee and against the Department by the judgment of the Supreme Court of India in ***Union of India v. Mohit Minerals Pvt. Ltd., 2022 SCC OnLine 657***. As far as the service tax is concerned, reliance is placed on the judgment of the Gujarat High Court in ***SAL Steel Ltd. v. Union of India, 2020 (37) GSTL 3***

(Guj.), which answers the same question in favour of the Assessee and against the Department by quashing the very same notification.

3. Mr. Jagabandhu Sahoo, learned Senior Counsel appearing for the Petitioner points out that although the said judgment of the Gujarat High Court has been challenged in the Supreme Court of India by the Union of India by way of SLP (C) Diary No.27016 of 2020, only notice had been issued in the said SLP with there being no interim order staying the operation of the judgment of the Gujarat High Court in ***SAL Steel Ltd. (supra)***.

4. In that view of the matter, following the judgment of the Gujarat High Court in ***SAL Steel Ltd. (supra)***, this Court quashes the impugned Notifications at Annexures 4, 5, 6 and 8. It will now open to the Petitioner-Assessee to apply for refund of the service tax along with statutory interest in accordance with law.

5. The petition is disposed of in the above terms. Issue urgent certified copy of this order as per Rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda