IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 472 of 2008

M/s. Priti Oil Ltd. .... ***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate
Along with Mr. R. Ghosh, Advocate

-versus-

State of Orissa .... ***Opposite Party***

Mr. Sunil Mishra, ASC &
Mr. S.K. Pradhan, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

<u>ORDER</u>
02.08.2022

<u>Order No.</u>

04. 1. The following questions have been framed for consideration by this Court in the present revision petition by the Assessee arising from an order dated 25th April 2008, passed by the Orissa Sales Tax Tribunal in S.A. No. 29(C) of 2001-02 for the period 1999-2000:

> "(a). Whether in the fact and circumstances of the case, refinery unit set up by the petitioner by way of expansion after 01.12.89 is eligible for sales tax incentive under the provisions of Central Sales Tax Act in respect of interstate sales read with Entry 30-FFF (ii) of the tax free schedule under the Orissa Sales Tax Act?
>
> (b). Whether in the facts and circumstances of the case, furnishing declaration form-F in respect of claim of stock transfer under Section 6-A of the C.S.T. Act is mandatory and whether it is proper on the part of the learned Tribunal to not to make any deliberation on the said issue is pleaded before it?
>
> (c). Whether in the facts and circumstances of the case the levy of surcharge purportedly under Section

5-A of the O.S.T. Act is lawful and valid in respect of transactions under the C.S.T. Act?"

2. As far as the Question (a) is concerned, it stands answered by the order dated 5th January, 2016 of this Court in STREV No.470 of 2008 involving the very same Assessee where similar question arose under the Orissa Sales Tax, 1947 (OST Act). In that order, it was held that the benefit under the IPR 1999 would be available to the Petitioner till 31st July, 1999. Accordingly, the Question (a) is answered by holding that the benefit under the CST Act to the Petitioner would correspondingly be available under the IPR 1999 till 31st July, 1999.

3. As far as Question (b) is concerned, the Court's attention is drawn to an order dated 21st June 2016, passed by this Court in STREV No.471 of 2008 filed by this very same Petitioner. That revision petition arose from an order passed by the Orissa Sales Tax Tribunal in an appeal for the period 1999-2000 where one of the grounds concerned disallowance of 'consignment sales'. This Court by the said order remanded the said issue to the Tribunal since the Tribunal had failed to address that ground.

4. Mr. Jagabandhu Sahoo, learned Senior Counsel appearing for the Petitioner states that the outcome of the remand to the Tribunal by the said order is not known.

5. As far as the present case is concerned, the Court considers it appropriate to remand this issue to the Tribunal for a fresh decision in accordance with law in light of the above order of this Court in dated 21st June, 2016 in STREV No.471 of 2008.

6. As far as Question (c) is concerned, the question arose only as a result of the Tribunal holding the branch transfers to be sales. Since that question has been remanded by this Court to the Tribunal for a fresh decision, this question has to await the fresh decision of the Tribunal.

7. Consequently, Question (c) is not answered at present except holding that the decision of the Tribunal in this regard is hereby set aside. The answer to Question (c) will await the fresh decision in this regard by the Tribunal depending on the answer to Question (b).

8. The revision petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S. Behera