IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.396 of 2008

State of Orissa represented by the Commissioner of Sales Tax, Orissa	....	***Petitioner***
		Mr. S.S. Padhy, A.S.C.
-versus-		
M/s. S. Lal & Co. Ltd.	....	***Opposite Party***

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

<u>ORDER</u>
10.05.2022

<u>Order No.</u>

08. 1. The present revision petition, which arises from an order dated 16th March 1996 in S.A. Nos.3247-3248 of 1989-90 of the Orissa Sales Tax Tribunal, Cuttack (Tribunal), seeks to raise the following question of law for consideration.

> "Whether on the facts and in the circumstances of the case, the learned Tribunal in majority view, is justified to allow exemption under Section 5(3) of the Central Sales Tax Act, 1956 particularly when there was no valid contract and relevant document to indicate that the goods contracted have been exported?

2. It may be noted that the Tribunal by an order dated 30th October, 1996 declined the application filed by the Sales Tax Department under Section 24 (1) of the Orissa Sales Tax Act, 1947 (OST Act) for making a reference of the above question to this Court.

3. The Opposite Party-Dealer sells iron and manganese ores inside the State as well as in the course of export. A claim to an

extent of Rs. 1,11,57,593.83 towards export sale was disallowed by the Sales Tax Officer (STO) on the ground that the stock sold by the Dealer to the exporter i.e., MMTC was mixed up with the stock of other parties and that there was no link between the goods supplied and exported.

4. The Assistant Commissioner of Sales Tax (ACST) allowed the Assessee's appeal against the assessment order. The Department then went in appeal before the Tribunal by way of S.A. Nos.3247-48 of 1989-90. The majority of the Tribunal agreed to the Assessee that for the purposes of availing the benefit under Section 5 (3) of the Central Sales Tax Act, 1956 (CST Act) the conditions required to be fulfilled have in fact been fulfilled in the present case.

5. There was a dissenting opinion which noted that the parties in Japan with whom the MMTC was shown to have entered into export contract were on verification of the bill of lading produced in support of such export transactions, found not to be the real parties but that the shipment related to five different parties, although they were located in Japan as well. The dissenting opinion therefore concluded that "in absence of any contract with the foreign buyers to whom MMTC had supplied iron ores, which is an essential ingredient of Section 5 (3) of the CST Act, the claim of the Dealer in this regard has rightly been disallowed by the STO".

6. This Court has heard the submissions of Mr. S.S. Padhy, learned Additional Standing Counsel for the Department.

7. Section 5 (3) of the CST Act reads as under:

> "Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export."

8. The conditions required to be fulfilled for availing the exemption of sales tax on sales made in course of export are as follows:

> "(i) The sale must be the last sale preceding the sale which occasions export of those very goods,
>
> (ii) This sale must take place after the agreement for such export, and
>
> (iii) This sale must take place for the purpose of complying with that agreement.

9. Factually, it has been found that the above conditions are satisfied as far as the Assessee is concerned. The Assessee had no control with as regards the transactions between MMTC and its exporters. Although it is possible that the bill of lading revealed certain parties other than those mentioned in the contract provided by MMTC to the Dealer for the purposes of making supplies, the fact remains that even those other parties were only in Japan. In other words, it does appear that the transactions between the Dealer and MMTC, which were entered into subsequent to the export contracts, were for the purposes of the

transactions of exports made by MMTC to parties in Japan and were in fact immediately preceding the export transaction.

10. The essential ingredients of the Section 5 (3) of the CST Act having been fulfilled, the Dealer was rightly granted the benefit of Section 5 (3) of the CST Act.

11. Consequently, the Court does not find any substantial question of law arising for consideration from the impugned order of the Tribunal. The revision petition is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin