IN THE HIGH COURT OF ORISSA AT CUTTACK

STREVNo.456 of 2008

State of Orissa, represented through the Commissioner of Commercial Taxes, Cuttack	....	***Petitioner***
		Mr. S. S. Padhy, ASC

-versus-

M/s. Ashok Leyland Limited, Bhubaneswar	....	***Opposite Party***
		None

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
17.05.2022

Order No.

05. 1. The State has filed this revision petition urging that the following question may be framed for consideration by the Court:

> "In the facts and circumstances, was the learned Tribunal justified in upholding the decision of the First Appellate Authority treating the transaction as branch Transfer under the Central Sales Tax Act, 1956?"

2. The background facts are that for the year 1986-87, the Opposite Party was assessed under Section 12(5) of the CST (Orissa) Rules, 1957 and a sum of Rs.14,35,818/- was demanded by holding that the sale effected by the Opposite Party of 72 numbers of chassis are not branch transfers but in reality inter-State sales within the

meaning of Section 3(a) of the Central Sales Tax Act, 1956 (‘CST Act’).

3. The Assessing Officer (AO) after examining various documents concluded that the gods in the 72 chassis had moved from the State of Orissa to other States pursuant to a prior contract of sale and, therefore, were sale within the ambit of Section 3(a) of the CST Act.

4. Aggrieved by the above assessment order dated 31st August, 1987, the Opposite Party preferred an appeal before the Assistant Commissioner of Commercial Taxes, Appellate Unit, Bhubaneswar (ACCT). The ACCT by the order dated 31st May, 1989 held that of the 72 chassis, 46 related to sale in course of inter-State sale and the rest were branch transfers. The assessment was reduced by Rs.5,23,302/-. Subsequently, a corrigendum order was issued where the figure was corrected and the assessment stood reduced by Rs.6,25,028/-

5. The State then preferred appeals [S.A. Nos. 19(C) and 82(C) of 1990-91] before the Orissa Sales Tax Tribunal (‘Tribunal’). The Tribunal dismissed the said appeals agreeing with the ACCT and treating the transaction as branch transfers.

6. It is seen that the concurrent findings of the ACCT and the Tribunal are based on facts as is evident from the discussion in para-5 of the order of the ACCT, which reads as under:

> "5. In order to decide the present transaction whether to be inter-State or intra-State on the basis of the conditions cited above I have examined each transaction starting from the date or order, date of transfer of goods and final delivery. The appellant had also submitted a statement indicating the chassis number, engine number of each vehicle, the stock transfer invoice number and date, final invoice number and date on sale to the customer of outside the State. In most of the transactions the gap between the date of branch transfer and the date of final sale was quite wide. In such cases the vehicles were subsequently re-transferred to some region before final sales were completed. These transactions cannot be said to have been taken place under covenant of a pre-arranged sale contract. They are undoubtedly the routine branch transfers. Since necessary 'F' forms were furnished on such stock transfers the learned Sales Tax Officer should have accepted the same. "

7. Consequently, the Court is not satisfied that any substantial question of law arises for consideration. The revision petition is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda