IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV Nos.99 and 100 of 2004

M/s. Chemie (India), Cuttack .... ***Petitioner***

Mr. S. Udgata, Advocate on behalf of
Mr. Pabitra Kumar Nayak, Advocate

-versus-

State of Orissa represented by the Commissioner of Sales Tax, Cuttack .... ***Opposite Party***

Mr. S.S. Padhy, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
16.03.2022

Order No.	
25.	1. These revision petitions by the Assessee-Dealer arise from an order dated 28th February, 2004, passed by the Orissa Sales Tax Tribunal (Division Bench), Cuttack ('Tribunal') allowing the Department's appeal being S.A. Nos.1629 and 1630 of 1997-98.

2. The following question is framed for consideration:

> Whether bandage and gauze cloth are taxable as 'Drugs and Medicines' with reference to Entry-37 of List-C of the Orissa Sales Tax Act or is it exempt from Sales Tax as 'Handloom Fabrics' with reference to Entry-16 of List-A of the Tax Free Goods under the Orissa Sales Tax Rate Chart?

3. The period in the question is 1992-93.

4. The Court finds from the impugned order of the Tribunal that the Petitioner had sought to place reliance on a decision of the two-Judge Bench of the Tribunal in ***State of Orissa v. M/s. Venus***

Surgical, Mangalabag, Cuttack (decision dated 25th October, 1978 in S.A. No.176 of 1978-79) and the Full Bench decision of the Tribunal in ***State of Orissa v. Orissa State Handloom Weavers Cooperative Society*** (decision dated 27th November, 1989 in S.A. No.366-369 of 1986-87).

5. In para 3.1 of the impugned order of the Tribunal, it is simply stated that the Tribunal was differing from the view of the Full Bench and it was concluded that bandage cloth and gauze cloths sold by the dealer in the present case "do come under the broad category of Drug and Medicine subject to levy of tax under the OST Act."

6. The Court is of the view that a two-Judge Bench of the Tribunal could not simply 'differ' from the decision of the Full Bench. It could differ only from an opinion of a coordinate Bench and not from that of a Full Bench since the decision of the Full Bench decision was binding on it.

7. Mr. S.S. Padhy, learned Additional Standing Counsel then offered that what the Tribunal intended to do was to 'distinguish' the decision of the Full Bench and not 'differ' from it.

8. Considering the language used in the impugned order of the Tribunal, the Court considers it appropriate to set aside the impugned order of the Tribunal and remand the appeals, S.A. Nos.1629 and 1630 of 1997-98, filed by the State to the Tribunal for a fresh decision in accordance with law. This time, the Tribunal will discuss in detail the decisions of the coordinate Bench in ***M/s. Venus Surgical*** *(supra)* and the Full Bench in ***M/s. Orissa State Handloom Weavers Cooperative Society*** *(supra).* The question

framed is accordingly left unanswered awaiting the decision of the Tribunal on remand. The aforementioned S.A. Nos.1629 and 1630 of 1997-98 filed by the State will now be listed before the Tribunal on 18th April, 2022 for directions. The LCR be returned forthwith.

9. The revision petitions are disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda