

Paradip Port Trust

Vs

Sales Tax Officer and Others

Civil Appeals No. 1489 of 1998

(S. C. Agarwal, D. P. Wadhwa, A. P. Mishra JJ)

06.03.1998

ORDER

1. Special leave granted.

2. These appeals are directed against the judgment of the Orissa High Court dated 19-2-1998 in writ petitions filed by the appellant Port Trust against the orders of assessment passed by the Sales Tax Officer, Cuttack, in respect of Assessment Years 1990-91 to 1994-95. In the said writ petitions the case of the appellant was that the assessment for sales tax has been made in respect of matters which do not fall within the legislative power of the State to impose sales tax. The writ petitioners raise questions involving interpretation of the words "transfer of the right to use any goods" in sub-clause (d) of clause (29-A) of Article 366 of the Constitution. By the impugned judgment, the High Court has dismissed the writ petitions filed by the appellant on the view that the alternative remedy of an appeal against order of assessment is available under the sales tax law and since the said remedy is available the writ petitions could not be entertained. Having regard to the question that was involved in the writ petitions relating to interpretation of sub-clause (d) of clause (29-A) of Article 366 of the Constitution and the taxability of the transactions in respect of which sales tax has been assessed by the Sales Tax Officer, we are of the view that the High Court should have entertained the writ petitions and should have considered the said question instead of requiring the appellant to avail the remedy of appeal under the Sales Tax Act. The appeals are, therefore, allowed, the impugned judgment of the High Court is set aside and the writ petitions filed by the appellant are remitted to the High Court for consideration on merits. No order as to costs.