

Arjun Flour Mills

Vs

State of Orissa and Others

Civil Appeals No. 8763 of 1994 with No. 8909 of 1994

(S. P. Bharucha, V. N. Khare JJ)

13.08.1998

ORDER

1. It becomes necessary to refer these appeals for hearing by a larger Bench in the following circumstances :

They challenge the validity of Section 5-A of the Orissa Sales Tax Act, 1947, which imposes a surcharge on the total amount of sales tax payable by a dealer. A similar provision was upheld by a Bench of three learned Judges of this Court in *Hoechst Pharmaceuticals Ltd. v. State of Bihar* [(1983) 4 SCC 45 : 1983 SCC (Tax) 248] but it is pointed out by learned counsel for the appellants, with some justification, that the judgment proceeded upon a concession that the provision was relatable to Entry 54 of List II of the VIIth Schedule of the Constitution. The judgment does, however, add that the surcharge partook of the nature of sales tax and, therefore, was within the competence of the State Legislature. Learned counsel for the appellants drew our attention to the judgment of a Bench of seven learned Judges of this Court in *India Cement Ltd. v. State of T.N.* [(1990) 1 SCC 12] where the observations, particularly in para 20, would seem to take a very different view; a cess on the royalty payable for excavation of land was held to be, not a tax on land, but on the royalty, which was land revenue.

2. The papers shall be placed before the Hon'ble the Chief Justice for appropriate directions.

Court Masters.