



IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.23602 of 2024

***M/s. Riverside Utilities Pvt.
Ltd., BBSR***

Petitioner

Represented by Adv.-

Mr. R.C. Jena, Advocate

-versus-

Union of India and others

Opposite Parties

Represented by Adv.-

Mr. A. Kedia, Advocate
(Jr. Standing Counsel)

Mr. S. Mishra, Advocate
(Standing Counsel)

Mr. S. Das, Advocate
(Additional Standing Counsel)

CORAM:

**THE HON'BLE MR. JUSTICE ARINDAM SINHA
AND
THE HON'BLE MR. JUSTICE M.S. SAHOO**

**ORDER
25.09.2024**

WP(C) no.23602 of 2024 and I.A. no.12320 of 2024

**Order No.
01.**

1. Mr. Jena, learned advocate appears on behalf of petitioner and submits, his client is a distribution company. Impugned is circular dated 1st March, 2018 issued by Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise and Customs. Under



challenge is clarification (1) against query (1) in serial no.4 in the circular. He submits, fees and charges mentioned in clauses (i) to (v) under clarification (1) are incidental to transmission, exempted as clarified by said clarification itself. Hence, the fees and charges under clauses (i) to (v) are also exempted. Pursuant to the clarification demands have been made. There be interference, interim at this stage. This is because the clarification has been struck down by, inter alia, the Gujarat High Court on **judgment dated 19th December, 2018 in Torrent Power Limited v. Union of India available at (2018) SCC OnLine Guj 4808**. He submits further, revenue preferred Special Leave Petition to the Supreme Court. There was direction for issuance of notice but no order of stay.

2. Mr. Kedia, learned advocate, Jr. Standing Counsel appears on behalf of revenue. He submits, revenue has filed Special Leave Petition against striking down of the clarification by, inter alia, the Gujarat High Court. Petitioner has just been issued with a show cause notice. There is no reason for interference at this stage.

3. Mr. Das, learned advocate, Additional Standing Counsel appears on behalf of State.

4. We are inclined to pass interim order and adjourn the writ petition sine die awaiting adjudication of the question by the Supreme Court. This is because the Supreme Court did not stay the striking down of the clarification. The struck down clarification has given rise to issuance of



show cause notice and acting further on basis of the clarification, there will be demand. Since the show cause notice was issued in respect of the clarification, struck down by the Gujarat High Court, we following judgment of the Supreme Court in **Kusum Ingots and Alloys Ltd. v. Union of India**, reported in (2004) 6 SCC 254, interpret the striking down to be applicable in this State. Paragraph 22 from **Kusum Ingots** (supra) is reproduced below.

“22. The court must have the requisite territorial jurisdiction. An order passed on writ petition questioning the constitutionality of a Parliamentary Act, whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.”

5. Impugned show cause notice dated 25th September, 2023 and followed by demand order dated 13th June, 2024 will remain stayed. The writ petition is adjourned sine die awaiting adjudication by the Supreme Court on the Special Leave Petition pending in said Court, inter alia, against **Torrent Power Limited** (supra). Liberty to mention.

(Arindam Sinha)
Judge



(M.S. Sahoo)
Judge