
(1970) 03 OHC CK 0020
In the Orissa High Court
Case No : O.J.C. No. 470 of 1967

Alguram Harinarayan Ram

APPELLANT

Vs

Assistant Commissioner of Sales Tax, Cuttack Range

RESPONDENT

Date of Decision : 30-03-1970

Acts Referred:

Citation : (1971) 27 STC 385

Hon'ble Judges : G.K. Misra, C.J.; S. Acharya, J

Bench : Division Bench

Advocate : S.C. Das, for the Appellant; Standing Counsel, for the Respondent

Judgement

G.K. Misra, C.J.—The petitioners are carrying on business in hardware and iron materials, amongst other articles, about the taxation of which there is no dispute. They sell B.P. sheets (iron plates) and iron rods. The method adopted by them is to cut into pieces the B.P. sheets and iron rods according to the needs of the customers. During the relevant period--quarters ending 31st March, 1965 and 30th September, 1965--they were assessed at five per cent. in respect of the B.P. sheets and iron rods. Their case is that they were liable to be taxed at two per cent. under entry 3C (b) and (c). The assessing officer and the Assistant Commissioner of Sales Tax rejected their case and assessed them at five per cent. in respect of the B.P. sheets and iron rods. Without going up in appeal to the Tribunal the petitioners have filed this writ application against the appellate order of the Assistant Commissioner of Sales Tax.

2. Under Notification No. 33927-CTA-130/57 F. dated the 30th December, 1957, certain goods were taxable at rates as indicated in the schedule attached to the notification .The relevant entry stands thus:

Sl. No. Description of goods. Rate of tax. 3C Iron and steel, that is to say-- Two per cent. (b) iron plates sold in the same form in which they are directly produced by the rolling mill; (c) steel scrap, steel ingots, steel billets, steel bars and rods. 3. It would appear from entry 3C(c) that iron rods are taxable at

two per cent. Even though the longer iron rods are cut into pieces, they continue to remain as iron rods. The assessing authorities were wrong in taxing the petitioners at five per cent. under entry 68 which speaks of other articles.

4. So far as the B.P. sheets are concerned, the entry says that iron plates sold in the same form in which they are directly produced by the rolling mill are to be taxed at two per cent. Once the plates are cut into pieces they cannot be said to retain the form in which they were directly produced by the rolling mill. The word "form" according to the Oxford Dictionary carries the meaning "shape or configuration". Once the bigger plate is cut into pieces according to the wishes of the customers the plate cannot be said to retain the form, at any rate the form which it had when it was produced directly by the rolling mill. Such cut iron plates were rightly assessed at five per cent.

5. Mr. S. C. Das placed reliance on *Rayavarapu Mrityanjaya Rao v. The State of Andhra Pradesh* [1967] 20 S.T.C. 417, where a Division Bench of the Andhra Pradesh High Court held that a casuarina tree cut into short pieces still retained its character as a casuarina tree. There, the proviso under examination was altogether in different language. It was to the effect:

Provided that in the case of a sale by a person of agricultural or horticultural produce grown "by himself or grown on any land in which he has an interest...shall be excluded from his turnover.

The question for consideration in that case was not whether the bigger casuarina tree lost its form when cut into pieces ; but whether the cut pieces continued to be the agricultural or horticultural produce grown by the dealer. After it was cut into pieces, it still continued to be agricultural or horticultural produce of the dealer. This decision has no application.

Mr. Das also placed reliance on *The State of Gujarat v. Sakarwala Brothers* [1967] 19 S.T.C. 24 (S.C.), wherein the Supreme Court held that the word "sugar" in entry 47 was intended to include within its ambit all forms of sugar. Emphasis was laid on the essential quality of the goods, namely, whether it would conform to the definition of "sugar".

6. We accept Mr. Das's contention with regard to iron rods that they were not taxable at five per cent. The writ application is accordingly allowed in part. The assessment with regard to iron rods will be modified by the assessing officer by taxing at two per cent. and not at five per cent.

7. We would, however, make it clear that in a case of this nature this court should not ordinarily interfere in exercise of jurisdiction under articles 226 and 227 of the Constitution. The matter ought to have been canvassed before the Tribunal in appeal. But with respect to iron rods, the language is plain and simple. We did interfere to prevent further harassment to the party.

8. In the result, the writ application is allowed in part as indicated above. A writ of certiorari be issued modifying the assessment order as indicated above. In the

circumstances there will be no order as to costs.

A. Acharya, J.

I agree.