
(1987) 11 OHC CK 0001

In the Orissa High Court

Case No : O.J.C. No's. 991, 992 and 993 of 1980

B. Agarwala

APPELLANT

Vs

Sales Tax Officer, Assessment Unit and Another

RESPONDENT

Date of Decision : 20-11-1987

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15

Citation : (1988) 65 CLT 344 : (1988) 69 STC 231

Hon'ble Judges : L. Rath, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : B. Agarwalla and R.S. Agarwalla, for the Appellant; A.B. Misra, Standing Counsel and S. Mohapatra, Additional Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—These three writ petitions involve common question of law and as such had been heard together and are being disposed of by this common judgment.

2. The short question which arises for consideration in all these three writ applications is:

Whether the purchasing dealer having purchased certain scraps on the strength of a declaration in form XXXIV for resale in Orissa, when resells the goods by converting the scraps into rods and rounds can be said to have "utilised the goods for any other purpose" so as to attract the second proviso to Section 5(2) (A)(a)(ii) of the Orissa Sales Tax Act, or not ?

This question directly came up for consideration before this Court in three writ petitions, namely, O.J.C. Nos. 618, 619 and 973 of 1979 (Konark Steel Industries v. Sales Tax Officer [1988] 69 STC 187 and a Bench of this Court consisting of Honourable the Chief Justice and our learned brother Justice K. P. Mohapatra, decided the same by judgment dated 24th of July, 1987 and held that in spite of

the conversion of the materials purchased by the petitioners from the selling dealers, the various commodities manufactured by them in their rolling mills although became by name different commercial commodities, they being specifically enumerated and mentioned in the definition of "iron and steel", the assessing authority had completely misdirected himself in holding that they became different goods.

This question again came up for consideration in O.J.C. Nos. 281 and 282 of 1980 [Konark Steel Industries (P.) Ltd. v. Sales Tax Officer [1988] 69 STC 202] disposed of on 11th September, 1987, before another Bench to which one of us (Justice G. B. Patnaik) was a party and following the decision in O. J. C. Nos. 518, 519 and 973 of 1979 [Konark Steel Industries v. Sales Tax Officer [1988] 69 STC 187 (Ori)] it was held that there had been no violation and, therefore, the second proviso to Section 5(2)(A)(a)(ii) of the Orissa Sales Tax Act did not apply.

3. When these cases were listed for hearing, the learned Standing Counsel appearing for the Revenue fairly stated that the point involved in these cases was one and the same which had already been decided against the Revenue in the two earlier Bench decisions of this Court and, therefore, if rules of precedent were to be followed, then these cases were bound to be allowed. He, however, "submitted that the two Bench decisions of this Court, referred to earlier, required reconsideration and these matters should be referred to a larger Bench for that purpose. For that purpose the matter was permitted to be argued at length both by the learned Standing Counsel as well as by the learned counsel appearing for the petitioner.

4. The main basis on which the learned Standing Counsel urges that the decision in Konark Steel Industries case [1988] 69 STC 202 (Ori) is not correct is that the earlier Division Bench did not consider the decision of the Supreme Court in the case of Devi Doss Gopal Krishnan v. State of Punjab [1967] 20 STC 430 and misapplied the decision of the Supreme Court in the case of State of Madhya Bharat (now the State of Madhya Pradesh) v. Hiralal [1966] 17 STC 313. But on consideration of the arguments advanced, we do not find any force in the aforesaid contention.

5. Before examining the several case-laws on the point, it would be profitable to note the scheme of the Act. Section 5(1) of the Orissa Sales Tax Act provides that the tax payable by a dealer under the Act shall be levied on his taxable turnover at such rate not exceeding sixteen per cent and subject to such conditions as the State Government may from time to time by notification, specify. Pursuant to this power conferred u/s 5(1), the State Government has issued notification and all the goods subject to sales tax have been enumerated in List C. Item No. 46 of List C provides rate of tax at four per cent on "iron and steel". The different species of iron and steel have been specified under that entry from serials (i) to (xvi). "Scrap" is described in serial (i) and "rods" and "rounds" are included within "steel bars" described in serial (iv) and the rate of tax is same, i.e., four per cent. Section 5(2)(A) defines "taxable turnover" of a

dealer and it excludes the sale of any goods notified from time to time as tax-free u/s 6 and of the packing materials in respect of such goods as well as sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration for resale by him in Orissa in a manner that such resale shall be subject to levy of tax under the Act. The first proviso to the aforesaid section prescribes the procedure for ascertaining the deductions contemplated under Clauses (i) and (ii) of Section 5(2)(A)(a). The second proviso to the aforesaid section, however, stipulates that where a registered dealer purchases certain goods free of tax after furnishing the declaration in the prescribed manner as contemplated under the first proviso, but utilises the same for any other purpose, then the price of the goods so purchased shall be included in the taxable turnover of the purchasing dealer. Interpretation of this proviso is involved in the present case and the court is required to find out what is the true meaning of the expression "but are utilised by him for any other purpose". The plain meaning of the second proviso, as it stands, is that the goods purchased by a registered dealer for resale in Orissa by giving a declaration must be resold in Orissa and should not be utilised for any other purpose by the purchasing dealer. There is no indication in the second proviso to restrict the manner of resale. Applying the rule of construction of giving literal meaning to a statute, in our opinion, the second proviso will be attracted to a transaction if the purchasing dealer utilises the goods for purpose other than resale. But "scrap" being resold in the form of "rods and rounds" will not attract the second proviso to Section 5(2)(A)(a)(ii) particularly when the rate of tax as provided in item No. 46 of the goods liable for taxation on sale is four per cent for all these categories of goods.

6. Mr. Misra, the learned Standing Counsel for the department strenuously relies upon the decision of the Supreme Court in *Devi Dass Gopal Krishnan's* case [1967] 20 STC 430 and contends that this decision has not been considered by the earlier Division Bench while deciding the case of *Konark Steel Industries* [1988] 69 STC 187 (Ori) in O.J.C. Nos. 518, 519 and 973 of 1979. The point for consideration before the Supreme Court in the aforesaid case was whether goods purchased and goods sold were identical ones or not so that there could be or could not be levy of purchase tax at one point and again sales tax at another point. The main argument advanced in this connection was that the amended provision of Section 2(ff) of the Punjab Sales Tax Act was void as it contravened Sections 14 and 15 of the Central Sales Tax Act, 1956, whereunder sales tax was prohibited to be imposed on declared goods at more than one stage, whereas under the Punjab Act, it could be imposed both at the purchase point and at the sale point of the transaction entered into by the manufacturer. This contention was repelled by the Supreme Court by holding that when scrap is made into rolled steel or rods, there is a vital change in the process of manufacture and a different commodity is produced. During the process, the scrap iron loses its identity and becomes a new marketable commodity and the process is certainly one of manufacture. The emphasis, therefore, in the aforesaid case was to find out whether there had been a process of manufacture by converting the scrap

into rolled steel. We are unable to find out as to how the aforesaid decision applies in interpreting the second proviso to Section 5(2)(A)(a)(ii). As we have stated earlier, the second proviso can only be attracted where a dealer purchases the goods by giving a declaration in the prescribed form for resale but instead of reselling utilises the same for any other purpose. The word "resale" has not been defined and in the absence of any definition, we are not prepared to accept the contention of the learned Standing Counsel to construe it to mean that it must be sold in the same form in which it was purchased. It is a well-known rule of construction of statutes that one should adhere to the ordinary meaning of the word used and to the grammatical construction unless that is at variance with the intention of the legislature. In interpreting a statute, there is always a caution that court should not add anything to the statute unless that is absolutely necessary. In that view of the matter, we are not prepared to add anything more to the second proviso to Section 5(2)(A)(a)(ii) as suggested by the learned Standing Counsel and must hold that there has been no violation when scrap is purchased for resale and is resold as rods and rounds, both the items being "iron and steel" enumerated in item No. 46 of List C and the rate of tax on sale of both is four per cent. In the circumstances, we find no justification in the submission of the learned Standing Counsel that the earlier decision in Konark Steel Industries case [1988] 69 STC 187 (Ori) has not been correctly decided and we are unable to accede to his request for referring these cases to a larger Bench for reconsideration of the judgment in O. J. C. Nos. 518, 519 and 973 of 1979 Konark Steel Industries case [1988] 69 STC 187 (Ori). We find no reasonable ground to differ from the view taken by the two earlier Bench decisions of this Court and, in our opinion, those decisions must be held to have been correctly decided. The extra demand raised by the assessing officer under the impugned order (annexure 1 to each of the writ applications) on the basis that the second proviso to Section 5(2)(A)(a)(ii) applies is hereby quashed and each of the writ applications is allowed.

There will be no order as to costs.

L. Rath, J.

I agree.