(1977) 08 OHC CK 0040

In the Orissa High Court

Case No : Special Jurisdiction Case No''s. 70 and 71 of 1975

Engineers Corporation APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 11-08-1977

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 24(1), 5(2A)

Citation : (1977) 44 CLT 347

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : P.K. Misra, K.K. Rath and R.L. Bose, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—These are two references made u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as ''the Act'') at the instance of the Assessee and the following questions have been referred for opinion of the Court by the Member, Sales Tax Tribunal.

(1) Whether in the facts and circumstances of the case, the transactions dealt in by the Assessee are intra-State sales or inter-State sales?

(2) Whether in the facts and circumstance of the case, the Assessee can be adjudged to have contravened the provisions of Section 5(2)(A)(a)(ii) of the Orissa Sales Tax Act?

(3) Whether in the facts and circumstances of the case, H.B. wires would come under the category of rolled steel section and as such would be taken as declared goods?

2. The periods of assessment are 1968-69 and 1969-70. Assessee is a registered dealer under the Act and carries on business in iron and steel goods as also steel furnitures. The Assessee used to purchase iron and steel goods from M/s. Agro

and Small Industries Corporation Limited at Cuttack and used to sell and give delivery of the sold goods within the State to the representatives of buyers located outside the State. For the year 1968-69, Assessee filed its return and paid the admitted tax. The Assessing Officer found that the Assessee had paid tax at 3 per cent on the sale of G.P. sheets and G.C.I. sheets, while the rate of tax was 5 per cent. Accordingly, he demanded additional tax. For the next year, the Assessing Officer found the discrepancy in the tax rate as in the first year. He further found that the Assessee had purchased goods on the basis of furnishing declarations that the purchased goods would be re-sold in Orissa but it had contravened the condition in the declarations and had sold the goods outside the State and bad collected Central Sales Tax. Accordingly, the Sales Tax Officer raised a demand by invoking the proviso to Section 5(2)(A)(a)(ii) of the Act.

3. In first appeal, Assessee contended that G.C. sheets had been sold in the same form as they were produced in the rolling mill and, therefore, they came within the meaning of declared goods and accordingly their sales were exigible to tax at 3 per cent. Similar claim was raised in regard to H.B. wires. The Appellate Authority took the view that the nature of transactions carded on by the Assessee required further examination in order to determine whether the transactions were intra-State sales or inter-State sales in character. Accordingly, he remanded the matter for re-assessment.

4. Two appeals were carried to the Tribunal. The Tribunal noticed the points indicated but ultimately came to hold that the remand directed by the Assistant Commissioner for a fresh assessment after thorough scrutiny was justified. He accordingly dismissed the appeals.

5. We do not think it- is a fit case where the references should have been made to this Court with the questions posed. The first Appellate Authority vacated the assessments and directed fresh assessment after due enquiry to be made. No finding was sustained; nor was any finding on any score intended to be given. In second appeals, the Tribunal upheld the order of remand. It is true that the Tribunal made certain statements, which need not, however, have been said when the order of remand made by the first Appellate Authority was being upheld.

6. No question has been raised regarding the validity of the remand. Therefore, we are not in a position to hold that the remand was not warranted. Once the direction of remand stands, there is indeed no finding of fact from which any question of law would arise for determination. In the absence of a challenge to remand, in the facts of these cases, the references seem to be unwarranted.

7. As to whether the proviso to Section 5(2)(A)(a)(ii) of the Act is applicable must now be examined by the Sales Tax Officer keeping in view the law as settled by this Court in a Full Bench decision M. and M.T. Corporation v. State of Orissa1.

We accordingly decline to answer the questions referred to us for the reasons indicated above. The references are discharged.

K.B. Panda, J.

I agree.

Ordered accordingly.

