(1975) 11 OHC CK 0017

In the Orissa High Court

Case No : Special Jurisdiction Case No. 60 of 1974

Joda East Iron Mines APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 06-11-1975

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 2(g)

Citation : (1976) 37 STC 574

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

Bench : Division Bench

Advocate : S. Patnaik, for the Appellant; Standing Counsel (S.T.), for the Respondent

Judgement

R.N. Misra, J.—At the instance of the assessee, four questions have been referred for opinion of the court by the Member, Additional Sales Tax Tribunal:

(1) Whether, on the facts and in the circumstances of the case, the receipt from sale of foodgrains which is compulsorily supplied to the workmen of the assessee''s mines without profit under the obligation of an agreement with recognised union of its workmen is a part of the assessee''s turnover as a ''dealer'' under the Orissa Sales Tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the sale of foodgrains by the assessee made to its workmen of its mines amounts to sale within the meaning of Section 2(g) of the Orissa Sales Tax Act so as to be included in the assessee''s turnover for the purpose of assessment ?

(3) Whether, on the facts and in the circumstances of the case, occasional disposal of used empty drums, used G. I. sheets, used and unserviceable hose pipes and used and rejected parts of machineries and other scrap materials by the assessee amounts to sale in the course of business so as to attract the provisions of the Orissa Sales Tax Act on the sale proceeds ?

(4) Whether, on the facts and in the circumstances of the case, the supply of

cement and steel to the contractors for construction of the assessee''s own building amounts to sale under the Orissa Sales Tax Act ?

2. The assessee is a mine-owner carrying on mining operation in the district of Keonjhar. It supplied cement and steel to contractors and claimed that these were in connection with the assessee''s own constructions. It also supplied rice and wheat to its workmen after procuring the same from Government sources. The assessee disposed of empty drums, used G. I. sheets and unserviceable hose pipes as also scrap materials during the year 1968-69. In respect of the disposal of the scrap materials, the assessee collected sales tax and deposited the same. According to the assessee, there was no liability under the Orissa Sales Tax Act (hereinafter referred to as the "Act") in respect of the aforesaid transactions.

3. The assessing officer repelled all the contentions and taxed the sale of foodgrains, the sale of empty drums, used G. I. sheets, unserviceable hosepipes, rejected parts of the machineries and other scrap materials. Supplies of cement and steel were also taxed.

4. The assessee appealed to the Appellate Assistant Commissioner. The appellate authority came to hold that there was liability for payment of tax in respect of the sales of rice and wheat. In regard to the supplies of cement and steel, the appellate authority was of the view that the matter should be remanded to the Sales Tax Officer for a finding as to whether the entire thing was a building contract or the supplies were separate from the rest and, therefore, liable to tax. In regard to the sale of used materials, the appellate authority was of the view that the same had been rightly taxed.

5. The assessee''s appeal before the Appellate Tribunal failed. Thereupon, the assessee applied for a statement of the case.

6. Mr. Patnaik appearing for the assessee concedes that so far as the first two questions are concerned, there has already been a determination by this Court in a similar case against him in Tata Iron & Steel Co. Ltd. v. State of Orissa [1975] 35 S.T.C. 195. For the reasons indicated in the said decision, we are of the view that the sale of foodgrains is liable to tax. The first two questions must, therefore, be answered against the assessee by saying that the sale of foodgrains by the assessee made to its workmen is liable to tax under the Act.

7. So far as the question of supply of cement and steel is concerned, the matter has rightly been remanded by the first appellate authority for investigation and the question does not arise for determination at this stage. We decline to answer the connected question.

8. So far as the turnover relating to disposal of used drums, used G. I. sheets, used and unserviceable hose pipes and used and rejected parts of machineries and other scrap materials, it is contended by Mr. Patnaik for the assessee that the turnover is not liable to tax because in regard to such commodities, the

assessee cannot be treated as a dealer. Admittedly, the assessee carries on mining business. Disposal of these commodities are casual and the assessee cannot be said to be carrying on business in these commodities. Reliance is placed on the decision of the Supreme Court in the case of State of Gujarat Vs. Raipur Manufacturing Company Ltd., . In the reported decision a manufacturer of cotton textiles had been disposing of old and discarded machinery, stores and scrap and miscellaneous goods, coal and byproducts and subsidiary products not necessary for its manufacturing process. The court held that in disposing of old and discarded items such as stores, machinery, iron scrap, cans, boxes and such other miscellaneous goods, the company was not carrying on business of selling those items of goods. Undoubtedly from the frequency, volume, continuity and regularity of transactions carried on with a profit-motive, an inference that it was intended to carry on business in the commodity may arise. But it does not arise merely because the price received by sale of discarded goods entered the accounts of the trader and may on an overall view have enhanced his total profit, or indirectly reduced the cost of production of goods in the business of selling in which he was engaged. An attempt to realise price by sale of surplus unserviceable or discarded goods does not necessarily lead to an inference that business was intended to be carried on in those goods, and the fact that unserviceable goods were sold and not stored so that badly needed space was available for the business of the assessee also could not lead to the inference that business was intended to be carried on in selling those goods.

The principle indicated in the aforesaid decision equally applies to the facts of the case. On the evidence recorded in the forums below, the irresistible conclusion to reach is:

On the facts and in the circumstances of the case, disposal of used empty drums, used G. I. sheets, used and unserviceable hose pipes and used and rejected parts of machinery and other scrap materials was not in the course of business and the assessee was not a dealer qua these sales. Therefore, this part of the turnover was not exigible to sales tax.

As success is divided, parties are directed to bear their respective costs of this reference.

Panda, J.

I agree.

