(1989) 07 OHC CK 0020

In the Orissa High Court

Case No : S.J.C. No. 14 of 1985

Krishna Steel Industries and Krishna Rolling Mills — APPELLANT

Vs

State of Orissa — RESPONDENT

Date of Decision : 25-07-1989

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

Citation : (1990) 79 STC 185

Hon'ble Judges : H.L. Agrawal, C.J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : B. Agrawala, M.L. Agarwala and S.P. Dalai, for the Appellant; A.B. Misra, Senior Standing Counsel (Commercial Taxes), for the Respondent

Judgement

S.C. Mohapatra, J.—This is a reference u/s 24(2)(b) of the Orissa Sales Tax Act (hereinafter referred to as "the Act") at the instance of the dealer. A statement of the case on the following question of law arising out of the order was called for :

"Whether on the facts of the case and on an interpretation of different provisions contained in the Orissa Sales Tax Act, the Tribunal was correct to hold that the levy of tax under the second proviso appended to Section 5(2)(A)(a)(ii) of the Act was justified ?".

2. The dealer is a partnership firm being registered under the Act and carries on the business in iron and steel. It is entitled to purchase iron and steel scrap free of tax for resale as it revealed from its certificate of registration. For the year 1979-80, the petitioner purchased scrap and furnished declaration in form XXXIV for resale. Out of the purchased scrap the dealer utilised a portion of the scrap in manufacturing mild steel rounds in its manufacturing units. The purchase price of such scrap so utilised comes to Rs. 42,15,660.53. The assessing officer held that the dealer has contravened the declaration and as such is liable under the second proviso to Section 5(2)(A)(a)(ii) of the Act.

This was confirmed by the Assistant Commissioner in the first appeal and by the

Tribunal in the second appeal.

3. Mr. B. Agarwala, the learned counsel for the dealer, submitted that in the absence of any finding that the mild steel was not sold but was utilised for purposes other than resale, the second proviso to Section 5(2)(A)(a)(ii) of the Act is not attracted for making the petitioner liable. Mr. A.B. Misra, learned Senior Standing Counsel, Commercial Taxes Department, urged that by utilising the scrap for manufacture of mild steel rounds the petitioner has utilised the scrap for a purpose other than resale and accordingly, the assessing authorities were justified in making the petitioner liable on that ground.

4. This question is no longer res integra. Various Benches including the present Bench have held at different times that in such circumstances, the liability of the dealer under the second proviso to Section 5(2)(A)(a)(ii) is not attracted. See [1988] 69 STC 187 (Orissa) (Konark Steel Industries v. Sales Tax Officer), [1988] 69 STC 202 (Orissa) (Konark Steel Industries (P.) Ltd. v. Sales Tax Officer), [1988] 69 STC 231 (Orissa) (B. Agarwala v. Sales Tax Officer), [1988] 70 STC 228 (Orissa) (Utkal Steels Limited v. Sales Tax Officer). This Bench in O.J.C. No. 2114 of 1980 decided on 6th November, 1987 [Konark Steel Industries (P.) Ltd. v. Sales Tax Officer], had also taken the same view. The contention of the learned Standing Counsel relying upon the decision of the Supreme Court in [1967] 20 STC 430 (Devi Dass Gopal Krishnan v. State of Punjab) was considered in one of the decisions and the decision was distinguished.

5. In view of the aforesaid decisions of this Court, the question of law arising out of the order is answered in the negative in favour of the assessee. There shall be no order as to costs.

H.L. Agrawal, C.J.

6. I agree.

