(2022) 04 OHC CK 0060

In the Orissa High Court

Case No : STREV No. 125 Of 2008

State Of Orissa	APPELLANT
Vs	
M/s. Tata Robins Frashers Ltd	RESPONDENT

Date of Decision : 11-04-2022

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 2(JJ), 24(2)(b)
Central Sales Tax Act, 1956 — Section 3, 3(a), 3(e)

Citation : (2022) 04 OHC CK 0060

Hon'ble Judges : Dr. S. Muralidhar, CJ;R.K. Pattanaik, J

Bench : Division Bench

Advocate : Sunil Mishra, S.P. Sarangi

Final Decision : Dismissed

Judgement

1. This is a petition by the State under Section 24(2)(b) of the Orissa Sales Tax Act, 1947 (OST Act) praying for a direction to the Orissa Sales Tax Tribunal (Tribunal) to refer the following questions of law for opinion of this Court along with a statement of the case:

"1. Whether in the facts and circumstances of this case the learned Sales Tax Tribunal is correct in law in coming to the conclusion that:-

(a) The movement of the goods transported from the outside the State to the site of execution of work by the contractor is the result of a sale or incident of a contract of sale when in fact and effect the movement of the goods is neither the result of a sale nor incident of a contract of sale.

(b) A concluded sale has taken place in respect of the goods transported from outside the State when the buyers have not taken delivery of such goods brought to the site of work and whether a mere movement of the goods same as concluded sale make the transaction as one falling under Sec.3(a) of the O.S.T. Act.

2. Whether in the facts and circumstances of the case where the contract is an turnkey basis the conclusion of the learned Sales Tax Tribunal that:

(i) There has been transfer of property for a consideration in the goods, moved from outside the State, in the course of inter-State trade or commerce and;

(ii) The sale of such goods is an inside the sale in respect of the State of origin so as to be covered under Section 3(a) of the C.S.T. Act are correct in law ?

3. Whether in the facts and circumstances of the case, the transactions in the goods from outside the State are purely inter-state sale exigible to tax under the C.S.T. Act and not one in the course of inter-state trade and commerce falling under section 3 of the C.S.T. Act?"

2. The background facts are that the Opposite Party entered into a contract with M/s. Tata Iron and Steel Company Ltd., Jamshedpur for and on behalf of M/s. IPITATA Sponge Iron Plant Ltd., Biliepada in Orissa for designing, engineering, manufacturing, supply erection and commissioning of equipments for the materials handling system for IPITATA Sponge Iron Steel Plant. The question that arose before the Sales Tax Officer (STO) was whether this entire transaction was in the nature of an inter-state sale as claimed by the Assessee and therefore not amenable to tax under the Orissa Sales Tax Act, 1947 (OST Act) or was it an intra-state sale?

3. The STO, by the assessment order dated 29th August, 1987 for the year 1985-86, came to the conclusion that on examination of the conditions attached to the agreement between the parties that "it can be safely concluded that the contract executed by the dealer at IPITATA Bileipada is an indivisible contract and hence the transactions come under the purview of the definition of 'Sale' under Section 2(JJ) of the O.S.T. Act." It was noted by the STO that the dealer had executed the alleged work from the year 1984-85 to 1986-87 and in that view of the matter, the dealer had to be assessed as a works contractor during the year under review.

4. The Opposite Party then filed an appeal which came to be allowed in part by the Assistant Commissioner of Sales Tax (ACST), Cuttack II Range by an order dated 16th August, 1988. The said order was common to the years 1985-86 and 1986-87. The ACST came to the conclusion that the contract was a 'turnkey' one, the primary object being the construction of the material handling system. It was held that on analysis the various clauses of the purchase order, it appeared that 'the title to the equipments supplied from outside the State in the instant case does not pass on to the contractee immediately after its arrival at the site and the title to the goods still remains with the contractee until the commissioning of the plant'. It was concluded that supply and the erection portions were interlinked. It was held that mere submission of 'C' forms against the supplies made from outside the State, did not imply that the transaction was in the course of 'inter-state trade'.

5. The plea that the cost of labour and services must be entirely excluded was also not accepted, since it was held that these get merged with the cost of the goods. It was however held that deduction of Rs. 3,42,200/- towards the labour charges allowed by the STO to arrive at the materials involved in the fabrication and erection work appeared low. Consequently, 65% of the total bill amount of Rs.11,40,686/-, which worked out to Rs.7,41,445/- was allowed as labour charges.

6. The Opposite Party then went in appeal before the Tribunal which analysed the clauses of the agreement in great detail. The Tribunal came to the conclusion that the impugned transactions come within the purview of inter-state sale under Section 3(e) of the Central Sales Tax Act (CST Act) and outside the tax net under the O.S.T. Act. It was held that there was a movement of goods from a place outside Orissa to the work site in Orissa on the strength of declaration of Form 'C'. Goods were dispatched in which the Assessee was the consigner and the contractee was the consignee and the contractee used his own goods in execution of the works contract through the Assessee who erected and commissioned equipment for the materials handling system for the contractee.

7. This Court has heard the submissions of Mr. Sunil Mishra, learned Additional Standing Counsel for the Department and has examined carefully the orders of the STO, the ACST and the Tribunal. The Court is unable to find any errors having been committed by the Tribunal in coming to the conclusion as noted above. Indeed, if the goods moved from outside Orissa to Orissa on the strength of declaration of Form 'C', then it cannot be said that there was one indivisible contract and that it would amount to a sale within the State of Orissa. It was correctly noted by the Tribunal that although the execution of the works contract took place inside Orissa, the total materials were brought from outside the State by the contractee from the contractor.

8. Consequently, the Court is not persuaded to direct the Tribunal to refer the above questions to this Court for a decision. The STREV is accordingly dismissed.

....

