(1982) 10 OHC CK 0009

In the Orissa High Court

Case No : S.J.C. No''s. 45 and 46 of 1978

State of Orissa APPELLANT

Vs

Orissa Steel Corporation RESPONDENT

Date of Decision : 04-10-1982

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

Citation : (1983) 54 STC 391

Hon'ble Judges : R.N. Misra, C.J;J.K. Mohanty, J

Bench : Division Bench

Advocate : B. Agarwala, for the Respondent

Judgement

R.N. Misra, C.J.—At the instance of the State, two questions have been referred for opinion of this Court by the Sales Tax Tribunal u/s 24(1) of the Orissa Sales Tax Act of 1947 :

(1) Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal, is correct in his view that even in sales in the course of inter-State trade and commerce there can be sales inside the State if the are inside the State of Orissa ?

(2) Whether, on the facts and in the circumstances of the case, the ''. Sales Tax Tribunal, is correct in his view that there was no contrave Section 5(2)(A)(a)(ii) of the O.S.T. Act and the assessee is not liable to pa sales tax ?

2. There can be no dispute that on the basis of the law as it stood ing two decisions of this Court in the case of State of Orissa v. Jokarim nanda [1976] 37 STC 157 and in the case of M.M.T.C. of India Ltd. v. Orissa [1976] 38 STC 189 (FB), both the questions referred should ha answered in favour of the assessee, but notice must be taken of the posi in the meantime following the Full Bench decision of this Court, the been amended by the amending Act 4 of 1978 with retrospective ef under the amended provision, the questions have got to be answered in i the State. The amended provision, it is conceded by Mr. Agarwala

assessee-opposite party, has introduced a different foundation and the ba which this Court had taken its view is no more sustainable. It is a i writ applications have been filed challenging the vires of the amending in reference jurisdiction as settled by the Supreme Court, it is not open go into the question of vires. On the law as it stands with the amendmi the questions must be answered in favour of the revenue and age assessee.

3. Mr. Agarwala says that he intends to file a writ application and i the vires of the amending Act. It is open to him to do so and in ultimate decision is that the amending provision is ultra vires, it woul that the ratio of the Full Bench decision referred to above would be rest the assessee would have his way.

4. Our answer on the law as existing would, therefore, be in favoi revenue subject to what we have indicated above.

There will be no order as to costs.

J.K. Mohanty, J.

I agree.

