

(1979) 07 OHC CK 0004

In the Orissa High Court

Case No : Special Jurisdiction Case No. 3 of 1976

Steel Trading Co.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 26-07-1979

Acts Referred:

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

Citation : (1980) 45 STC 142

Hon'ble Judges : R.N. Misra, J;P.K. Mohanti, J

Bench : Division Bench

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

Judgement

R.N. Misra, J.—This is a reference made u/s 24(1) of the Orissa Sales Tax Act, at the instance of the assessee, by the Member, Additional Sales Tax Tribunal, stating a case and referring the following questions for opinion of this Court:

(1) Whether, on the facts and in the circumstances of the case, the sales effected by the petitioner to dealers outside Orissa are sales as denned u/s 2(g) of the Orissa Sales Tax Act read with the explanations appended thereto, as the goods were in Orissa when the contract for inter-State trade was entered into and thereby the petitioner has complied with their obligations of resale in Orissa?

(2) Whether, on the facts and in the circumstances of the case, the petitioner's turnover of purchases made by giving declaration is not liable to be added to the taxable turnover for violating the provisions of Section 5(2)(A)(a)(ii) of the Orissa Sales Tax Act when he sold these very goods subsequently in the course of inter-State trade?

(3) Whether, on the facts and in the circumstances of the case, the petitioner's purchase of iron and steel materials by giving declarations for resale in Orissa and his subsequent sales in the course of inter-State trade are two distinct transactions or one transaction and, if they are distinct, whether the subsequent

sale will be treated as a compliance of the obligation of resale given at the time of purchase?

4. The short facts to appreciate the real point in issue are these: The assessee is a partnership firm carrying on business in iron and steel materials at Rourkela. It got registered as a dealer under the Orissa Sales Tax Act and was assigned registration No. RL 2063. For the quarter ending 30th September, 1971, the assessee submitted a return of its turnover disclosing a sum of Rs. 4,047.20, but offered to pay tax on Rs. 260 only. The assessing officer found that the total purchase was to the tune of Rs. 12,22,361.88, There was a branch transfer as also inter-State sale amounting to about Rs. 6,33,325.66. The record is not clear as to how much out of this amount was branch transfer and what exactly was the quantum of inter-State sale. As the purchase was on the basis of declarations and the goods were allowed to move outside the State, the sale price was added to the turnover under the proviso. Ultimately, the taxable turnover for the quarter was estimated at Rs. 15,83,314.15 and the tax was demanded.

5. In appeal, the assessment was upheld by the Assistant Commissioner. In second appeal, the Member, Additional Tribunal, while agreeing with the assessee that he had not been given a full opportunity and, therefore, the assessment should be vacated and there should be a reassessment, indicated a definite opinion in regard to the petitioner's liability in law in respect of the inter-State sale. The three questions, which have been posed for opinion, are indeed one, namely:

Whether, on the facts and in the circumstances of the case, the assessee would have liability to pay tax on that part of the turnover which had been purchased on the basis of declarations but had been made the subject-matter of inter-State sales?

6. Accordingly, in lieu of the three questions framed by the Member, Additional Sales Tax Tribunal, we substitute the aforesaid question.

7. Before we proceed to examine that question, we must make it clear that, in regard to the branch transfer, the provisions of the Central Sales Tax Act would have no application because even on the assessee's own showing there had "been no inter-State sales; when the goods moved out of Orissa, it belonged to the assessee and continued to belong to it even in the other State where its branch is located. In that view of the matter, the relevant proviso to Section 5 of the Orissa Act has full application and the purchase price to the extent of the branch transfer would have to be added to the assessee's gross turnover by application of the proviso.

8. So far as the inter-State sale is concerned, as we have already indicated, its quantum has yet to be determined by the Sales Tax Officer, because there is no clear determination as to its extent. In view of the Bench decision of this Court in the case of *State of Orissa v. Joharimal Gajananda* [1976] 37 S.T.C. 157(SC), we must hold that the same cannot be added to the assessee's turnover. We may

quote what has been said in the reported decision:

Under the scheme of the Act, sales tax is leviable at a single point and a registered dealer at the point of sale is entitled to pass on the incidence of sales tax to the buyer. Where the buyer is a registered dealer, upon furnishing a declaration in terms of Section 5(2)(A)(a)(ii) of the Act, he is entitled to exemption from payment of sales tax and the payment of tax is shifted and deferred to a point where the sale takes place in favour of a consumer, an unregistered dealer, or is a transaction in respect of which no declaration has been furnished even when the purchasing dealer is a registered dealer. Section 5(2)(A)(a)(ii) authorises a dealer to exclude from the gross turnover the sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for resale by him in Orissa. The proviso occurring in Section 5(2)(A)(a)(ii) requires the sale price of goods used by the purchasing dealer for the purposes other than those mentioned in his certificate of registration to be included in his taxable turnover. The assessee before us had purchased bin (in the instant case, scrap iron) from registered dealers and had furnished declarations. It is not disputed that it was entitled to make such purchases free of tax on furnishing declarations. Its declarations contemplated that it would resell the goods so purchased in Orissa. As we have already found, the goods purchased by the assessee were as a fact resold in Orissa, but these sales, by application of the provisions of the Central Act, became the first sales under the Central Act. It is true that the scheme under the Act collecting Orissa sales tax at the deferred point has not worked out, but, in the facts of the case, it cannot be said that the assessee used the goods purchased by it for a purpose other than that specified in its certificate of registration, which alone would attract the application of the proviso under which the additional demand has been raised. If the assessee as a fact resold the goods in Orissa, but on account of some supervening law that transaction is made taxable under some other Act and tax under the Orissa Sales Tax Act was not imposable, it would not amount to any violation of the declarations by the assessee. We agree with the contention raised on behalf of the assessee that the proviso cannot be applied to a case of this type. In our opinion, the Tribunal came to the correct conclusion in the matter. The ratio indicated by the Supreme Court in the case of *The Installment Supply Ltd. Vs. S.T.O., Ahmedabad-I and Others*, supports this view.

9. In the instant case, the matter is going back for a fresh determination of the facts in terms of the Tribunal's decision. Ordinarily, we would not have answered the reference, but in view of what has been stated by the second appellate decision, the assessee is likely to be prejudiced unless the mistake occurring in the Tribunal's decision on the question of law is corrected. We would, therefore, answer the question by saying:

11.If the sales which are claimed to be inter-State actually took place within the State of Orissa but in view of the provisions of the Central Act are deemed to be the first sales under that Act, the principle indicated in the *Joharimal*

Gajananda's case [1976] 37 S.T.C. 157(SC) has full application and the proviso to Section 5(2)(A)(a)(ii) of the Orissa Act would not be applicable.

12. Since there has been no clear determination of the factual aspect, the Member, Additional Sales Tax Tribunal, should require the assessing officer to go into this aspect also, while reframing the assessment. There will be no order for costs.

P.K. MOHANTI, J.

I agree.