(1988) 02 OHC CK 0003

In the Orissa High Court

Case No : O.J.C. No''s. 330 and 358 of 1981, 314, 973, 1650 and 2359 of 1982, 440 of 1983, 2745 of 1984 and 73 of 1986

Utkal Steels Limited APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 04-02-1988

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 6(2)(A)(a)(ii)

Citation : (1988) 70 STC 228

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

Bench : Division Bench

Advocate : B. Agarwal, for the Appellant; The Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, C.J.—In all these nine writ applications which have been heard together for the sake of convenience, the facts and the points of law arising for our consideration are the same, and they are being disposed of herewith.

2. All the petitioners are registered dealers under the Orissa Sales Tax Act, 1947 and carry on business in iron and steel materials. Besides trading in iron and steel materials, they also run rolling mills for manufacturing mild steel rods and flats, etc., and thereafter sell them in the market. For their manufacturing purposes, they purchase raw materials from Rourkela Steel Plant and other sources in shape of ingots, moulds and scraps on furnishing declaration in form No. XXXIV for the purpose of resale in the State of Orissa which entitles them to a lesser rate of sales tax. This sale of manufactured products was included in the petitioners'' taxable turnover. But the assessing officer took a view that the utilisation of the raw materials for manufacturing rods, plates, etc., and selling the finished products thereafter amounted to violation of the declaration made in the prescribed form and thus the dealers had contravened the second proviso to Section 6(2)(A)(a)(ii) of the Act. He has accordingly added back the value of the

raw materials purchased by the petitioners to their taxable turnover in accordance with the second proviso and concluded the assessment proceedings and raised the additional demands under the assessment orders in annexure 1 to each of the writ applications separately.

3. The petitioners have challenged the assessment orders and the main point urged on behalf of the petitioners by their learned counsel is that in view of entry No. 46, the manufacturing process adopted by the petitioners in their rolling mills for converting the raw materials into finished products did not alter or change the materials into a different item exigible to tax differently under any separate entry. In this connection, entries Nos. 45 and 46 of the Schedule containing the list of goods subject to sales tax, as far as relevant, may be noticed.

-- Serial Description of goods Rate of Date of No. tax effect -- 1 2 3 4 -- 45 Iron and steel furniture 16 per cent 1-4-84 46 Iron and steel, that is to say- 4 per cent do. (i) pig iron and cast iron including ingot, moulds, bottom plates, iron scrap, cast iron scrap, run ner scrap and iron skull scrap; (ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes); * * * (vi) sheets, hoops, strips and skelp, both black and galvanised, hot and cold rolled, plain and corru gated in all qualities in straight lengths and in coil form, as rolled and in rivetted condition; * * * (xi) steel tubes, both welded and seamless of all diameters and lengths, including tube fittings; * * * --

On the basis of the above entry, i.e., entry No. 46, it was vehemently submitted that the description of "iron and steel" was not exhaustive and only descriptive in nature and, therefore, the materials after the milling process, such as, bars, rounds and flats, etc., still remained one of the species of the iron and steel, i.e., the notified commodity and thus the petitioners did not contravene the declaration or any of the terms of the registration certificate.

4. It is not necessary to enter into any detailed discussion on the point as similar matters have been decided recently by different Benches of this Court including this Bench. The unreported decision of this Bench in O. J. C. Nos. 518, 619 and 973 of 1979 on 24th July, 1987 (Konark Steel Industries v. Sales Tax Officer [1988] 69 STC 187 was in favour of the dealers. Another Bench consisting of G. B. Patnaik and V. Gopalaswamy, JJ., decided on 11th September, 1987, O. J. C. Nos. 281 and 282 of 1980 [Konark Steel Industries (P.) Ltd. v. Sales Tax Officer [1988] 69 STC 202 (Ori)]. Again, I, sitting with S. C. Mohapatra, J., decided O.J.C. No. 2114 of 1980 [Konark Steel Industries (P.) Ltd. v. Sales Tax Officer] on 6th November, 1987 taking the same view following my earlier decision. Similarly, G. B. Patnaik, J., sitting with L. Rath, J., took the same view in 0. J. C. Nos. 991, 992 and 993 of 1980 [B. Agarwala v. Sales Tax Officer [1988] 69 STC 231 (Ori) disposed of on 20th November, 1987.

It may be mentioned that in the last batch of cases the learned Standing Counsel (C. T.) had assailed the correctness of the earlier decisions on the basis of a decision of the Supreme Court in Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, where an observation was made that after the manufacture, the goods purchased had become a different marketable commodity, and it was accordingly submitted that the view that the goods (scrap, etc.) did not change their identity (after manufacture) was not correct. This argument was noticed by the court in great detail in paragraph 6 of the judgment and was rejected for good reasons, namely, that the question in that case was as to whether for the purposes of the purchase tax and sales tax obviously at different points, the change of the commodity could be treated separately. I find myself in full agreement with those observations, however, with further addition that even if for the sake of argument it is accepted that a different commercial commodity was produced by the manufacturing process by the petitioner different than the raw material, still they remain nothing else than iron and steel falling under entry No. 46. Had it been the situation that the newly manufactured items were separately categorised just like entry No. 45, then it could perhaps be argued that a separate commodity within the meaning of the Act was produced. The expression "iron and steel" embraced within its fold all the species enumerated therein. Learned Standing Counsel unnecessarily argued at length by giving the illustration of G. I. pipes. Apart from his misconception, none of the petitioners has also manufactured G. I. pipes Learned counsel for the petitioners has also brought to our notice several decisions that whenever on such decisions by this Court the State Government wanted to tax the manufactured items, a separate entry was made in the Schedule and they amended the Schedule by including the resultant products as separate items.

Learned Standing Counsel urged before us the self-same points which were argued by him earlier and rejected in all the cases. I therefore do not find any reason to take any different view in the matter.

5. For the foregoing reasons, all the applications must succeed and they are accordingly allowed. Accordingly, the further demands raised by the assessing officer under annexure 1 to the writ applications on this account are hereby quashed. In the circumstances, however, I leave the parties to bear their own costs.

K.P. Mohapatra, J.

6. I agree.

