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IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.81 of 2013

M/s.Maharshi Steel Industries

..... Petitioner

Mr. K. Sharma, Advocate

-versus-

***The Commissioner of Sales Tax,
Cuttack***

Opposite Party

Mr. S. Mishra, ASC

CORAM:

THE CHIEF JUSTICE

JUSTICE R. K. PATTANAİK

ORDER

12.07.2022

Order No.

Dr. S. Muralidhar, CJ.

05. 1. This is an Assessee's revision petition against the order dated 14th May, 2013 of the Orissa Sales Tax Tribunal, Cuttack (Tribunal) in S.A. No.1148/2005-06.
2. By the impugned order of the Tribunal allowed the first appeal against the order dated 19th May, 2005 of the Assistant Commissioner of Sales Tax, Sundargarh Range, Rourkela (ACST) in First Appeal No.AA-406(RL-II) and restored the assessments order dated 30th October, 2004 passed by the Assessing Officer for the Assessment Year 2003-04. In sum, the Tribunal agreed with the Assessing Officer that tin containers sold by the Petitioner were exigible to sales tax not under Entry 129 of List-C of the rate chart appended to the Orissa Sales Tax Act, 1947 (OST Act) but under the residual entry where the rate of the tax was 12%.

3. While admitting the present petition on 5th August, 2014, the following questions were framed by this Court for consideration:

(i) Whether containers made out of tin plates, i.e. steel plates coated with Tin, are “tin Container”, within the common parlance meaning of the term “Tin Containers?”

(ii) whether the Assessing Authority can treat the products of the petitioner, i.e. containers made out of tin plates, which are steel plates coated within Tin, as “Fin Containers” in the year 2004-05, as taxable under Entry-129 of List-C, and deny this treatment in the year 2003-04 and tax it at higher rates under the residuary entry.”

4. At the outset, counsel for the Assessee points out that for the subsequent year i.e. 2004-05 the Assessing Officer the accepted the plea of the assessee that tin containers are classifiable under Entry 129 of List-C of the rate chart appended to the OST Act which reads thus:

“Packing materials, that is to say, gunny bags HDPE bags, corrugated boxes, tin containers and glass bottles.”

5. From the copy of the assessment order for 2004-05, it is evident that the tin containers have been taxed at 4% and not 12%. That order has not been further questioned by the Revenue. Since for the subsequent year the plea of the assessee in the above regard has been accepted there is no reason why even on the principles of consistency it should not govern the earlier AY i.e. 2003-04.

6. There is merit of the contention of the counsel for the Assessee that the expression ‘tin containers’ is to be understood the in the

normal commercial and trade parlance and it would be erroneous for the Department to insist that only containers manufactured entirely out of tin should be considered to be tin containers. The essential character of the product being that of a metal container, as understood in trade and common parlance, metal containers with a coating of tin would satisfy the description of 'tin containers'. There is, therefore, merit in the contention that it is classifiable under Entry 129 of List-C of the rate chart appended to the OST Act.

7. For the aforementioned reasons, question (i) is answered in the affirmative i.e. in favour of the Assessee against the Department and question (ii) is answered the negative i.e. in favour of the Assessee and against the Department. The impugned orders of the Tribunal as well as Assessing Officer are hereby set aside and the order of the ACST is restored to file.

8. The revision petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge