had become futile. I, therefore, hold that the Regulations in so far as they purport to regulate the mines situate in West Bengal have not been validly made under the Act inasmuch as a condition precedent imposed by s. 59 of the Act on the exercise of the Government's power to make a regulation was not complied with.

In the result, I direct the issue of a writ of prohibition against respondents 1 to 4 restraining them from proceeding with the criminal case launched against the petitioners. The petitioners will have their costs.

BY COURT : In view of the majority opinion of the Court the Writ Petition fails and is dismissed.

THE NATIONAL STEEL WORKS LTD.

v.

COMMISSIONER OF INCOME-TAX, BOMBAY

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May 3.

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Income-tax—Agreement by quota-holder to supply steel to manufacturer at a certain royalty per ton—Receipt of lump sum in lieu of royalty—Assessment on amount received—If according to law—Capital receipt and revenue receipt—Distinction—Indian Income-tax Act, 1922,(11 of 1922), s. 66A (2).

The assessee company was receiving quota of coal and steel from the Government but had no factory. It entered into a partnership with a person who had a factory but no quota. The latter agreed to pay a royalty of Rs. 50 per ton of steel supplied to the firm under the quota. A few years later, that agreement was modified and the assessee agreed to receive a lump sum of Rs. 60,000 in consideration of waiving the royalty.

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In assessing the income-tax on the assessee, the Income-tax Officer brought the amount of Rs. 60,000 to tax. When the matter went to the High Court, that court held that the amount was a revenue receipt, and hence liable to tax. On appeal to this Court,

Held, that the amount of Rs. 60,000 represented capitalised profits of the assessee company on account of its transferring or selling the steel which the assessee company purchased under the authority given by the quota allowed to it. The assessee company purchased the goods in its own name and delivered them to the partnership. The sum of Rs. 60,000 represented the capitalised value of the profits the assessee company was to have on supplying all the steel it had under the quota at net price. No right to the quota itself was transferred, and hence it could not be said that the sum of Rs. 60,000 was paid in lieu of the transfer of the rights in the quota of steel. The description of the amount as goodwill in consideration of waiving royalty from partnership account did not convey the real nature of the amount. There was no question of goodwill in waiving a royalty.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 544 of 1961.

Appeal from the judgment and order dated July 1, 1959, of the Bombay High Court in Income-tax Reference No. 58 of 1958.

C. B. Agarwala, A. D. Mathur for *K. P. Gupta*, for the appellent.

K. N. Rajagopala Sastri and *D Gupta* for respondent.

1962. May 3. The Judgment of the the Court was delivered by

Raghubar Dayal J.

RAGHUBAR DAYAL, J.—This is an appeal under s. 66 A (2) of the Indian Income-Tax Act.

The appellant, the National Steel Works Ltd., Bombay, a limited liability company, hereinafter referred to as the assessee, carried on the business of a 'Rolling Mill' prior to the partition of the country in the territory now in Pakistan. It was a member of the Steel Rolling Mills Association of

India and as such was receiving a quota of coal and steel from the Government of India. After the Partition, its registered office was shifted to Bombay. It had no factory there for carrying on the business of a rolling mill. Though possibly not entitled to receive the quota of coal and steel, it however continued its membership of the Steel Rolling Mills Association of India and continued to receive the quota of coal and steel. In order to utilise the coal and steel so received, it entered into a partnership with one K. P. Irani who had put a factory in Bombay called the New Era Iron & Steel Works but had no quota of steel and coal. The agreement of partnership entered into between Irani and the assessee on September 29, 1948 provided that the partnership would continue so long as the quota system regarding steel continued in the Dominion of India or till the expiry of the then lease of the factory premises, and that the capital of the firm would be subscribed by the partners in equal shares. Paragraphs 12 and 13 of this agreement are of importance and are quoted below:

> "12. In consideration of Company taking the said Mr. Irani as partner in the partnership it is agreed that a sum of Rs. 50/- per ton on all steel received by the partnership from the Company through the Steel Re-Rolling Mills Association of India, Calcutta or Iron and Steel Controller, Calcutta shall be paid to the Company by this partnership calculated every month, and after deducting all the other expenses incidental to the business of the partnership the net profit of the partnership after providing for outgoings and interest on the current loans, if any, shall be paid over to the partners in equal shares.
>
> 13. All the quota of steel and coal that Company may receive from the Iron & Steel

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Controller, the Government of India and from the Provincial Iron & Steel Controller, Bombay or from the Steel Re-Rolling Mills Association of India, Calcutta or any such other body under the quota system that may be in force from time to time for Steel re-rolling mills of the company at Bombay shall be utilised solely for the purposes of the business of the partnership who shall pay for the same.

Thereafter, in 1954, the assessee and Irani entered into an agreement where by the terms of the agreement of September 29, 1954, were modified. The amendments to clause 12 are important and they are quoted below:

"IT IS HEREBY AGREED THAT in clause 12 of the Partnership Agreement dated 29.9.48, the Royalty by which is fixed at Rs. 50/- per ton shall be reduced in the manner following from 1st October, 1953."

(a) Royalty of Rs. 25/- per ton shall be charged from 1/10/53 on all rollable materials received up to 30.6.54 except semis and perfect billets on which royalty will be charged at Rs. 10/- per ton on all the said materials received upto 30/6/54.

(b) That cess charges payable to Steel Re-Rolling Mills Association of India, Calcutta, will be paid by the partnership till the partnership exists.

(c) Mr. K. R. Irani hereby agrees to pay a lump sum of Rs. 60,000/- a good-will in consideration of waiving the Royalty from the partnership Account on the quota of re-rollable scrap materials received after 30.5.54.

(d) Mr. K. R. Irani here agrees that the said amount of Rs. 60,000/- be debited to his capital account in the books of partnership, bearing interest at 6% per annum from 1st July, 1954.

(e) No Royalty will be charged on any kind of rollable materials received after 30th June, 1954, by the Company from the partnership.

(f) The partnership shall pay to the Company Rs. 500/- per month as office allowance from 1/10/53 till the partnership exists.

In assessing the income-tax on the assessee, the Income-tax Officer brought the amount of Rs. 60,000/- mentioned in sub-cl. (d) of amended paragraph 12 of the agreement to tax. The assessee's appeal to the Appellate Assistant Commissioner failed and so did its appeal to the Income-tax Appellate Tribunal. On an application by the assessee, the Income-tax Appellate Tribunal stated a case to the High Court for the decision of the question whether the sum of Rs. 60,000/- received by the assessee company from Irani is a revenue receipt and liable to Income-tax. The High Court decided that it was a revenue receipt and liable to tax. It is against this order that this appeal has been filed after obtaining the certificate of fitness from the High Court.

The contention for the appellant is that the sum of Rs. 60,000/- was paid by Irani to the assessee company in view of the partnership getting the rights under the quota which the assesssee company possessed and that therefore the sum represented a capital receipt and not a revenue receipt. We do not agree.

It is clear from the facts stated in the statement of the case that this amount represents capitalised profits of the assessee company on account

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of its transferring or selling the steel which the assessee company purchased under the authority given by the quota allowed to it. It is the assessee company which purchases the goods in its own name and delivers them to the partnership at cost price. Under the original agreement of 1948, the partnership was to pay to the assessee company Rs. 50/- per ton on all steel it received from the assessee company. Clearly, therefore, the sum of Rs. 50/- per ton represented the profit which the assessee company was getting per ton from the partnership. Under the terms of the amended agreement, no such profit was to be paid to the assessee company for the steel received from it after June 30, 1954, and it was to receive Rs. 60,000/- in a lump sum. This amount, therefore, represents the capitalised value of the profits, the assessee company was to have on supplying all the steel it receives under its quota at net price. No right to the quota itself has been transferred to Irani or the partnership under the agreement and therefore there could be no basis for considering that this amount of Rs. 60,000/- was paid in lieu of the transfer of rights in the quota of steel to Irani or the partnership. The description of the amount as goodwill in consideration of waiving royalty from the partnership account on the quota of re-rollable scrap materials received after June 30, 1954, does not convey the real nature of this amount and is really an expression which conveys no meaning. There is no question of goodwill in waiving a royalty.

We are, therefore, of opinion that the High Court came to a correct conclusion that the sum of Rs. 60,000/- was a revenue receipt and liable to tax. We accordingly dismiss the appeal with costs.

Appeal dismissed.