(1955) 07 OHC CK 0005

In the Orissa High Court

Case No : O.J.C. No. 45 of 1955

Banchanidhi Misra APPELLANT

Vs

The State of Orissa and Others RESPONDENT

Date of Decision : 06-07-1955

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 1(3), 10, 12, 13, 14

Citation : (1956) 22 CLT 49

Hon'ble Judges : Panigrahi, C.J;Rao, J

Bench : Division Bench

Advocate : D.S. Misra, for the Appellant; A.G. and G. Dhal, for the Respondent

Final Decision : Allowed

Judgement

Panigrahi, C.J.—The Petitioner has been assessed to sales tax and penalty on the turnover of his contract works. The grievance ventilated before us is two-fold: firstly, that the contract was entered into long before the Sales-Tax Act came into force, and the benefit under the contract is not liable to be taxed under the Act; and secondly, that the contract related to earth work and there was no sale of goods as such which alone can render the Petitioner liable to assessment under the Orissa Sales Tax Act. The facts disclosed by the Petitioner are that he supplied earth for the construction of a double-embankment over the relief channel from the Dhamra to the Kushabhadra rivers. The tender had been accepted on 9-10-47, but the work appears to have been commenced sometime before March 1947. A certified copy of the ledger of the P.W.D. has been filed before us and it shows that the rates were finally settled by the Superintending Engineer by his letter No. 21, dated 22nd February 1947, and the first payment was made to the contractor on 30-3-47. Thereafter payments were made to him from time to time, and the total amount received by him amounted to over one lakh of rupees.

2. The point taken by Mr. Misra on behalf of the Petitioner is that the Act itself exempts contractors who entered into their contracts before a specified date,

from liability to pay tax. He has relied on the proviso to Section 4(1) of the Orissa Sales Tax Act. That proviso reads as follows:

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the Collector to have been entered into by the dealer concerned or before the date so notified.

Sub-section (3) of Section 1 says that the Act would come into force on such date as the Provincial Government may, by notification in the gazette, appoint. In exercise of the powers conferred by this sub-section Government in the Finance Department issued a Notification No. 5598-F., dated 28th July 1941 by which the 1st day of August 1947 was appointed as the date on which sections 2 to 29 of the Act would came into force. It is clear, therefore, that when the contract in question was entered into the provisions of the Act were not in force and they came into operation several months later. The proviso to Section 4(1) expressly saves contracts prior to that date from being affected by provisions of the Act.

3. On behalf of the Department, the learned Advocate-General contended that it is the date on which the tender was accepted that should determine the date of the contract and not the date of the oral agreement under which the contractor performed the contract. As pointed out already payments were made even in March 1947 for work that had already been completed; and such work could only be done in performance of a contract which may be either oral or written. The written contract which came into existence later is only evidence of the terms and conditions under which the contractor undertook to carry out the contract. Nor does the proviso say that the contract referred to therein should be a written contract in order to be taken out of the scope of the Act. We are therefore unable to accept the contention, put forward on behalf of the State that the Act does not apply to oral contracts as such. It must be remembered that a tax is levied on the turnover of the contractor and not on the nature of the terms of the contract. We would accordingly hold that the contract in the present case is governed by the proviso to Section 4(1) of the Orissa Sales Tax Act, and that the turnover of the Petitioner is exempt from liability to taxation. In the view we have taken, of the interpretation to be put upon the proviso to Section 4(1) it is unnecessary to decide here whether the contract relates to earth work only and as such, is liable to be exempted from taxation.

We would therefore allow this petition arid declare that the Petitioner is not liable to pay any tax, or penalty, which has been imposed upon him by the Sales Tax Department. The Petitioner will also have the costs of this application which we assess at Rs. 100/- (Rupees one hundred) only. Any tax, if paid, shall be refunded.

Rao, J.

4. I agree.

5. Petition allowed.

