

(2008) 02 OHC CK 0056

In the Orissa High Court

D. Ch. Guruvulu Son and Co.

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 1 OLR 992

Hon'ble Judges : A.K. Ganguly, Acting C.J.;I. Mahanty, J;B.P. Das, J

Bench : Full Bench

Judgement

B.P. Das, J.—The petitioner-M/s. D. Ch. Guruvulu Son & Co., a partnership firm, in this writ petition under Articles 226 and 227 of the Constitution of India has challenged the notice issued by the opposite party-Sales Tax, Officer u/s 12(8) of the Orissa Sales Tax Act, 1947 (hereinafter "the Act") for the assessment years 1995-96, 1996-97 and 1997-98, vide Annexure-1, on the ground of non-communication of the reasons for re-opening the assessment.

2. The case of the petitioner, as depicted in the writ petition, briefly stated is thus: The petitioner is a partnership firm and carries on business of rice-milling and has established a small scale industry for processing tamarind seeds to tamarind dal amongst others. For the purpose of its milling business, it procures paddy and tamarind and mustard seeds and sells the processed products, such as rice, broken-rice, processed-tamarind, tamarind dal and mustard oil, etc. and accordingly it has registered itself as a dealer with the opposite party-Sales Tax Officer under the Act. The petitioner for the purpose of its business used to collect tamarind by taking exclusive lease of forest lands from the State Govt. in Forest Department.

3. The petitioner entered into different lease agreements on different occasions with the State Govt. for procurement of tamarind on payment of royalty in lieu of exclusive right to collect tamarind from lease areas. The petitioner filed its returns for the periods 1995-96," 1996-97 and 1997-98 treating the amount of royalty paid as purchase turnover of tamarind which were accepted by the Sales

Tax Officer and assessment orders were passed by the Sales Tax Officer u/s 12(4) of the Act indicating therein that the amount of royalty paid had been accepted as the petitioner's, purchase turnover of tamarind. After completion of assessment, the Sales Tax Officer for the aforesaid assessment years issued notice u/s 12(8) of the Act, vide Annexure-1, for re-opening the assessments on the ground that the turnovers of the petitioner-dealer had been under-assessed. On being asked to furnish the reason for re-opening the assessments in writing, the petitioner was told that the A.G. audit had objected to the assessment on the ground that in the royalty the petitioner had not included the procurement expenses, transportation and handling charges for collection of tamarind. The Sales Tax Officer further indicated that the purchase turnover disclosed on the basis of royalty paid to the Divisional Forest Officer in lieu of exclusive right for procurement of forest produce might not be acceptable. The aforesaid notice is under challenge in this writ petition.

4. A Bench of this Court by its order dated 20.9.2001 issued notice of admission on the writ petition and referred the matter to the Full Bench by observing thus:

There appears to be some conflicting opinion in the judgments of this Court in P.R. Tata & Co. v. The Sales Tax Officer, Koraput-I Circle and Anr. (1971) 27 STC 176, State of Orissa v. Iqbal Bros. (1990) 79 STC 337, and Iqbal Brothers v. State of Orissa S.J.C. No. 49 of 1986, disposed of on 17.11.1994, which needs to be resolved by the Full Bench.

5. We perused the judgments of the aforesaid three cases.

In P.R. Tata & Co. v. Sales Tax Officer (1971) 27 STC 176, the petitioner-firm carried on the business in myrobalan (Harida) by taking leases from the Forest Department of the Govt. of Orissa and under the terms of the agreement the forest produce was sold by the Forest Department and purchased by the petitioner for a consideration as indicated in the schedule to the agreement. The petitioner as per the agreement was entitled to the forest produce that existed in the forest at the time of the contract so entered into or that might come into existence within the areas specified. The petitioner returned the purchase turnover which was the same as the consideration money paid to the Forest Department in accordance with the agreement. The question giving rise to the writ petition was whether the collection, transport and crushing charges incurred by the petitioner in getting the forest produce from the forest were to be included in the purchase turnover and were exigible to tax. This Court came to hold that the purchaser himself had to pluck the Harida, Collect, transport and crush the same. None of these things was done by the seller and therefore the purchase price would not include collection, transport and crushing charges incurred by the petitioner.

In State of Orissa v. Iqbal Brothers (1990) 79 STC 337 the dealer was carrying on the business of purchase and sale of Mohua flower belonging to the State Govt. which was liable to purchase tax u/s 3-B of the O.S.T. Act and during the

assessment year in question the dealer had paid purchase tax on the royalty paid to the State Govt. The Sales Tax Officer, however, held that the sale price of Mohua flowers included royalty which was charged by the dealer when he sold the goods. Accordingly, the prevailing market rate at which Mohua flower was sold at the time of purchase by the dealer would be the purchase turnover of the dealer. Ultimately the Sales Tax Tribunal relying upon the principle decided in P.R. Tata (supra) held that royalty was the purchase price on which purchase tax was leviable. Against the aforesaid order, a reference at the instance of the Revenue was made to this Court u/s 24(1) of the Act and the question posed was answered in favour of the assessee thereby confirming the order of the Sales Tax Tribunal which, relied upon the principle decided in P.R. Tata (supra).

6. In *Iqbal Brothers v. State of Orissa* S.J.C. No. 49 of 1986, disposed of on 17.11.1994, the questions posed for opinion of a Bench of this Court were as follows:

(i) Under the facts and circumstances of the case, whether the royalty paid to the Forest Department on the collection of Mohua Flower from Government forest lands shall be the purchase turnover in the hands of the dealer-appellant ?

(ii) Under the facts and circumstances of the case, whether the tribunal is justified to hold that all the charges such as transport charges, commission paid to Agents and handling charges etc. incurred by the dealer-appellant after collecting Mohua flower from Government Forest lands are to be included in the purchase turnover of the appellant and are exigible to sales tax in view of definitions u/s 2 (ee) and 2(j) Of the Orissa Sales Tax Act.

Considering the facts and circumstances of the case, the Court answered question No. 1 saying that the royalty paid to the Forest Department could not be the purchase turnover in the hands of the dealer-assessee. So far as question No. 2 is concerned, the Court answered saying that the Tribunal was entirely justified in holding that the charges shown to have been paid towards transport charges and handling charges incurred by the dealer-appellant were to be included in the purchase turnover of the dealer and were exigible to sales tax. So, both the questions were answered in favour of the Revenue and against the assessee.

In *Iqbal Brothers v. State of Orissa* (supra) the assessee was carrying on the business in forest produce like Mohua flower, Myrobalan gum etc., and in the register maintained for collection of Mohua flower it was shown that the assessee collected Mohua flower through his agents on payment of collection charges, commission to agents, transport charges and handling charges. The assessee, however, paid purchase tax on the amounts stated to have been paid as royalty to the Forest Department on the ground that the royalty paid was the purchase price. The Assessing Officer determined the taxable turnover by including the collection charges. Against the aforesaid order of the Assessing Officer, the assessee carried an appeal but the appellate authority confirmed the same so far

as purchase of Mohua flower was concerned. Against the order of the first appellate authority, the assessee moved the Sales Tax Tribunal in second appeal and the Tribunal on consideration of the entire materials on record came to the conclusion that the assessee having not taken any lease for collection of Mohua flower had not paid any royalty in respect of the Mohua flower and there was no agreement between the dealer and the Forest Department to indicate that the dealer was liable to pay royalty on the Mohua flower collected. The Tribunal also rejected the plea of the assessee that he collected Mohua flowers by engaging his own labourers as no evidence to that effect could be produced. Ultimately the Tribunal held that the Sales Tax Authorities were fully justified in coming to the conclusion that the entire expenses incurred by the dealer in purchasing Mohua flower must be the purchase price on which the dealer was liable to pay sales tax. Being aggrieved by the aforesaid order, the assessee moved the Tribunal for making a reference u/s 24(1) of the Act and having failed in his attempt approached this Court u/s 24 (2) of the Act and the questions posed were answered in favour of the Revenue, as indicated hereinabove.

7. On going through the aforesaid three judgments, we find that the decisions in P.R. Tata (supra) and State of Orissa v. Iqbal Brothers (supra) were rendered on different facts and circumstances. In P.R. Tata, the lease was taken by the assessee from the State Govt. and in State of Orissa v. Iqbal Brothers (supra), the royalty was paid to the State Govt. for procurement of Mohua flowers. However, in Iqbal Brothers v. State of Orissa (supra), there was no agreement between the State Govt. and the assessee and it was local tribals from whom the assessee purchased the Mohua flowers and there was no privity of contract between the State Govt. and the assessee. So, the three cases referred to are judgments passed on different factual backgrounds, as indicated above. Therefore, there is no conflict between the decision in P.R. Tata & Co. v. Sales Tax Officer and State of Orissa v. Iqbal Brothers and Iqbal Brothers v. State of Orissa (supra). Since there is no conflict, there is no question of resolving the same. Accordingly, we remit the matter back to the appropriate Division Bench to dispose of the writ petition.

A.K. Ganguly, A.C.J.

8. I agree.

I. Mahanty, J.

9. I agree.