(1987) 11 OHC CK 0028

In the Orissa High Court

Case No : Original Jurisdiction Case No''s. 487 and 488 of 1980

Forest Utilisation Officer — APPELLANT

Vs

Sales Tax Officer and Another — RESPONDENT

Date of Decision : 28-11-1987

Acts Referred:

Citation : (1988) 69 STC 79

Hon'ble Judges : H.L. Agrawal, C.J;R.C. Patnaik, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Additional Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, C.J.—In both these writ applications, the parties and the facts being common, they have been heard together for disposal by the following order.

2. The question involved is the liability of the petitioner under the Central Sales Tax Act. The periods of assessment are 1974-75 and 1975-76. Copies of the assessment orders have been filed as annexure-3 to each of the writ applications.

3. The petitioner is the Forest Utilisation Officer, Bihar, having his office in the town of Ranchi. In a high level meeting between the representatives of the Ministry of Railways and some other Ministries of the Central Government and the Government of Bihar, it was agreed that out of the timber coupes leased out by the State of Bihar to the forest contractors, the contractors will be required to make certain number of sleepers and supply them to the Union of India in the Ministry of Railways or the Ministry of Works, Housing and Supply, for which, necessary funds were to be placed at the disposal of the State Government by the Central Government to be utilised by the Conservator of Forests.

4. The Saranda Forest Division in the State of Bihar is adjacent to the territory of Orissa. In the public auction, contractors of the Orissa also participate. For the supply of sleepers from the State of Orissa, earlier, the petitioner was assessed

for the year 1964-65 under the Orissa Sales Tax Act, which was challenged in this Court in S. J. C. Nos. 182-188 of 1972. By order dated 28th March, 1974, this Court came to hold that the petitioner not being a "dealer" within the meaning of the Act was not liable to tax. The Supreme Court, by order dated 11th August, 1975, also confirmed the said order by dismissing the SLP by the State of Orissa, and the tax collected from the petitioner was refunded. However, for the assessment years in question, O. P. 1 made assessment under the Central Sales Tax Act.

5. Mr. R. Mohanty, learned counsel appearing for the petitioner, submitted that since similar assessment under the State Act was annulled by this Court on a finding that the transaction did not amount to carrying on business and, therefore, there was no liability, there could be no liability under the Central Act as well, as in that Act also, carrying on business by a dealer is the main ingredient for the liability. He further submitted that in any view of the matter, Orissa was not the situs for imposition of the sales tax under the Central Act.

6. The earlier order of this Court, as mentioned above, was based upon a reported decision of this Court in the case of State of Orissa v. Divisional Forest Officer, Karanjia Division [1973] 32 STC 487 which was a case under the Central Sales Tax Act dealing with almost an identical question. There also, the Government of Orissa and the Railway Administration had entered into an agreement by which the Divisional Forest Officers in Orissa were allowed to obtain sleepers from the contractors within their respective areas, pay for them on behalf of the railways in similar manner and supply the sleepers to the railways. It was held that there being no intention to carry on the transaction for profit, but only for fulfilling an obligation to the Central Government in the interest of the country, the Divisional Forest Officers were not "dealers" under the Sales Tax Act.

7. This decision, no doubt, fully supports the stand of Mr. Mohanty. But the learned Additional Standing Counsel (C. T.) referred to the amended definition of "dealer" substituted by Act 103 of 1976 (on 7th September, 1976). The definition reads as follows :

''dealer'' means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-

* * * Explanation 2.-A Government which, whether or not in the course of business, buys, sells, supplies or distributes, goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration, shall, except in relation to any sale, supply or distribution of surplus, unserviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purposes of this Act.

8. It appears that the new definition of the term "dealer" has been made more comprehensive to include local authorities, co-operative societies, Governments and various other bodies. It was submitted that in view of the changed definition, read with explanation 2, the previous decision will be deemed to have been rendered otiose.

9. It is, however, not necessary to enter into this complicated sphere for the simple reason that the amendment in question came into force subsequent to the periods of assessment, i.e., 1974-75 and 1975-76. So, that will have no bearing upon the subject-matter of the present cases. Both the writ applications are, therefore, squarely covered by the decision referred to above and accordingly it must be held that the petitioner did not carry on any business in the supply of sleepers and was therefore not a "dealer" within the meaning of the Central Sales Tax Act at the relevent time and was not liable to be assessed under the said Act.

10. Both the writ applications, therefore, must succeed. They are accordingly allowed and the impugned orders of assessment are hereby quashed. In the circumstances, there shall be no order as to costs.

R.C. Patnaik, J.

I agree.