(1970) 02 OHC CK 0013

In the Orissa High Court

Case No : O.J.C. No. 205 of 1967

Ghasilal Agarwalla APPELLANT

Vs

State of Orissa and Another RESPONDENT

Date of Decision : 26-02-1970

Acts Referred:

Citation : (1971) 27 STC 569

Hon'ble Judges : G.K. Misra, C.J;S. Acharya, J

Bench : Division Bench

Advocate : Ranjit Mohanty, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The assessee was assessed to sales tax for the years ending 1962-63 and 1963-64. The agreement relating to the contract was not made an annexure but a copy thereof has been supplied to us by Mr. Mohanty. Law is well settled that if the contractor does construction of roads and that is the subject-matter of the agreement, then he is not liable to sales tax even if he supplies materials for the purpose of construction. The principle is whether goods passed to the purchaser as movables or as accessories to the immovable property. A road is an immovable property. All movables which are constituents of the road passed to the State as a part of the immovable property. "Sale" means sale of movables and not sale of immovable property within the meaning of the Orissa Sales Tax Act. It was therefore imperative on the part of the Sales Tax Officer to clearly analyse the terms of the agreement and other evidence to come to the conclusion whether the various movables passed to the purchaser independent of the contract for construction of the road. For instance, if the P.W.D. enters into an agreement for supply of concrete, pebbles, sand and earth separately, then there would be a sale of each one of these goods. If, on the other hand, the very goods are utilised in the construction of the road and the agreement is for construction of the road, then there is no sale of those movables. It appears from the assessment order that the Sales Tax Officer did not clearly appreciate the legal position. He says: "It was learnt on enquiry that the contractor executed certain road works under the Executive Engineer, P.W.D. (R. & B.) Mayurbhanj Division, and in course of such works he has supplied certain materials like hard stone metal, morrum, hard soiling stones etc." If title to these goods passed to the purchaser in the course of doing the road work, then they are not assessable to sales tax. The subsequent part of the assessment order shows that in one agreement there is a separate contract for supply of movables. We do not find anything in the agreement supplied to us to bring out a clear distinction.

2. In the circumstances, we quash the impugned assessment orders and direct that the assessing authority would determine the nature of the agreement and if title to the movables passed as a part of the construction of road work or otherwise. The assessment is to be completed by the end of June, 1970.

3. In the result, the writ application is allowed as indicated above. There will be no order as to costs.

S. Acharya, J.

I agree.

