(1955) 11 OHC CK 0003

In the Orissa High Court

Case No : O.J.C. No''s. 375 and 376 of 1954

Gunei Sahu and Another — APPELLANT

Vs

The State of Orissa and Another — RESPONDENT

Date of Decision : 21-11-1955

Acts Referred:

Citation : (1956) 22 CLT 155 : (1956) 7 STC 217

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

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; B. Mohapatra and D. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

Panigrahi, C.J.—O.J.C. No. 375 of 1954 :-The petitioners are contractors under the Public Works Department and have been assessed to sales tax by the Sales Tax Officer, Puri, under the Orissa Sales Tax Act. Their case is that they undertook to do earth work for closing of "Kalia Ghai" in Prachi left embankment. The final bill submitted by them shows that the work consisted, partly of earth work and partly of supply of rubbles and Sal Ballets. Obviously the supply of rubbles and Sal Ballas would constitute sale of goods, and it is liable to tax. Items 1 and 2 of the final bill, as would appear from the affidavit filed by the petitioners, show that much of the work consisted in placing earth upon the embankment, with a view to close the breach and in dressing and turfing it. The amount paid by the Department for these items comes, in the aggregate, to Rs. 41,000. It is pointed out on behalf of the opposite party by Mr. Mohanty that there is no specific statement, in the affidavit, that the earth supplied by the contractors belonged to Government and no price was separately charged for it. Undoubtedly this is so. . But the omission is, I think, due to the careless drafting of the affidavit by the Advocate. It appears from the bill itself that 1000 cubic feet of earth has been valued at Rs. 35-8-0. This would show that the price of earth was not taken into the calculation and all that was paid was for the labour of removing earth from one place to another. It is also likely that in the case of the closing of a breach in an embankment, earth belonging to Government is usually used. There is no reason to think, in the absence of further materials, that in this particular case the earth was brought from a distant place or was separately charged for by the contractor. We would accordingly hold items 1 and 2 of the final bill should be exempted from assessment to sales tax. The rest of the claim put forward by the petitioners is rejected. The petition is thus allowed so far as the claim relates to items 1 and 2 of the final bill, and the Sales Tax Authorities will revise the assessment accordingly. In the circumstances, we make no order as to costs.

2. O.J.C. No. 376 of 1954 :-In spite of repeated opportunities being given to the petitioner he has not been able to place any material before us to satisfy us that there was no element of sale in the contract undertaken by him. We have therefore no option but to reject this petition. We make no order as to costs.

Rao, J.

3. I agree.

