(1987) 11 OHC CK 0004

In the Orissa High Court

Case No : Original Jurisdiction Case No. 826 of 1980

Kshem Chand Agarwalla APPELLANT

Vs

Sales Tax Officer, Assessment Unit and Others RESPONDENT

Date of Decision : 03-11-1987

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 12(4), 12(8)

Citation : (1988) 69 STC 93

Hon'ble Judges : H.L. Agrawal, C.J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : B.K. Mohanty, for the Appellant; Standing Counsel (C.T.) and Additional Government Advocate (I), for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—Messrs. Kshem Chand Agarwalla, an assessee under the Orissa Sales Tax Act, 1947 (for short the ""Act"") has filed

this writ application seeking a writ of certiorari to quash the order of the Sales Tax Officer, Assessment Unit, Rairangpur, opposite party No. 1, as

per annexure-1, in purported exercise of powers u/s 12(8) of the Act.

2. The gist of the case set out in the writ application is that the petitioner carries on business of taking lease of forest coupes, collecting timber from

it and preparing logs, timbers and sleepers, etc., for sale. The sleepers are usually sold to the Indian Railways. The petitioner is registered under the

Act having Registration Certificate No. MS(R)-25 and also under the Central Sales Tax (Registration and Turnover) Rules having been assigned

registration No. BCR-14. During the assessment year 1976-77 the petitioner supplied sleepers to the railways. For the said year he returned gross

turnover at Rs. 1,31,153 and taxable turnover at Rs. 1,14,612.34 and paid tax of

Rs. 6,204.85 under the Act. The opposite party No. 1 taking up

the assessment u/s 12(4) of the Act as per order under annexure-2, excluded the sleepers sold to the railways considering the same to be in the

course of inter-State sale. The said authority determined the gross turnover and taxable turnover of the petitioner at Rs. 73,363 and Rs. 57,222

respectively. The tax due from the petitioner was determined at Rs. 2,638.63 and a sum of Rs. 3,568.20 was held to be refundable to him.

Simultaneously the opposite party No. 1 passed order under Rule 15 of the Central Sales Tax (Orissa) Rules including the sale of sleepers

amounting to Rs. 57,790.04 in the turnover of Central sales and taxed it under the Central Sales Tax. Act as per order under annexure-3.

3. Thereafter the opposite party No. 1 issued notice to the petitioner u/s 12(8) of the Act for the year ending 1976-77 on the allegation that there

has been an escaped assessment or under-assessment of the petitioner for the said year. In response to the notice the petitioner appeared and

explained the position, with reference to the records, that there has been no escapement of the turnover. But the opposite party No. 1 by the

impugned order passed on 31st January, 1980 redetermined the tax liability of the petitioner under the Act at Rs. 6,289,86 against Rs. 2,638.63

already assessed. He accordingly directed the petitioner to pay the balance tax amounting to Rs. 3,651.23. No penalty was levied on the

petitioner.

The main basis of the order passed by the opposite party No. 1 was that there were two separate and distinct sales, the first one between the

timber dealer, that is, the petitioner and the Divisional Forest Officers under the State Government and the second one between the Divisional

Forest Officers and the railways. The first sale, according to the authority, was eligible to be taxed under the Act. The reasons which appeared to

have prompted the authority to come to this conclusion were that the petitioner received payment from the concerned Divisional Forest Officer

inside the State and as such the transaction was intra-State sale; that there was no pre-existing contract envisaging transport of sleepers to outside

the State in pursuance of which purchases and sales of sleepers were made; that there was no clear link between the purchase and sale and

transport thereof to places outside the State; and that the transactions ""may"" not have all the attributes of the inter-State sales.

4. Shri B. K. Mohanty, the learned counsel for the petitioner, challenged the finding of the assessing authority referring to several cases decided by

this Court taking the view that transactions involving supply of sleepers to the railways by contractors through the Divisional Forest Officers were

inter-State sales and therefore eligible to tax under the Central Sales Tax Act. According to Shri Mohanty, the order of assessment initially passed

by the opposite party No. 1 including this turnover in the Central sales tax assessment was correct and there was no question of escaped

assessment or under-assessment in the case necessitating exercise of jurisdiction u/s 12(8) of the Act.

Despite service of notice the opposite parties have not chosen to file any return.

5. In the impugned assessment order the authority has not discussed the materials forming the basis for his finding that there were two separate and

distinct sales, the one between the timber dealer and the Divisional Forest Officers and the other between the Divisional Forest Officers and the

railways. He has also not stated why he felt that the deal may not have all the attributes of inter-State sale so as to attract liability of the dealer to

pay Central sales tax. The transactions regarding supply of sleepers by forest contractors to the railways are done in accordance with the practice

prevalent since long. The arrangement has been considered by this Court in several cases while dealing with this very question, whether the

transaction is eligible to Orissa sales tax or Central sales tax. This Court in the case of Kunjabihari Sahoo v. State of Orissa [1982] 51 STC 330

and in the case of Singhbhum Timber Trading Company v. State of Orissa [1982] 51 STC 334 (Appendix II to [1982] 51 STC 330), has taken

the view that the transaction is one of inter-State sale and therefore eligible to Central sales tax. In the first case the facts considered by the court

were that at the request of the officials of the South Eastern Railway, the Divisional Forest Officer contacted the assessee, a forest contractor and a

registered dealer under the Act, and in terms of the agreement between the Governor of Orissa represented by the Divisional Forest Officers and

the assessee, sleepers were supplied. . Those sleepers were despatched by rail to different places outside the State of Orissa as per the

specifications of the railway authorities. The assessing officer included the turnover for the purpose of assessment under the Act, rejecting the claim

of the assessee that the sales were not eligible to tax and at any rate there was no intra-State sale. This Court held that on the facts and

circumstances of the case, the sale of sleepers by the assessee constituted inter-State sale liable to tax under the Central Sales Tax Act, 1956, and

not intra-State sale liable to tax under the State Act. The decision in the case of Singhbhum Timber Trading Company [1982] 51 STC 334 (Ori)

[App. II] was followed in this case.

As noticed earlier, the Revenue has not produced any material to show that the arrangement for supply of sleepers was different in the present case

from that discussed in the aforementioned decision. Further, it appears from the order as per annexure-1 that in this case arrangement was made

by which sleepers were obtained by the railways from timber dealers through the Divisional Forest Officers of Orissa. It is therefore clear that the

arrangement for supply of sleepers by the petitioner to the railways, that is the Sleeper Controller at Calcutta, was in the course of inter-State sale

and not intra-State sale. It was rightly held by the assessing authority initially that the said turnover was eligible to Central sales tax and taxed under

the said Act. The conclusion arrived at by the authority under the impugned order that there was escaped assessment or under-assessment was

thus without any basis,

6. In the result, the writ application is allowed and the impugned order, as per annexure-1, is set aside. No demand shall be raised on its basis.

There will be no order for costs.

H.L. Agrawal, C.J.

I agree.

