(1980) 08 OHC CK 0002

In the Orissa High Court

Case No : S.J.C. No''s. 56 to 58 of 1976

Kunjabihari Sahoo APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 27-08-1980

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 5(2)(A)(a)(ii)

Citation : (1982) 51 STC 330

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : B.K. Mohanty, for the Appellant; Standing Counsel (S.T.), for the Respondent

Judgement

R.N. Misra, J.—At the instance of the assessee, the Sales Tax Tribunal has stated these cases and referred the following question for opinion of the court u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the "Act") :

Whether, on the facts and in the circumstances of the case, the Sales Tax Tribunal, Orissa, was right in holding that the sale of sleepers by the assessee during the years 1967-68, 1968-69 and 1969-70 constituted intra-State sale ?

2. The assessee is a forest contractor and is also registered as a dealer under the Act. The South Eastern Railway needed a lot of sleepers made of timbers for laying and maintenance of railway tracks. At the request of the railway officials, the Divisional Forest Officers of the State Government were negotiating for purchase of sleepers. The Divisional Forest Officers, Dhenkanal, contacted the assessee and in terms of the agreement between the Governor of Orissa represented by the Divisional Forest Officers and the assessee, sleepers of different quantities were supplied during the three years. These sleepers were despatched by rail to different places outside the State of Orissa as per the specifications of the South Eastern Railway authorities. The assessing officer rejected the claim laid by the assessee u/s 5(2)(A)(a)(ii) of the Act and included the sales turnover for purposes of assessment and raised demands under the

Orissa Sales Tax Act. The assessee''s stand that the sales were not exigible to tax and at any rate there was no intra-State sale were not accepted and demands were raised for the three years. The assessee''s appeals before the Assistant Commissioner and the Tribunal failed.

3. This Court in the case of State of Orissa v. Orissa Forest Corporation Ltd., Nowrangpur Division S.J.C. Nos. 171 to 174 of 1971 disposed of on 24th April, 1973) page 333 infra examined the question as to whether such sales were intra-State or inter-State sales. In paragraph 3 of the decision, it was stated :

So far as the assessee''s case is concerned, the question of the turnover being exigible to Central sales tax does not at all arise. The learned counsel for both sides therefore rightly asked us not to answer this question as being a question arising out of the order of the Appellate Tribunal. The Tribunal has rightly come to the conclusion that there has been a sale in Orissa which is exigible to Orissa sales tax. On that finding, no further enquiry was necessary Justifying the remand for assessment of the turnover of the assessee. Mr. Patnaik, appearing for the corporation, agrees with that finding that the assessment under the Orissa Sales Tan Act should have been concluded and there was no scope for a further remand....

Though the question was raised, the matter was not examined in view of the concession of the counsel.

The self-same question arose again in the case of Singhbhum Timber Trading Company v. State of Orissa S.J.C. No. 130 of 1970 disposed of on 19th August, 1975, by a Bench consisting of both of us) page 334 infra. In that case, we stated :

The Forest Utilisation Officer of the Government of Bihar was bound under an agreement made with the railway administration for securing sleepers for the railway tracks. In fact, it is clear from the several minutes that even signed cheques were made over by the railway administration for buying the sleepers. The sleepers were thus purchased with the money of the railways and were intended to be exclusively used for the purposes of the railways. Undoubtedly, the sleepers after being passed and taken delivery of from the assessee have been despatched to Bihar. A clear link has been established between the purchase of the goods from the assessee and transport thereof to Bihar. In fact, it has been consistently found by the departmental authorities as also the Tribunal that it is the assessee himself who put the materials into the railways for movement. It is difficult to accept the contention of the learned standing counsel that the transactions were two independent ones-one between the assessee and the Forest Utilisation Officer and the other between the Forest Utilisation Officer and the railway administration. The purchase was made following a pre-existing contract and it envisaged transport of the sleepers from Rourkela into Bihar. For these reasons we would hold that the Tribunal was not correct in holding that the sales between the assessee and the Forest Utilisation Officer were exigible to sales tax under the Orissa Sales Tax Act. On the other hand, the claim of the assessee that these constituted sales taxable under the Central Sales Tax Act was correct.

The third case on the point is that of State of Orissa v. Divisional Forest Officer, Karanjia Division [1973] 32 STC 487 There the assessee was the Divisional Forest Officer and the principal question for consideration was whether the Divisional Forest Officer was actually a dealer and could be subjected to tax. This Court held that the assessee was not a dealer. Therefore, the present question was not really canvassed and considered.

4. On the facts of the case, we are inclined to agree that the view expressed by us in Singhbhum Timber Trading Company v. State of Orissa S.J.C. No.130 page 334 infra correctly indicates the law. As the facts are similar, we would answer the question referred to us by saying that the transactions were exigible to Central sales tax.

There will be no order for costs.

N.K. Das, J.

5. I agree.

