(2022) 03 OHC CK 0105

In the Orissa High Court

Case No : STREV No.13 Of 2004

M/s. Orissa Forest Development Corporation Ltd., Jharsuguda	APPELLANT
Vs	
State Of Orissa represented by the Commissioner of Sales Tax, Orissa, Cuttack	RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 3B

Citation : (2022) 03 OHC CK 0105

Hon'ble Judges : Dr. S. Muralidhar, CJ;R. K. Pattanaik, J

Bench : Division Bench

Advocate : S. K. Pattanaik, Sidharth Shankar Padhy

Final Decision : Disposed Of

Judgement

1. While admitting the present revision petition filed by the Orissa Forest Development Corporation Ltd., (OFDC), on 14th September, 2006, this Court framed the following question for consideration:

"Whether the Tribunal was justified in concluding that Royalty paid by the corporation (petitioner) has become a purchase price and it is the sale price in the hand of the concerned D.F.Os.".

2. From the documents placed on record and in particular the Notification dated 10th May, 1985 issued by the Forest, Fisheries and A.H. Department, Government of Orissa, it is seen that the OFDC was merely appointed as an agent on behalf of the State for purchase of and trade in sal seeds for the year 1985 "on their behalf in respect of units as notified by the Government of Orissa…" The relationship of the State with the OFDC was that of principal and agent. The rate at which the royalty had to be collected was also fixed from time to time by the Government of Orissa as is evident from the Notification dated 24th November, 1987 [Annexure-2(a)]. Consequently, the Court fails to appreciate how the collection of royalty by OFDC could be characterized as the

price for sale of the sal seeds by OFDC.

3. Learned counsel for the Department-Respondent sought to place reliance on the decision of this Court in State of Orissa v. Iqbal Bros. (1990) 79 STC 337 to contend that sales tax in such instance was leviable on the royalty paid to the Forest Department, which would be the purchase price in the hands of the dealer for the purposes of purchase tax under Section 3-B of the Orissa Sales Tax Act, 1947 (OST Act).

4. A perusal of the said judgment shows that purchase tax was sought to be levied on the royalty amount paid for the Mahua flowers, which had been collected by the dealer from the Forest Department. Significantly, the Court commented in para 3 of the judgment "we have our own doubts if collection of mahua flower on payment of royalty would amount to purchase of such goods." However, the Court proceeded to answer the question before it in favour of the Department only because "the dealer has not questioned whether the transaction amounts to purchase."

5. In the present case, however, OFDC is questioning the treatment of royalty as 'sale price' and making it amenable to sale tax. OFDC cannot be characterized as a 'dealer' for the purposes of the transaction in question i.e. supply of sal seeds on payment of royalty. Consequently, the Court is not convinced with the submission of the Department that the transaction in question is a sale and that the royalty paid to the State should be characterized as 'sale price' on which tax has to be paid.

6. The question framed is accordingly answered in favour of the Assessee and against the Department by holding that the Tribunal was not justified in concluding that the royalty paid by the OFDC to the State is purchase price and that it is the sale price in the hands of the concerned D.F.Os.

7. The revision is accordingly disposed of.

8. Issue urgent certified copy of this order as per rules.

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