(2001) 07 KAR CK 0004

In the Karnataka High Court

Case No : S.T.R.P. No. 63 of 2001

Mysore Minerals Ltd. APPELLANT

Vs

Karnataka Appellate Tribunal and Others RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 23 (1)

Citation : (2001) 124 STC 413

Hon'ble Judges : Chidananda Ullal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : S. Prabhakar, for the Appellant;

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—Assesses-petitioner (for short, "the assessee") has filed this petition u/s 23(1) of the Karnataka Sales Tax Act, 1957 (for short, "the Act") read with Section 8A of the Karnataka Appellate Tribunal Act, 1976 on the following question :

"Whether the amounts charged for and collected by the assessee from customer towards royalty and loading charges form part of sale price liable to tax ?"

2. Facts relevant to determine the controversy between the parties are :

Assessee is engaged in the mining and sale of ore and other minerals. Assessment for the period April 1, 1996 to March 31, 1997, was concluded by the assessing officer on March 12, 1999. Assessing authority included in the turnover the sum of Rs. 1,13,956 collected as royalty and remitted to the Government and the loading charges of Rs. 19,190 for the purpose of levying tax under the Act. Aggrieved against the inclusion of the aforesaid amounts in the total turnover, the assessee filed the appeal before the Joint Commissioner of Commercial Taxes (Appeals). The first appellate authority dismissed the appeal holding that the royalty was a price paid to Mines and Geological Department of Government of Karnataka by the assessee to obtain China clay. Therefore, the royalty paid formed part of the sale price as it is a pre-sale expenditure. Loading charges incurred separately in the bills was also taken to be the pre-sale expenditure and a part of the sale price. The levy of tax on royalty and loading charges was upheld.

3. Aggrieved against the orders passed by the first appellate authority, assessee filed further appeal before the Karnataka Sales Tax Appellate Tribunal (for short, "the Tribunal"). The Tribunal concluded that the appellant had included the sale price (bills) amounts representing royalty and loading charges and realised the same from customers on the sale of clay, and therefore, such amounts would constitute part of the sale price. That royalty and loading charges form part of the pre-sale expenses. Therefore, these two amounts could not be deducted while computing the taxable turnover. Tribunal relied upon the judgment of the Supreme Court in Cooch-Behar Contractors'' Association and Others Vs. State of W.B. and Others, wherein it has been held that the royalty forms part of the sale price. Question regarding the expenses incurred on account of loading charges would depend on the circumstances in which the labour was employed.

4. Counsel for the assessee strenuously contended that the rule laid down by the Supreme Court in Cooch-Behar Contractors'' Association and Others Vs. State of W.B. and Others, holding that the payment of royalty amounts to payment of price for the goods obtained is not good law. It was argued that for coming to this conclusion, the Supreme Court had relied upon its earlier decision in the case of State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., , whereas the said decision had been overruled by a larger Bench of the Supreme Court in the case of State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, . It is submitted that perhaps the judgment of the Supreme Court in State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, was not brought to the notice of their Lordships of the Supreme Court hearing the Cooch-Behar Contractors'' Association and Others Vs. State of W.B. and Others, .

5. After going through the judgments cited above, we do not find much substance in this submission. Supreme Court in State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., was considering as to whether the trees and bamboos rooted in the earth which are agreed to be severed before sale or in the contract of sale, are movable property and goods and thus exigible to the sales tax. No doubt, the Supreme Court in State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, specifically overruled its earlier decision in the State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., as not good law being per incuriam as it had failed to advert to the decisions by the larger Bench of the Supreme Court. Point as to whether the payment of royalty amounts to payment of pre-sale price would form part of the pre-sale price was not considered by the Supreme Court in State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, .

6. The Supreme Court in Cooch-Behar Contractors'' Association and Others Vs.

State of W.B. and Others, has clearly laid down that "payment of royalty amounts to payment of the price obtained and used in the works contracts". The Tribunal was therefore right in holding that the sale price amounts representing royalty and realised from the customers on the sale of clay would constitute part of the sale price, making it exigible to sales tax.

7. Question as to whether the expenses incurred on account of labour would form part of the sale price, though noticed by the Supreme Court in Cooch-Behar Contractors'' Association and Others Vs. State of W.B. and Others, , was not answered, as the Tribunal in the said case had not finally disposed of the issue and was left open to be decided in the facts and circumstances of each case. The Tribunal had left open the point by observing :

"Learned counsel for the applicants did not submit that such inclusion is in any way bad or unconstitutional. Expenses incurred on account of labour simpliciter surely cannot form a part of the contractual transfer price, simply because it is not a value of or valuable consideration for any "goods", unless such expense amounts to cost of freight or delivery for carrying the goods to the worksite. It will depend on the circumstances in which or the purpose for which labour was employed. On this question, we hold accordingly. Each case shall have to be judged on its own merits and on its peculiar facts.We therefore, do not at this stage express any opinion one way or the other on those charges and expenses as to whether or not they will form part of the contractual transfer price." (Reproduced from the judgment of the Supreme Court Cooch-Behar Contractors'' Association and Others Vs. State of W.B. and Others,

8. Assessee has not clearly brought out the nature of the labour expenses as loading charges. Under the circumstances, the finding given by the authorities below has to be accepted. Accordingly, it is held that the loading charges would also form part of pre-sale expenditure.

9. Otherwise also, we feel that the amount of royalty paid to the Government or the departments of Government which is passed on to the customers forms part of the total sale price of the goods which is exigible to levy of sales tax.

10. For the reasons stated above, we do not find any merit in this revision petition and dismiss the same. No order as to costs.