

(2010) 04 MP CK 0020

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 3321, 3322, 3324, 3334 and 3336 of 2007

Northern Coal Fields Ltd.

APPELLANT

Vs

Additional Commissioner, Commercial Tax, Jabalpur and
others

RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Madhya Pradesh Commercial Tax Act, 1994 — Section 2(u)

Madhya Pradesh Transit (Forest Produce) Rules, 2000 — Rule 3

Citation : (2010) 2 MPLJ 563

Hon'ble Judges : Smt S. Shrivastava, J;A.K. Mishra, J

Bench : Division Bench

Advocate : H.S. Shrivastava, with Sandesh Jain, for the Appellant; Deepak Awasthy, Government Advocate, for the Respondent

Judgement

Arun Mishra, J.

The question involved in the writ petitions is whether the transit fee realized under M. P. Transit (Forest Produce) Rules, 2000 (hereinafter referred to as "the Rules of 2000") can be considered to be forming part of "sale price" as defined in section 2(u) of the M. P. Commercial Tax Act.

The petitioner/Northern Coal Fields Ltd. is engaged in extraction and sale of coal. The State of M. P. has framed M. P. Transit (Forest Produce) Rules, 2000 for imposing transit fee (for brevity hereinafter referred to as "Rules of 2000"). Rule 3 provides for regulation of transit of forest produce by means of passes. State of M. P. has prescribed the levy of transit fee at Rs. 7 per ton on various goods including coal vide notification (P.2) dated 28th May, 2001. Ministry of Forest directed the Chief Conservator of Forest to charge transit fee while issuing the transit passes as per letter dated 28-5-2001 that the transit fee payable shall be paid to issuing department in the single window procedure for issue of transit passes which shall be deposited in the Forest Department. The Revenue and Mining Department will issue passes. Royalty as well as the transit fee has to be

paid, thereafter transit passes will be issued to the lessees. Before issue of transit passes along with royalty transit fees has to be deposited with respect to minerals which are extracted from the forest area. Vide communication (P.4) dated 7-2-2002 the petitioner was informed by the DFO with respect to deposit of transit fee along with royalty. The petitioner was required to make payment of transit fee with effect from 1-6-2001 to 31-1-2002 under the prescribed rate of Rs. 7 per ton. Collector also wrote to the petitioner for depositing the requisite transit fee. The petitioner had deposited the amount under protest.

In the assessment proceedings before the Assistant Commissioner, Commercial Tax, petitioner objected to the inclusion of amount of transit fees in the sale price, but the objection was not accepted and commercial tax has been levied vide Order (P.7) dated 27-1-2005. Petitioner filed a revision before the Addl. Commissioner, Commercial Tax, same has been dismissed vide Order (P. 10) dated 8-9-2006. The Commissioner, Commercial Tax has clarified that transit fee shall not form the part of the sale price in spite of that orders to the contrary were passed by respondents 1 and 2, hence petitions have been preferred.

In WP No. 3322/07, WP No. 3324/07 and in WP No. 3336/07 demand is for the period 1-4-2002 to 31-3-2003, and in WP No. 3334/07 demand is for the period 1-4-2001 to 31-3-2002.

In the return filed by the respondents, it is contended that State of M. P. has enacted the Act called M. P. Commercial Tax Act, 1994. Said Act has been later on substituted by M. P. Value Added Tax Act, 2002 which came into force with effect from 1-4-2006. The transit fee realized from part of sale price, sale price means amount payable to a dealer as valuable consideration for the sale of any goods. The issue raised has been decided by the Apex Court in *Central Coal Fields Ltd. vs. Commissioner of Sales Tax*, (1994) 95 STC 571 in which the Apex Court has held that coal mines welfare cess, stowing duty and the rescue cess recovery by the Central Coal Fields Ltd. from its customers when the coal was dispatched to them by road forms part of the sale price of the coal and includible in the turnover. In *Mohd. Rafi vs. State of M. P. and others*, 2003(5) MPLJ 508 : (2003) 2 STJ 127 this Court has also opined that forest development cess forms part of sale price of Tendu leaves. Reliance has also been placed on a decision of Andhra Pradesh High Court in *Premier Cotton Mills Ltd. vs. State of A. P.*, 2002 STC 412.

Shri H. S. Shrivastava, learned senior counsel appearing with Shri Sandesh Jain, for petitioner has submitted that the transit fee cannot be said to be forming part of the sale price. The decisions to the contrary rendered by respondents 1 and 2 are illegal. The decision in *Central Coal Fields Ltd. vs. Commissioner of Sales Tax* (supra) and other decisions are not applicable. It could not be said to be a sum charged by the dealer for anything done in respect of the goods at the time of or before the delivery of the coal. He has further submitted that the notification under the Rules of 2000 has been declared to be ultra vires by a Division Bench of this Court in *Northern Coalfields Ltd. vs. State of M. P. and others*, WP No.

2309/2002 decided on 14-5-2007, thus, the assessment orders and the demand raised be quashed. He has also submitted that it is a cost of freight which is realized in the shape of transit fee.

Shri Deepak Awasthy, learned Govt. Advocate appearing for respondents has submitted that the transit fee forms part of the sale price. He has supported the orders and has submitted that decision rendered by this Court pertaining to vires of the notification in WP No. 2309/2002 has been stayed by the Apex Court and it cannot be said that notification issued is ultra vires.

In order to appreciate the rival submissions, it is necessary to consider the definition of "sale price" as defined in section 2(u) of the M. P. Commercial Tax Act. Section 2(u) read thus :-

2(u) : "Sale Price" means the amount payable to a dealer as valuable consideration for the sale of any goods less any sum allowed as cash discount according to ordinary trade practice by inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof other than the cost of freight or delivery or the cost of installation when such cost is separately charged.

"Sale Price" means amount payable to a dealer as valuable consideration for the sale of any goods. It includes any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof. However, it exclude cost of freight or delivery or the cost of installation when such cost is separately charged.

The transit fee is realized under the Rules of 2000. Rule 3 whereof provides regulation of transit of forest produce by means of passes. Thus, it is in the form of regulatory measure the transit passes are issued and for which transit fee is realized, same is required to be paid along with royalty in advance by the lessees as per circular (P.3) dated 28th May, 2001 issued by State of M. P., Department of Forest. After deposit of the transit fee along with royalty the transit passes are issued. Under Rule 3 of the Rules of 2000 it is provided that no forest produce shall be moved into or outside the State or within the State of M. P. without a transit pass in the requisite form. Under Rule 5 State Government fixes the rates of fee for issue of transit pass. Rule 16 provides the forest produce to be removed between hours of sunset and sunrise within the forest. Thus, it is clear that in furtherance of the regulation of transit of the forest produce the transit fee is realized along with royalty. Thus, it is clear that amount payable to a dealer as valuable consideration for sale of any goods includes royalty as well as transit fee without which sale is not possible of the forest produce as per definition of "sale price" in section 2(u) of M. P. Commercial Tax Act read with the Rules of 2000. It is also clear that it is a sum charged for regulatory measures taken by the dealer in respect of the goods before the delivery thereof. Thus, the sum charged of transit fee clearly forms part of sale price.

The Apex Court in Central Coal Fields Ltd. vs. Commissioner of Sales Tax and ors.

(supra) has considered the question whether the coal mines welfare cess, stowing duty and rescue Cess recovered by the petitioner from its customers when coal is dispatched to them by road forms part of the sale price of coal and is includible in the turnover for assessment of sales tax for the purpose of M. P. General Sales Tax Act, 1958. The decision rendered by this Court in M. P. No. 852/1975, decided on 4-4-1980 was affirmed. The Welfare Cess, stowing duty and rescue cess were recovered by the Central Coalfields Ltd. from its customers and when coal was dispatched by road, the Apex Court held that it forms part of sale price on goods and includible in the turnover for assessment of tax. In M/s Ramesh Traders vs. State of M. P. and others, WP No. 3545 of 1994 decided on 9-9-1998, this Court has opined that the forest development cess forms part of sale price.

In *George Oaks (Pvt.) Ltd. vs. State of Madras*, (1961) 12 STC 476 the Apex Court has held that the price paid by the purchaser was not a sum of money for the article plus tax but a composite sum and, therefore, the total amount charged was rightly treated as part of the turnover. The Apex Court has held in para 8 thus :-

8. In *George Oakes (Private) Ltd. vs. State of Madras*, the Supreme Court quoted with approval the following observations of Goddard, L.J. in *Love vs. Norman Wright (Builders) Ltd.* "Where an article is taxed whether by purchase tax, customs duty, or excise duty, the tax becomes part of the price which ordinarily the buyer will have to pay." It was held in the case of *George Oakes* that the sales tax collected by the seller from the buyer is really part of the entire consideration and forms part of the sale price and has to be included in the turnover for assessment of sales tax. In another case bearing the same title, *George Oakes (Private) Ltd. vs. State of Madras*, Hidayatullah, J. (as he then was), said that one of the reasons for inclusion of the tax recovered by the dealer from the purchaser in the turnover is that the dealer who realises the tax does not hand it over forthwith to the Government but keeps it with him, and turns it over in his business before he parts with it; the tax becomes, for the time being, a part of the circulating capital of the tradesman. The second reason is that the price paid by the purchaser is not so much money for the article plus tax but a composite sum. Therefore, in calculating the total turnover, observed Hidayatullah, J., there is nothing wrong in treating the tax so paid as part of the turnover, because the turnover means the amount of money which is turned over in the business. These principles were applied in *Delhi Cloth and General Mills Co. Ltd. vs. Commissioner of Sales Tax*. This case dealt with the definition of "sale price" as contained in section 2(o) of the Madhya Pradesh General Sales Tax Act, 1958, with which we are concerned here. "Sale Price"* as defined therein means, "the amount payable to a dealer as valuable consideration for the sale of any goods, less any sum allowed as cash discount according to ordinary trade practice but including any sum charged for anything done by the dealer in respect of the goods at the time or before delivery thereof other than the cost of freight or delivery or the cost of installation when such cost is separately

charged." The Supreme Court in this case held that as the liability to pay sales tax is that of the dealer and as there is no statutory power given to the dealer to collect sales tax from the purchaser, if the dealer passes on his tax burden to the purchaser, he does it only by adding the tax in question to the price of the goods sold and thereby the price fixed for the goods including the tax payable becomes the valuable consideration given by the purchaser for the goods purchased and the tax collected by the dealer becomes a part of the sale price as defined in section 2(o) of the Act. This ruling fully applies here. Duties of excise paid under the three Acts by the petitioner and collected by it from the purchasers must, on the same reasoning, be held to be forming part of the sale prices.

In *Sanghi Beverages Pvt. Ltd. vs. Commissioner of Sales Tax*, (1996) 102 STC 144, the question whether the excise duty recovered by an assessee from the purchaser formed part of the sale price on which sales tax was leviable was also answered in affirmative. In *Mohd. Rafi vs. State of M. P. and others* (supra) decided on 23-4-2003, this Court has considered the definition of "sale price" in section 2(o) of M. P. General Sales Tax Act which is *pari materia* to definition in section 2(u) of the M. P. Commercial Tax Act. Relying on *Central Coal Fields Ltd. vs. Commissioner of Sales Tax* (supra) and aforesaid other decisions, this Court came to the conclusion that forest development cess forms part of the sale price.

Shri H. S. Shrivastava, learned senior counsel has relied upon the decision of the Apex Court in *Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax*, . The question arose whether market fee was payable under U. P. Krishi Utpadan Mandi Adhiniyam, 1964 collected from the purchasers by the commission agent form part of turnover. The Apex Court also considered when commission chargeable by the commission agent form part of turnover, it is not a sum which he has in his turn to pay to an authority either by way of tax or by way of fee, but is only a reward for the services rendered by him. Therefore, the commission payable by a purchaser of goods to a commission agent operating within the market area established under the Adhiniyam can be treated as forming part of turnover of purchases. However, the market fees payable under the U. P. Krishi Utpadan Mandi Adhiniyam, 1964 being a sum which can be collected from the purchaser by virtue of provision contained in section 17(iii)(b) of the Adhiniyam by the commission agent, who is required to pay the same to the market committee, cannot be considered as forming part of the consideration paid or payable by the purchaser to the commission agent in respect of purchase of goods at an auction held within a market area established under the Adhiniyam, therefore, it could not be included in the turnover of purchases for purpose of levy of tax u/s 3-D of the U. P. Sales Tax Act, 1948. The question for consideration before Apex Court was quite different. The market fee could not be considered as forming part of consideration paid or payable by the purchaser to the commission agent hence it was not includible in turnover. The said decision with respect to market fees, in the aforesaid circumstances, is not attracted in the instant cases as lessee is required to pay the transit fee along with the royalty.

Shri Shrivastava has further relied upon decision in *Hindustan Steel Ltd. vs. The State of Tamil Nadu*, (1984) 56 STC 70 in which the question before the Madras High Court was in the case of sale of M. S. rounds, M. S. plates, and M. S. angles by assessee, there were separate bargain between parties for cutting and bending such articles for easy transport, hence, collection of cutting and bending charges shown separately in bills, whether post sale charges or pre-sale charges are includible in sale price and form part of taxable turnover. It was held that the bending and cutting charges were only post sale charged and not pre-sales charges. There was separate bargain between the parties as regards the services to be rendered by the assessee for cutting and bending the articles purchased by the customer for the purpose of easy transport. When there was a separate bargain stating that the bending and cutting charges were to be paid separately, it was not possible to include such charges as part of the sale price and consequently in taxable turnover. The charges were not recovered by the assessee from each and every customer but only from those customers who want cutting and bending to be done in respect of articles purchased by them for the purpose of re-transport. The decision cannot be said to be of any application in the instant cases as regulatory measures are taken before hand the transit fee is deposited before delivery of goods along with the royalty. Thus, all the components form part of sale price. Another decision relied upon is *Commissioner of Sales Tax vs. Premier Automobiles Ltd.*, 1985(59) STC 147 in which the High Court of Bombay held that the service pool charges collected by the assessee from its distributors were not a part of the consideration for the vehicle sold to the distributor at all. The charges were collected with a view to establish and maintain the service promotion pool and participate in the benefit provided thereunder and did not constitute the consideration of sale of the cars at all. The Scheme was available only after the cars were delivered to the ultimate consumers, therefore, the benefit received could not be in any way said to be related to or anything done in respect of the cars sold at or before the time of delivery. Thus, Bombay High Court came to the conclusion that in "sale price" contained in section 2(h) of the Central Act the service pool charges could not be included as service pool scheme was separate and available after cars were delivered. Another decision relied upon is *Ananda Timber Depot vs. Commissioner, Board of Revenue (Commercial Taxes), Chepuak, Madras*, (1984) 55 STC 65 in which the sawing charges collected were held to be post sale charges and it was held to be an independent bargain and related to the services rendered by the assessee after sale of the logs to the purchaser. In the facts of the instant case and considering the definition under the M. P. Act, it could not be said that it was an independent or post sale bargain. We find that decision has no application to the facts of the instant cases.

Coming to the submission raised by Shri H. S. Shrivastava, Sr. Advocate with respect to the notification issued by the State Government under the Rules of 2000 has been declared to be ultra vires in *Northern Coalfields Ltd. vs. State of M. P. and others* (supra). In the instant cases vires of the notification has not

been questioned. Apart from that it is stated by Shri Deepak Awasthy, learned GA that said decision has been stayed by the Apex Court which fact has not been controverted at Bar, hence, no help can be derived from a decision, operation of which has been stayed by the Apex Court.

Resultantly, in our opinion the transit fee realized under the Rules of 2000 forms part of the "sale price" as defined in section 2(u) of M. P. Commercial Tax Act, 1994, and has been rightly included in the turnover by the assessing officer.

We find no merits in the writ petitions. They are liable to be dismissed and are hereby dismissed. However, in the facts and circumstances of the cases, we leave the parties to bear their own costs as incurred of the petitions.