
(1988) 05 OHC CK 0003
In the Orissa High Court
Case No : S.J.C. No. 48 of 1979

Orissa Card Board Box Industries

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 05-05-1988

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(3), 5(2)(A)(a)(ii), 6(2)(A)(a)(ii)

Citation : (1988) 71 STC 79

Hon'ble Judges : R.C. Patnaik, J;K.P. Mohapatra, J

Bench : Division Bench

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

Judgement

K.P. Mohapatra, J.—The following questions have been referred by the Sales Tax Tribunal u/s 24(3) of the Orissa Sales Tax Act (hereinafter referred to as the "Act"):

(1) Whether, on the facts and in the circumstances of the case, the learned Member, Sales Tax Tribunal, was justified in rejecting the claim for exemption of tax by the petitioner in respect of sale of wrappers, cartons and labels, etc., to M/s. Sajitha Bakery, Chilika Pharmaceutical Laboratories, Priyadarsini Chemicals, Khosala Lamp Industries and Konark Television ?

(2) Whether, on the facts and in the circumstances of the case, the printing charges received by the petitioner have been rightly treated as sale price can be included in the taxable turnover of the petitioner ?

2. It appears from the statement of facts submitted by the Sales Tax Tribunal that the petitioner-firm, a registered dealer under the Act (hereinafter referred to as the "dealer"), is a manufacturer of cardboard boxes, deals in wax papers and wrappers and also undertakes printing work on the above materials. In the assessment year 1975-76, the dealer sold goods to other dealers as described below :

Name of the manu- Products Amount Form facturers to whom sold obtained
petitioner sold

Rs. Sajitha Bakery Wrappers 78,254.16 Form D Chilika Pharmaceutical
Laboratories Cartons 2,618.76 do. Priyadarsini Chemicals Wrappers 3,201.57 do.
Khosala Lamp Industries Labels 846.70 do. Konark Televisions Cartons 5,312.00
do.

90,233.19 Republic Store (Trader) 8,774.00

99,007.19 Form XXXIV

On account of existence of declarations in form D and form XXXIV the dealer claimed exemption of sales tax u/s 6(2)(A)(a)(ii) of the Act. Further, the dealer claimed exemption of sales tax on a turnover of Rs. 32,615.25 on the ground that it represented labour charges for printing. The Sales Tax Officer, the Assistant Commissioner of Sales Tax, being the first appellate authority and the Member, Additional Sales Tax Tribunal concurrently held that the dealer was not entitled to exemption of sales tax on a turnover of Rs. 99,007.19, because the registration certificates of the purchasing dealers were verified and it was found that they were not entitled to purchase packing materials, such as cartons, wrappers and labels as raw materials for the purpose of manufacture of finished goods inside the State for resale. They further concurrently disallowed exemption of sales tax on the turnover claimed as labour charges for printing on the ground that the dealer had supplied paper and other materials from its own stock, got the printing work done in its own press and thus the contracts were composite ones which could not be bifurcated. Accordingly, sales tax on the aforesaid turnover was demanded.

3. In order to answer the first question, it is necessary to quote Section 5(2)(A)(a)(ii) of the Act :

5. Rate of tax.--

* * * (2)(A) In this Act, the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom:--

(a) his turnover during that period on--

* * * (ii) sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration for resale by him in Orissa in a manner that such resale shall be subject to levy of tax under this Act; and on sales to a registered dealer of containers or other materials for the packing of such goods:

Provided that for the purpose of ascertaining the deductions under this item the dealer selling the goods shall furnish to the prescribed authority in the prescribed manner, a declaration in the prescribed form obtained from the prescribed authority within the prescribed time or within such further time as that authority may after sufficient cause permit:

Provided further that where any goods specified in the certificate of registration are purchased by a registered dealer free of tax after furnishing a declaration under the preceding proviso but are utilised by him for any other purpose, the price of the goods so purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of purchasing dealer.

According to the statement of facts for all the six transactions of sale by the dealer, declarations in form D and form XXXIV were produced. But before allowing exemption as referred to by the section quoted above, the Sales Tax Officer verified the registration certificates of the purchasing dealers in order to find out if they were entitled to purchase cartons, wrappers and labels for resale inside the State. He found out that none of them was entitled to purchase the above materials, but nevertheless the dealer had obtained declarations in form D and form XXXIV which were of no avail to claim exemption of sales tax.

4. Mr. R. B. Roy, learned Counsel appearing for the dealer, did not press that exemption of sales tax was available u/s 5(2)(A)(a)(ii) of the Act, because the purchasing dealers were not entitled to resell the goods inside the State according to the endorsement made in the registration certificates. He urged that at least Sajitha Bakery, Chilika Pharmaceutical Laboratories and Konark Televisions who furnished declarations in form D were entitled to purchase wrappers and cartons as raw material for the purpose of manufacture inside the State as contemplated in the fifth proviso to Section 5(1) of the Act. Therefore, these purchasing dealers are entitled to claim exemption of sales tax. In support of his contention, he placed reliance on two decisions reported in *The State of Madras Vs. Radio and Electricals Ltd. etc.*, and *The Commissioner of Sales Tax Vs. Samaj Paper Mart*, . In the first case, the Supreme Court, in a case of sale and purchase in course of inter-State trade and commerce, held that the seller can have no control over the purchaser. He has only to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate; but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in form C the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were entitled to be used. Whether the goods specified in the registration certificate in form B can be used for the purpose is not for the selling dealer to determine. Relying upon this decision, the Madhya Pradesh High Court held in the second case that no duty is cast on a selling dealer at the time of sale to satisfy himself that the article sold by him is, in fact, "raw material" for the purpose of the manufacture of the purchasing dealer ; nor is the dealer called upon to satisfy the sales tax authorities about it at the time of assessment. If the selling dealer has obtained the necessary declaration from the purchasing dealer that the article is included as raw material in the registration certificate of the purchasing dealer, he is entitled to the concessional rate of tax and the sales tax

authorities have no right to embark upon an enquiry as to whether the articles can be used as raw material by the purchasing dealer. In view of the principles laid down in these two decisions, it is necessary to determine if the purchasing dealers, Sajitha Bakery, Chilika Pharmaceutical Laboratories and Konark Televisions were entitled to purchase wrappers and cartons as raw material for the purpose of manufacture of finished goods, for which they had issued declarations in form D.

5. In the statement of facts, the Sales Tax Tribunal stated that the declarations in form D were rejected and the exemption of sales tax was denied to the purchasing dealers, because they were not authorised in their registration certificate to purchase wrappers and cartons as raw material. In order to verify the correctness of this statement, it is necessary to look into the registration certificate of the three purchasing dealers attested copies of which are available on record. It is to be remembered that the assessment relates to the assessment year 1975-76. Sajitha Bakery was granted the registration certificate in the year 1971. In Clause 2-A it was stated that this dealer was authorised to purchase wrappers as raw material for the purpose of using them for manufacture of goods inside the State of Orissa. Similarly, Chilika Pharmaceutical Laboratories was granted registration certificate in the year 1974. In Clause 2-A of the registration certificate it was mentioned that this dealer was entitled to purchase cartons for manufacture of goods inside the State of Orissa. Registration certificate was also issued to the Orissa Small Industries Corporation Limited in the year 1973. It was mentioned in Clause 2-A of the registration certificate that this dealer was entitled to purchase cartons and packing materials for the purpose of manufacture of T.V. sets. But this clause was added on 25th August, 1976 in the assessment year 1976-77. Therefore, it prima facie seems that in the financial year 1975-76 this dealer was not entitled to purchase cartons and packing materials for the purpose of manufacture of T. V. sets. Further, it is not possible to ascertain if Konark Television is the same as the Orissa Small Industries Corporation Limited or a separate dealer altogether. The attested copies of registration certificates of other purchasing dealers are not available on record. The lower forums did not examine this aspect of the case. Therefore, examination of materials in this regard will be incomplete without asking for further particulars and without hearing the learned Counsel for both parties. This can best be done if the case is remitted back to the Sales Tax Tribunal to examine with reference to entries made in the registration certificate if the purchasing dealers were entitled to purchase wrappers and cartons for the purpose of manufacture of finished goods inside the State of Orissa. Therefore, the first question is answered in the manner that the Sales Tax Tribunal shall examine the question as to whether the purchasing dealers were entitled to purchase wrappers and cartons for manufacture of finished goods inside the State of Orissa and grant declarations in form D to the selling dealer.

6. The second question relates to exclusion of a sum of Rs. 32,615.25 representing the labour charges for printing which amount was concurrently

accepted as sale price and was included in the taxable turnover of the dealer. In coming to the aforesaid conclusion, reliance was placed on a decision of this Court reported in [1971] 27 STC 100(Ori) (State of Orissa v. Sri D. N. Joshi) and the further fact that order books and agreements of the dealers with the customers to whom it supplied printed materials in order to ascertain the nature of the contract were not produced.

7. Mr. Roy urged that the disputed turnover was actually labour charges which were shown separately in the bills issued by the dealer to the customers and could be bifurcated from the sale of paper, etc., on which the printing was made. Therefore, the transactions being divisible contracts, the sum of Rs. 32,615.25 shown separately as labour charges for printing should be excluded from the dealer's taxable turnover.

8. The facts of the case of State of Orissa v. Sri D. N. Joshi [1971] 27 STC 100 (Ori) were that the dealer supplied paper from his own stock and got the printing done on the paper according to the orders of the customers and the receipts granted by him showed separately the payments made for the paper and printing. The question that arose for consideration was whether the cost of paper only should be taxed and not the full value of the sale memos. It was observed that if the agreements were that the price of paper would be paid separately and that the printing would be done on that paper, then sales tax was not leviable on the cost of printing. But in that case the dealer did not place materials to show that there were divisible agreements. In the above premises, it was held that the agreements were composite in character, the contracts were indivisible and the dealer was liable to pay sales tax on the entire sum. In this case it was found as a fact that the dealer was issuing separate cash memos in respect of sales of paper and realisation of labour charges for printing of the papers. But when asked to produce the agreements or work orders or the books of accounts in order to determine as to whether the contracts were composite or divisible, the dealer failed to produce the documents. In my view, the facts of the case are quite similar to the facts of State of Orissa v. Sri D. N. Joshi [1971] 27 STC 100 (Ori) and so being bound by the precedent it is not possible to take a different view. A different view could be possible only if the dealer would have produced the agreements or the work orders of the customers, if any, as well as the books of accounts showing the divisibility of the contracts for sale of materials, as well as the printing and labour charges. As this was not done by the dealer, the sum of Rs. 32,615.25 is exigible to sales tax and cannot be excluded from its taxable turnover. Accordingly, the question is answered in the affirmative.

9. In the result, so far as question No. (1) is concerned, the case is remitted back to the Sales Tax Tribunal for examination in the light of the observations made in the judgment. Question No. (2) is answered in the affirmative. Parties to bear their own costs.

R.C. Patnaik, J.

I agree.