(1970) 04 OHC CK 0001

In the Orissa High Court

Case No : O.J.C. No. 248 of 1969

P.R. Tata and Co. — APPELLANT

Vs

The Sales Tax Officer and Another — RESPONDENT

Date of Decision : 08-04-1970

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1971) 27 STC 176

Hon'ble Judges : G.K. Misra, C.J;S. Acharya, J

Bench : Division Bench

Advocate : S.C. Roy, for the Appellant; S.C. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The petitioner is a partnership firm and carries on business in myrobalan (harida) by taking leases from the Forest Department of the Government of Orissa. It was a lessee for the years 1965-66 to 1966-67 under the Forest Department. The terms of the agreement were that the forest produce mentioned in the schedule annexed to the agreement is sold by the Forest Department and purchased by the petitioner, which is called the contractor. The consideration for sale is separately mentioned in the schedule. The petitioner is entitled to the forest produce that exists in the forests at the time the contract was entered into or that may come into existence within the areas specified. The petitioner returns the purchase turnover which is the same as the consideration money paid to the Forest Department in accordance with the agreement.

2. Opposite party No. 1, Sales Tax Officer, Koraput Circle-I, refused to accept the turnover as given by the petitioner. He held that the purchase price would be determined not in accordance with the agreement but by taking into account the various expenses incurred, including labour charges for collection of harida from the forest, the transport charges incurred by the petitioner in bringing the forest produce, and the expenses incurred on crushing and re-crushing the same.

3. Against the assessment order, the petitioner unsuccessfully carried an appeal before opposite party No. 2 (Assistant Commissioner of Sales Tax, Ganjam). It is against the order of the first appellate authority that this writ application has been filed under articles 226 and 227 of the Constitution.

4. The short question is whether collection, transport and crushing charges incurred by the petitioner in getting the forest produce from the forest are to be included in the purchase turnover and are exigible to sales tax. The answer depends on the meaning of "purchase price". The expression "purchase price" has been defined in Section 2 (ee) of the Orissa Sales Tax Act, 1947, as follows:

2. (ee) ''Purchase price'' means the amount payable by a person as valuable consideration for the purchase or supply of any goods less any sum allowed by the seller as cash discount according to ordinary trade practice, but it shall include any sum charged towards anything clone by the seller in respect of the goods at the time of or before delivery of such goods other than the cost of freight or delivery or the cost of installation when such cost is separately charged.

Section 2 (j) defines "turnover of purchases":

2. (j) ''Turnover of purchases'' means the aggregate of the amounts of purchase prices paid and payable by a dealer in respect of the purchase or supply of goods or classes of goods declared u/s 3-B.

Thus turnover of purchase means the aggregate of the amounts of purchase price paid and payable by the dealer in respect of the purchase, while purchase price means amount payable by a person as valuable consideration and shall also include any sum charged towards anything done by the seller in respect of the goods at the time of or before delivery of such goods.

5. In the present case harida was either on the tree or was to come subsequently. The seller did not incur any expenses towards anything done at the time of or before delivery of the harida. The purchaser himself was to pluck the harida, collect, transport and crush the same. None of these things was done by the seller and was accordingly not to be included in the purchase price.

6. The taxing authorities therefore exercised their jurisdiction wrongly and acted contrary to law in holding that the purchase price included collection, transport and crushing charges incurred by the petitioner.

7. The writ application is allowed. A writ of certiorari be issued quashing the assessment orders and the order of the first appellate authority. The Sales Tax Officer, Koraput Circle-I (opposite party No. 1) is directed to re-compute the tax in accordance with law in the light of the observations made above. After re-computation, the petitioner would be entitled to refund of the excess amount, if already paid by him. There will be no order as to costs.

S. Acharya, J.

I agree.

