(1975) 08 OHC CK 0016

In the Orissa High Court

Case No : Special Jurisdiction Case No. 130 of 1970

Singhbhum Timber Trading Company APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 19-08-1975

Acts Referred:

Citation : (1982) 51 STC 334

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Judgement

R.N. Misra, J.—This Court by order dated 22nd November, 1971, required the Member, Sales Tax Tribunal, to state a case and refer the following two questions for determination of this Court:

(1) Whether, in law, there was a contract for supply of sleepers between the petitioner and the Government of India in the Ministry of Railways through the agency of the Government of Bihar ?

(2) Whether the transaction between the petitioner and the Government of Bihar constitutes inter-State Sale ?

Accordingly the Tribunal has drawn up a statement of the facts from which it appears that the assessee is a partnership firm carrying on business in timber at Rourkela. While the assessing officer examined the accounts of the assessee for the year 1965-66, he found that the assessee had sold timber locally worth Rs. 91,326.41 to the Forest Utilisation Officer, Bihar, but had classified that turnover as sales in the course of inter-State trade liable to tax under the Central Sales Tax Act. The Sales Tax Officer, therefore, proceeded to assess the said turnover under the Orissa Sales Tax Act.

2. The first appeal preferred by the assessee claiming that the turnover was liable to assessment only under the Central Sales Tax Act was rejected. The Assistant Commissioner found that the Forest Utilisation Officer, Bihar, had

actually purchased the timber within the State of Orissa and had resold them to the railways in the course of inter-State trade and therefore, according to the first appellate authority, there were two sales involved-one a sale liable to tax under the Orissa Sales Tax Act and the other under the Central Sales Tax Act, The second appeal of the assessee was dismissed by the Tribunal.

3. The assessee contends that the supply of timber to the railways through the Forest Utilisation Officer, Bihar, was a part of the contract and from the minutes of the meetings of the authorities of the Railway Board and the Bihar Forest Department, contracts can be spelled out. The several proceedings were placed on the record and the Tribunal had referred to some of the minutes but did not agree with the contention of the assessee that there was a pre-existing contract pursuant to which the goods had been sold by the assessee to the Forest Utilisation Officer of Bihar which necessarily envisaged movements of the goods. We do not think that the Tribunal took the correct view of the matter.

The Forest Utilisation Officer of the Government of Bihar was bound under an arrangement made with the railway administration for securing sleepers for the railway tracks. In fact, it is clear from the several minutes that even signed cheques were made over by the railway administration for buying the sleepers. The sleepers were thus purchased with the money of the railways and were intended to be exclusively used for the purposes of the railways. Undoubtedly, the sleepers after being passed and taken delivery of from the assessee have been despatched to Bihar. A clear link has been established between the purchase of the goods from the assessee and transport thereof to Bihar. In fact, it has been consistently found by the departmental authorities as also the Tribunal that it is the assessee himself who put the materials into the railways for movement. It Is difficult to accept the contention of the learned standing counsel that the transactions were two independent ones-one between the assessee and the Forest Utilisation Officer and the other between the Forest Utilisation Officer and the railway administration. The purchase was made following a pre-existing contract and it envisaged transport of the sleepers from Rourkela into Bihar. For these reasons we would hold that the Tribunal was not correct in holding that the sales between the assessee and the Forest Utilisation Officer were exigible to sales tax under the Orissa Sales Tax Act. On the other hand, the claim of the assessee that these constituted sales taxable under the Central Sales Tax Act was correct.

4. Our answer to the questions referred, therefore, shall be :

(1) There was a contract for supply of sleepers between the petitioner and the Government of India in the Ministry of Railways through the agency of the Government of Bihar.

(2) The transactions between the petitioner and the Government of Bihar constituted inter-State sales.

The assessee shall have his costs. Hearing fee is assessed at rupees one hundred. The reference fees be refunded.

N.K. Das, J.

5. I agree.

