(1978) 03 OHC CK 0010

In the Orissa High Court

Case No : Special Jurisdiction Case No. 171 of 1975

State of Orissa APPELLANT

Vs

Balaji Wood Industries RESPONDENT

Date of Decision : 06-03-1978

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 24(1), 9, 9A, 9C

Citation : (1978) 42 STC 178

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

Bench : Division Bench

Advocate : P.K. Misra, for the Respondent

Judgement

R.N. Misra, J.—This is a reference made at the instance of the State of Orissa by the Member, Sales Tax Tribunal, Orissa, u/s 24(1) of the Orissa Sales Tax Act of 1947, referring two questions for opinion of the court, namely:-

(1) Whether, in the facts and circumstances of the case, cable drums can be treated as packing materials for aluminium cables and the Member, Sales Tax Tribunal, was justified to allow the benefit of concessional rate of tax in respect of sale of goods to M/s. Aluminium Industries Limited ?

(2) Whether, in the facts and circumstances of the case, packing material will come within the sweep of column 2-A of certificate of registration u/s 9/9-A and 9-C of the Orissa Sales Tax Act granted to M/s. Aluminium Industries Limited ?

2. The assessee carries on the business of purchase and sale of timber and firewood as also manufacture and sale of cable drums. In the course of its business, during the year 1971-72, the assessee had sold cable drums to M/s. Aluminium Industries Limited and M/s. Hira Cable Works. Both these purchasing dealers are registered under the Orissa Sales Tax Act and are entitled to purchase packing material at concessional rate as provided by the Act and the Rules made thereunder. The goods sold by the assessee would normally be exigible to tax at the rate of five per cent unless by virtue of the entry in the

certificate of registration, the purchasing registered dealers were entitled to buy the same at concessional rate of 3 per cent. While the assessee maintained that the purchasing dealers were entitled to the concessional, rate, the Sales Tax Officer was of the view that the purchasing dealers were not entitled to the benefit and, therefore, the assessee became exigible in respect of its turnover on this account at the rate of 5 per cent. Thus, it is the difference in the rate of assessment that gave rise to the dispute. Ultimately, the Tribunal accepted the claim by holding that in the absence of a definition of "packing material" and keeping in view the nature of the goods in question, cable drums should be accepted as packing material.

3. There is no dispute that the term "packing material" has not been denned and, in the absence of a definition, the meaning in common parlance afforded to the term must be accepted. The Tribunal as a fact has found:

Bales of cotton yarn are bound and riveted by thin tin-plate wire and then wrapped in gunny rolls. So the packing materials are thin tin-plate wires and gunny rolls. Corrugated iron sheets are packed in bundles by tying them in iron wire. So the packing material is iron wire. Stationery articles when despatched are packed in thin wooden boxes fixed with iron nails. So the packing materials are thin wooden boxes and iron nails. Iron rods required for house-building are tied in bundles in iron wires. The iron wires are, therefore, packing material. When a readymade garments shop sells a shirt to a customer it packs the material inside a paper bag. Therefore, the paper bag is the packing material. In the case of aluminium cables, they cannot be packed inside a box or by any other mode conveniently except that they can be wound around a cable drum so as to keep them intact. In fact, large rolls of aluminium and copper cables are made to wind around cable drums which is the usual practice. Therefore, so far as the aluminium cables are concerned, cable drums made of timber in whatever names or abbreviations they are called, cannot but be treated as packing materials....

The illustrations indicated by the Tribunal have led the learned standing counsel to fairly concede before us that keeping the processed goods in view (i. e., aluminium cables), the cable drums could be packing material. We are inclined to agree with the learned standing counsel that his stand is absolutely fair and there can be no doubt that cable drums in this case were packing material. Our conclusion is supported by the fact that in respect of another similar dealer, the department itself has chosen to make an entry against column 2-A of the certificate of registration that the dealer is entitled to buy at concessional rate wooden drums as packing material. Though the shape or the nature of the drum could not be material, yet the entry in the other dealer''s certificate of registration is certainly available to be used as a further illustration of what the department expects the packing material to be.

4. On the aforesaid analysis, we must hold that the Tribunal has taken the right view and the contentions advanced by the State have no basis. We would,

accordingly, answer the first question thus :

In the facts and circumstances of the case, cable drums can be treated as packing materials for aluminium cables and the Member, Sales Tax Tribunal, was justified in allowing the benefit of the concessional rate in respect of the sales effected by the assessee to M/s. Aluminium Industries Limited.

In view of the aforesaid answer, the second question, as framed, does not arise for consideration.

We make no order as to costs.

P.K. Mohanti, J.

I agrees.