(1990) 08 OHC CK 0022

In the Orissa High Court

Case No : S.J.C. No. 23 of 1983

State of Orissa APPELLANT

Vs

Iqbal Bros. RESPONDENT

Date of Decision : 03-08-1990

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 3B

Citation : (1990) 79 STC 337

Hon'ble Judges : S.C. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : A.B. Misra, S.T, for the Appellant; J. Mohanty, for the Respondent

Judgement

S.C. Mohapatra, J.—This is a reference u/s 24(1) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as "the Act"), at the instance of the Revenue on the following question of law :

"Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was justified to hold that the dealer is to pay purchase tax on the transaction of mahua flowers, on the basis of royalty amount paid by the dealer to the Forest Department to remove mahua flowers collected from the persons on payment of remuneration ?"

2. The dealer carries on business of purchase and sale of mahua flower which is liable to purchase tax u/s 3-B and was registered under the Act. For the year 1978-79, he was assessed to the best of judgment as envisaged u/s 12(4) of the Act. The dealer paid purchase tax on the royalty paid to the State Government. The Sales Tax Officer, however, held that sale price of mahua flowers included royalty which is charged by the dealer when he sells the goods. Accordingly, the prevailing market rate at which mahua flower is sold at the time of purchase by the dealer would be the purchase turnover of the dealer. In appeal, the Assistant Commissioner confirmed the same. Accepting the accounts, Tribunal held that after taking lease of mahua trees, the dealer was collecting mahua flower and is

thus, the first purchaser whose purchase price was the royalty. On this finding, relying on the principle decided in [1971] 27 STC 176 Ori (P.R. Tata & Co. v. Sales Tax Officer), where harida was collected from forest on payment of royalty, the Tribunal held that royalty is the purchase price on which purchase tax is leviable.

3. We have our own doubts if collection of mahua flower on payment of royalty would amount to purchase of such goods. In this case, however, the dealer has not questioned whether the transaction amounts to purchase. Once it is accepted as purchase, royalty paid becomes the purchase price since there is no dispute that mahua flower belongs to the State and on payment of consideration which is called royally, the dealer purchased the same.

4. In view of our discussion, on the facts and in the circumstances, the question is answered in the affirmative against the Revenue. No costs.

J.M. Mahapatra, J.

5. I agree.

