(1973) 04 OHC CK 0024

In the Orissa High Court

Case No : Special Jurisdiction Case No''s. 171 to 174 of 1971

State of Orissa APPELLANT

Vs

Orissa Forest Corporation Ltd. and Others RESPONDENT

Date of Decision : 24-04-1973

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

Citation : (1982) 51 STC 333

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

Bench : Division Bench

Judgement

R.N. Misra, J.—These references have been made u/s 24(1) of the Orissa Sales Tax Act, 1947 and the following three questions have been referred to this Court:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in remanding the case for reassessment when he held that there was one sale by the forest contractor or the Forest Corporation to the Divisional Forest Officers under the Orissa Sales Tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in not considering the fact of the credit sales effected by the opponents and their non-inclusion in the turnover of the relevant period ?

(3) Whether, on the facts and in the circumstances of the case, the opponents could not be assessed under the Central Sales Tax Act for the sales effected in the course of inter-State trade and commerce ?

2. The short facts as appear from a connected reference which the counsel for both sides wanted us to adopt for these cases would show that the forest department of the Orissa Government agreed to supply sleepers to the South Eastern Railway Administration. Funds were supplied by the railway administration and the forest department through its local forest officers collected the sleepers from different contractors on making payment. The Forest Corporation is one of such contractors from whom sleepers were collected on

payment. The sales tax authorities held that there were two sales-one by the contractors to the forest officers and thereafter by the forest officers to the railway administration. So far as the Forest Corporation, the assessee in these cases, is concerned, on the aforesaid finding it was liable to be assessed under the Orissa Sales Tax Act. After this finding was recorded in second appeals, the Tribunal directed the matter to be remitted back for reassessment. Thereupon, at the instance of the State, the above questions have been referred.

3. So far as the assessee''s case is concerned, the question of the turnover being exigible to Central sales tax does not at all arise. The learned counsel for both sides therefore rightly asked us not to answer this question as being a question arising out of the order of the Appellate Tribunal. The Tribunal has rightly come to the conclusion that there has been a sale in Orissa which is exigible to Orissa sales tax. On that finding, no further enquiry was necessary justifying the remand for assessment of the turnover of the assessee. Mr. Patnaik, appearing for the corporation, agrees with that finding that the assessment under the Orissa Sales Tax Act should have been concluded and there was no scope for a further remand. Without discussing further we are prepared to hold in answer to the first question referred to us that in the facts and circumstances of the case the Tribunal was not right in remanding the case for reassessment after it held that there was one sale by the forest contractors or the Forest Corporation to the Divisional Forest Officers under the Orissa Sales Tax Act.

4. Once we answer that question in favour of the department, the second question also does not arise, because on that finding it is conclusive. We, therefore, decline to answer the second question referred to us. The net result, therefore, is that the first question referred to us is answered as indicated by the answer in the negative, namely, the Tribunal was not right in remanding the case for reassessment. We direct the parties to bear their own costs of this Court.

B.K. Ray, J.

5. I agree.

