

(1977) 05 OHC CK 0003

In the Orissa High Court

Case No : O.J.C. No's. 1107 and 1108 of 1975

Straw Products Limited

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-05-1977

Acts Referred:

Central Sales Tax Act, 1956 — Section 2
Constitution of India, 1950 — Article 14
Sales of Goods Act, 1930 — Section 64A

Citation : (1978) 42 STC 302

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

Bench : Division Bench

Advocate : D.P. Pal, B.K. Mohanty and S.B. Nanda, for the Appellant; Adv.-General and Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—The petitioner, Messrs. Straw Products Limited, a company incorporated under the Companies Act of 1956 with its registered office at Jaykaypur in the District of Koraput is engaged in the manufacture of paper and allied products. For the purpose of obtaining pulp for paper-making, the company obtained two leases from the State of Orissa on 17th May, 1956 and 22nd August, 1956, on the basis of royalty. Both the contracts were for a term of 16 years with a stipulation for renewal and in January, 1974, the two leases have been renewed for a further term of 16 years. There is no stipulation for reimbursement of sales tax in the contracts. On 24th February, 1975, the Divisional Forest Officer, Balliguda Division, sent the following letter to the petitioner:

I am a registered dealer and my registration No. is GA-II-3252. I am assessed to tax on sale of all standing trees which includes bamboos for the years 1969-70 to 1971-72 and the assessments for the period from 1972-73 till to date are pending.

Your transactions with the undersigned from the year 1969-70 are as below and the tax payable by you is noted against each,

_____ Since according to the tax laws, tax on all sales are to be realised and remitted during the same quarters, I would request you that all arrears of sales tax as detailed above may please be paid by 15th March, 1975, failing which this letter will be operative for stopping extraction and despatch of bamboo from the forests to your depots....

The petitioner thereupon sent a letter of protest to the forest authorities contending that the transaction was not exigible to sales tax and in the absence of stipulation of reimbursement, the company had no liability of meeting the demand. It was further pointed out that the threat of stopping extraction and removal of timber from the forests was an arbitrary and high-handed action. The Government machinery should not take such arbitrary and unsustainable steps. When the petitioner found that there was imminent danger to its business, these two writ applications were filed asking for quashing of the demand on the footing that the transactions under the leases were not exigible to sales tax and, at any rate, the petitioner could not be forced to make the payment and for non-payment the petitioner could not be restrained from working out its leasehold rights. The two writ applications are for the two separate contracts but as common questions have been raised and one set of arguments were advanced by the parties, we propose to dispose of both these applications by one common judgment.

2. Two separate counter-affidavits have been filed, one by opposite parties 1 to 3 and the other by opposite parties 4 and 5. The Divisional Forest Officer of Balliguda Division in his counter-affidavit on behalf of opposite parties 1 to 3 has pleaded that Clause 10 of the contract making provision that no fee other than payments expressly mentioned therein (namely royalty) would be payable by the lessees is to be read along with Clause 7, wherein it has been provided thus :

Nothing herein contained shall be deemed to relieve the company, its agents and servants from the duty of complying with any Act of the Legislature and any legal enactment in force and any Rules thereunder for the time being in force applying to the locality in which the contract area is situated.

It has been further pleaded that as a result of the amendment of the Orissa Sales Tax Act in 1974, the Divisional Forest Officer became liable to be registered

as a dealer, got himself registered and the sales made by him have become exigible to tax. In view of the statutory provision that a registered dealer is entitled to pass on the incidence of tax to the buyer, the petitioner as buyer is liable for reimbursing the selling Divisional Forest Officer in respect of the sales tax. The State Government decided in September, 1974 and January, 1975, that the forest department should pay sales tax on the sale price; the Divisional Forest Officers should register themselves as dealers in their respective areas and in view of such decision of the State Government, the Divisional Forest Officer has accepted the assessment raised against him and has demanded reimbursement.

The Law Officer attached to the Commissioner of Commercial Taxes in his counter-affidavit on behalf of opposite parties 4 and 5 has pleaded that the Divisional Forest Officer of Balliguda Division has been rightly assessed to tax under the Act and the assessments have become final in the absence of any challenge. It has been further pleaded that the petitioner has no locus standi to challenge the assessment of tax as it is the dealer who has been assessed and even if the petitioner may not be burdened with the tax incidence, opposite party No. 2, who has been assessed as dealer will remain bound to satisfy the tax demand raised against him.

3. At the hearing, Dr. Pal appearing for the petitioner contended :

(i) The State of Orissa in the forest department is the owner of the bamboos in respect of which the two leases have been granted. These bamboos grow spontaneously and it is not the case of the lessor or of the taxing department that these are grown by the forest department.

(ii) The State Government in the forest department does not carry on any business and, therefore, it had already been held by this court in the case of State of Orissa v. Divisional Forest Officer, Deogarh Division S. J. C. Nos. 54 and 55 of 1975 decided on the 3rd September, 1976 (Orissa High Court), that the Divisional Forest Officer while leasing out the right to exploit the timber or other forest produce from a defined area was not a dealer under the Act. The incorporation of a definition for the word "business" in 1974 did not bring in any change in the legal position and, therefore, the levy of sales tax on the Divisional Forest Officer is not in accordance with law.

(iii) Conceding that under the contracts, there is any sale, it is the State of Orissa which is the seller and not the Divisional Forest Officer. Therefore, the Divisional Forest Officer is not entitled to claim any reimbursement.

(iv) Even if the sales tax be exigible and it be accepted that the Divisional Forest Officer has been correctly assessed, in the absence of a contract, the Divisional Forest Officer is not entitled to recover sales tax paid by him. The demand, therefore, has no basis.

(v) Even conceding that the demand is recoverable from the petitioner-company,

the opposite parties are not entitled to stop extraction of bamboos from the leasehold area for non-satisfaction of the claim for reimbursement.

Learned Advocate-General appearing for the State of Orissa and the Forest Officers has taken the stand that:

(a) On the petitioner's own showing at the most, it would be a case of breach of contract and no writ application is tenable for this threatened breach.

(b) The petitioner not being the assessee is not entitled to challenge the assessment or question its validity.

(c) The decision of the Supreme Court in the case of State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., is a complete answer to the other points raised on behalf of the petitioner and in view of the ratio in the said decision, the writ application is bound to fail.

Learned standing counsel for the taxing department has reiterated these very contentions and has further stated that when, in the absence of any challenge by the Divisional Forest Officer (the dealer), the assessments have become final, it would not at all be appropriate for us to examine the exigibility of tax and interfere in the matter.

4. Having heard both sides, we are of the view that the following questions arise for determination :-

(1) Whether the writ applications are maintainable ?

(2) Whether the Divisional Forest Officer could have been assessed to sales tax when the State of Orissa is the lessor (and, therefore, the seller) under the contracts ?

(3) Whether the levy of sales tax on the transactions covered by the contracts is legal ?

(4) Is the Divisional Forest Officer entitled to claim reimbursement of tax?

(5) Is the petitioner entitled to any relief against the threatened action ?

Question No. (1): Whether the writ applications are maintainable ?

5. Objection has been raised on behalf of the opposite parties that the petitioner not being the assessee, the assessments to sales tax made against the Divisional Forest Officer are not open to challenge at the instance of the petitioner. On behalf of the petitioner, it has been claimed that the taxing department and the forest department are two wings of the State Government and once the State Government, as indicated in the counter-affidavit, decided that the transactions would be exigible to sales tax and the Divisional Forest Officer should get himself registered, pay tax and get himself reimbursed from the lessee, it was not open to the Divisional Forest Officer to challenge the assessment. If, however, the transaction is not exigible to sales tax, the petitioner who is asked to bear the

ultimate incidence of liability cannot be forced to meet the demand. Dr. Pal for the petitioner contends that the petitioner, in the circumstances, must be found to have cause of action and in respect of this wrong, it must have a remedy. We find support for the maintainability of the applications from the decision of the Andhra Pradesh High Court in the case of A.M. Ansari and Others Vs. The Board of Revenue, Andhra Pradesh and Others, . The petitioners before the Andhra Pradesh High Court were forest contractors in respect of timber, fuel, bamboo and other minor forest produces. One of the conditions of auction sale was that within ten days of the receipt of the confirmation order of the competent authority, the contractor was to pay sales tax over the bid amount at the rate current at the time of sale. Undoubtedly, the Andhra Pradesh Government or its forest department was the seller and the contractors as buyers were to bear the incidence of sales tax. The contractors' applications were entertained and ultimately succeeded. Appeals were carried to the Supreme Court against the decision of the Andhra Pradesh High Court and in the case of Board of Revenue and Others Vs. A.M. Ansari and Others, , the appeals were dismissed. No objection had been raised either at the stage of the original proceeding or before the Supreme Court that the contractors' applications were not maintainable because they were not the assesseees. The observations of the Supreme Court in State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., relied upon by the learned Advocate-General for some other purpose seems to be a complete answer to the objection. In paragraph 3 of the judgment, it has been stated :

It may be mentioned right here that the respondent before us is not directly liable to pay sales tax, even assuming that the "lease deed" involves sale of goods. The forest department of the Government is admittedly a registered dealer for the relevant period and it is claimed by the appellant-State that it was liable qua dealer to pay tax on sales of timber and by virtue of Section 64A of the Sale of Goods Act such sums, which became leviable only after the agreement was entered into in 1956, could be recovered from the purchaser-respondent. It is virtually admitted in this appeal, as stated earlier, that both parties are registered dealers under the relevant Sales Tax Act. Nor is it in dispute that if the appellant-forest department were liable to pay sales tax for the sales of timber which were alleged to have taken place, the respondent, in turn, would be liable to make good that sum in view of the plain provision in Section 64A of the Sale of Goods Act....

Apart from this reason, we are inclined also to accept Dr. Pal's contention that when the public authorities are forcing the petitioner to bear the ultimate burden of tax and the burden is nothing other than sales tax alleged to be exigible on the transaction, we must hold that it is open to the petitioner to contend that the transaction is not exigible to sales tax and, therefore, it has no liability to reimburse. If the position would be otherwise, the petitioner would have to bear a burden which is not ultimately its. We would accordingly negative the contention raised by the opposite parties and hold that the petitioner has a cause of action.

Connected with this objection, the opposite parties had also contended that at the most, the threat amounted to a breach of contract and, therefore, the petitioner should pursue its remedies in the common law forum and not by invoking the extraordinary jurisdiction of this court. Reliance has been placed on the observations of the Supreme Court in some cases where the court has indicated that disputes arising out of contractual obligations are appropriately matters for the civil court. On the other hand, Dr. Pal has placed reliance on the decision of the Supreme Court in the case of D. F. O., The D.F.O., South Kheri and Others Vs. Ram Sanehi Singh, We do not think, this is a case where the question should be examined from the angle indicated by that line of decisions. The lessor is out to pass on the incidence of sales tax to the lessee and the dispute has arisen out of the lessee's stand that the transactions of the lessor with the lessee are not at all exigible to sales tax. Under the contracts, there is no stipulation regarding reimbursement of sales tax. In the counter-affidavit of the opposite parties before us, reliance has been placed on the scheme of the Orissa Sales Tax Act and, in particular, Section 9-B thereof in support of the position that a registered dealer is entitled to pass on the incidence of sales tax to the buyer. In these circumstances, we do not think, the examination of this question should be from the angle of breach of contract. We are inclined to agree with the petitioner's counsel that the writ application are also otherwise maintainable.

Questions Nos. (2) and (4)

(2) Whether the Divisional Forest Officer could have been assessed to sales tax when the State of Orissa is the lessor (and, therefore, the seller) under the contracts ?

(4) Is the Divisional Forest Officer entitled to claim reimbursement of tax?

6. Conceding that sales tax is leviable, it has been contended on behalf of the petitioner that the seller under the two contracts was the State of Orissa and not the Divisional Forest Officer. Therefore, in the absence of anything more, it is not known as to how the Divisional Forest Officer has been assessed to sales tax when the seller is the State of Orissa. There is no statutory provision supporting the situation that the Divisional Forest Officer could be taken as the seller and, therefore, the dealer, when the sales are actually by the State of Orissa. It is not disputed that the two contracts are between the Governor of the State of Orissa as the grantor of the leases and the company as the lessee. Even the Divisional Forest Officer is not the authority signing the contract on behalf of the State of Orissa. Royalty which is said to be the sale price is payable under schedule II to the contracts to the grantor, i. e., the Governor of the State of Orissa. In the circumstances, we agree with Dr. Pal that the State of Orissa and not the Divisional Forest Officer could be the dealer qua the transactions covered by the contracts in question in case sales tax was exigible and the Divisional Forest Officer is not competent to demand reimbursement from the company on the footing that he has been assessed to sales tax. Liability under the Orissa Sales Tax Act is a statutory one and it is not open to the State in discharge of its

administrative business or at its volition to name an employee under it as the person liable to pay sales tax under the Act. We must, therefore, hold that the Divisional Forest Officer could not have been assessed to sales tax for the transactions under the contracts and thus he is not the person entitled to claim reimbursement.

Question No. (3): Whether the levy of sales tax on the transactions covered by the contract is legal ?

7. The main question for consideration in these applications is as to whether the transactions covered by the two contracts are exigible to sales tax. This court, in a series of disputes between the taxing department and the forest department had taken the view that the transactions are not exigible to sales tax and, therefore, demands raised under the Act are not tenable. In the case of *State of Orissa v. Divisional Forest Officer, Deogarh Division* S. J. C. Nos. 54 and 55. of 1975 decided on the 3rd September, 1976 (Orissa High Court), a Bench of this Court came to hold that the Divisional Forest Officer of Deogarh Division did not come within the definition of "dealer" appearing in Section 2(c) of the Orissa Sales Tax Act in respect of transactions with forest contractors in matters of selling of standing timbers and other minor forest produces. The definition of the term "dealer" in Section 2(c) runs thus :

"Dealer" means any person who carries on the business of purchasing or selling or supplying goods in Orissa, whether for commission, remuneration or otherwise and includes a department of the Government which carries on such business and any firm or Hindu joint family and any society, club or association which purchases goods from or sells or supplies goods to its members and also includes a casual dealer as hereinbefore defined.

Explanation....

The word "business" in the absence of a definition under the Orissa Sales Tax Act had been assigned the common parlance meaning. Dealing with the matter, the Supreme Court in the case of *State of Andhra Pradesh Vs. Abdul Bakhi and Bros.*, observed :

...A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression business though extensively used is a word of indefinite import. In taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying, selling and supplying the same commodity. Mere buying for personal consumption, i. e., without a profit-motive, will not make a person dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer. The legislature has

not made sale of the very article bought by a person a condition for treating him as a dealer : the definition merely requires that the buying of the commodity mentioned in Rule 5(2) must be in the course of business, i. e., must be for sale or use with a view to make profit out of the integrated activity of buying and disposal....

Same was the view of the Supreme Court in the case of Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon v. Travancore Rubber and Tea Co. [1967] 20 S.T.C. 520 (S.C.). It is unnecessary to refer to the several other decisions of different courts where that view had been adopted.

By Orissa Act 18 of 1974, the legislature for the first time introduced a definition of "business" in Section 2(b) to include :

(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and

(ii) any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern ;

and this definition was deemed to have always been inserted in the statute. The net effect of the definition of "business", therefore, is that it does away with the requirement of profit-motive. The term "business" in the definition of "dealer" has, therefore, to be understood in the light of the definition of "business" and the judicial view that unless the activity was run with a profit-motive, it would not constitute "business" must be taken to have been nullified by the legislative definition of the term. Does the presence of the definition in the Act, however, require the other concept of "business" to have been done away with ?

Dealing with the definition of "dealer" occurring in Section 2(c) of the Orissa Sales Tax Act, the Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa, , pointed out that a person to be a dealer within the meaning of the Act must carry on the business of selling or supplying goods in Orissa and quoted with approval its observations in State of Andhra Pradesh Vs. Abdul Bakhi and Bros., . In order that a particular activity may constitute "business", therefore, it is necessary that such activity must be systematic, time and attention has to be devoted for the running of it and it must have been an activity of selling or supplying. Reliance has been placed by Dr. Pal on the Bench decision of this Court in the case of Ramakrishna Deo v. Collector of Sales Tax, Orissa [1955] 6 S.T.C. 674, which has subsequently been approved in Board of Revenue and Others Vs. A.M. Ansari and Others, . Therein the court found that the proprietor of the Jeypore Estate who had been assessed to sales tax was selling sal trees spontaneously grown in his forest and refused to hold that he was engaged in a trading activity which could be called his "business".

In the case of The Deputy Commissioner of Agricultural Income Tax Vs. Palampadam Plantations Ltd., Kottayam, , the Supreme Court took the view that a person selling trees of spontaneous growth was not a "dealer" under the Kerala General Sales Tax Act. The same matter came up for examination before a Division Bench of the Madhya Pradesh High Court in the case of Orient Paper Mills Ltd. v. State of Madhya Pradesh [1971] 28 S.T.C. 532, where the Madhya Pradesh State was selling bamboos and salai wood from its forests to a paper mill. The following four contentions were raised before the court on behalf of the paper mill:

- (i) The transaction is not a sale of goods and no sales tax is payable in respect of bamboos and salai wood extracted thereunder by the petitioner.
- (ii) No sales tax is payable under the terms of the lease deed dated 4th August, 1956 and, therefore, such tax cannot be recovered.
- (iii) Neither the State Government nor the forest department of that Government is or could be a dealer and for this reason also no sales tax is payable or recoverable.
- (iv) The sales tax, even if payable, is not recoverable as arrears of land revenue, particularly when the revenue recovery certificate was issued by the Divisional Forest Officer.

The court came to hold that the State Government or the forest department could not by merely selling the forest produce grown on their land be regarded as carrying on any business of buying, selling, supplying or distributing goods and, therefore, in respect of mere sales of forest produce, neither the State Government nor the forest department was a dealer within the meaning of the definition in Section 2(d) of the Madhya Pradesh General Sales Tax Act, 1958. The State Government carried an appeal to the Supreme Court and during the pendency of the appeal, the Act was amended. Dealing with the amendment, the Supreme Court pointed out:

The time is set true for stating the decisive statutory changes which occurred after the High Court ruled against the State, calculated to undo the disability discovered by that pronouncement. This development deserves attention as the sole point on which the State lost in the High Court, viz,, that the forest department is not doing business, ceases to have relevance today on account of the amendment to the Madhya Pradesh General Sales Tax Act by the M. P. G. S. T. (Amendment and Validation) Act 13 of 1971. The definition of "dealer" and other related provisions were touched up and redefined in such manner that the finding on point No. 3 formulated by the High Court was effectively nullified. Indeed, the legislation is a sequel to the decision and has squarely undone the impediment in the way of the State collecting sales tax from the respondent. So long as that law holds good the State's claim cannot be bowled out. Of course, Shri B. Sen, for the respondent, desired to challenge the vires of the amending Act but the Presidential Proclamation during the Emergency, suspending the

operation of Article 14, handcuffs the respondent from seeking to strike down this legislation. When the Presidential Proclamation sterilising Article 14 lapses, then it may be time enough to assail this law. So far as this appeal is concerned, Article 14 is under eclipse and the ground of challenge unavailable. The amendatory provisions must therefore be held impregnable, on this score and we proceed on that footing. Its post-emergency validity will be decided, if attacked, at that time, since we leave that aspect untouched. To abbreviate the discussion, thanks to Act 13 of 1971, the forest department of the State shall be deemed to be dealer. If it is a dealer, the levy of sales tax from it is legal and the controversy on this score is silenced.

The conclusion of the Supreme Court was rightly reached on the basis of the second explanation added to Section 2(d) defining the term "dealer" :

The Central or a State Government or any of their departments or offices which, whether or not in the course of business, buy, sell, supply or distributes goods, directly or otherwise, for cash or for deferred payment, or for commission, remuneration or for other valuable consideration, shall be deemed to be a dealer for the purposes of this Act.

It is thus clear that the Supreme Court decision in *State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd.*, assumed that the forest department was a dealer and the scope of the appeal was as indicated in paragraph 3 of the judgment:

...But to attract that provision there has to be sale of goods. Was there any sale of wood under the lease deed ? That is the core of the legal quarrel agitated before us.

It is thus clear that the only question which was examined at length by the Supreme Court in *State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd.*, was as to whether there was a sale. In fact, the Madhya Pradesh High Court had held that there was a sale and once the amended position was accepted as the basis for disposal of the dispute, nothing indeed remained to be decided unless on behalf of the paper mills, the decision of the High Court that there was a sale was attacked. In *State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd.*, , the learned Judges did not find it necessary to refer to the judgment in *Board of Revenue and Others Vs. A.M. Ansari and Others*, , which was rendered by a larger Bench, as the scope of dispute in *State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd.*, was confined to the dispute as to whether there was a sale.

8. In *Board of Revenue and Others Vs. A.M. Ansari and Others*, , the Supreme Court observed:

In order that the sales tax should be payable by the respondents in accordance with the obligation imposed on them by Clause (23) of the sale notice, it is necessary that the Government of Andhra Pradesh should have been carrying on

the business of selling the forest produce. In *State of Gujarat Vs. Raipur Manufacturing Company Ltd.*, , this court while examining the term business in another context observed that whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit-motive. The court further went on to observe that when a subsidiary product is turned out in the factory of the assessee regularly and continuously and it is being sold from time to time, an intention to carry on business in such product may be reasonably attributed to the assessee. As the consideration of profit-motive cannot be regarded as an essential constituent of the term business in view of the amendment introduced in the definition of the term dealer in 1966, what we are left to consider is whether the other ingredients of the term business, viz., volume, frequency, continuity and regularity of transactions of sale and purchase, are satisfied in the instant cases. The auctions of the forest produce by the Government of Andhra Pradesh are admittedly carried on only annually and not at frequent intervals. Thus the important element of frequency being lacking in the instant cases, it cannot be held that the said Government was carrying on the business of sale of forest produce. In *P. T. T. C. and S. Merchants' Union v. State of A. P* (1958) 2 A.W.R. 100 , where a person who grew agricultural products and incidentally sold the same, it was held that no sales tax was payable as it could not be said that the person carried on business. A similar view was expressed in *Raja Bhairabendra Narayan Bhup Vs. Superintendent of Taxes and Others*, , where standing sal trees grown spontaneously in his zamindari were sold by the zamindar by auction and the purchasers were permitted to fell the trees and sell them after sawing and other processes.

The position indicated by the Supreme Court with reference to the term "business" sans the profit-motive is the position in the cases before us. In *Board of Revenue and Others Vs. A.M. Ansari and Others*, , the vending was annual, whereas in the cases before us, the vend comes once in sixteen years, or if we take it that royalty is the sale price and is calculated on annual basis, it would be the same as in *Board of Revenue and Others Vs. A.M. Ansari and Others*, and the learned Judges were not prepared to accept that as a sufficient frequency in assuming that the activity was in the course of business.

In *Board of Revenue and Others Vs. A.M. Ansari and Others*, , the court approved the ratio in *Orient Paper Mills'* case 1971 Tax. L.R. 1249 (M.P.) of the Madhya Pradesh High Court by saying :

In *Orient Paper Mills Ltd. v. State of Madhya Pradesh* 1971 Tax. L.R. 1249 (M.P.), it was held that the State Government or the forest department could not, merely by selling the forest produce grown on their land, be regarded as carrying on any business of buying, selling, supplying or distributing goods and, therefore, in respect of mere sales of forest produce, neither the State Government nor the forest department was a dealer within the meaning of the definition in Section

2(d) of the M. P. General Sales Tax Act, 1958....

The law as indicated in the aforesaid case of the Madhya Pradesh High Court was not rejected by the learned Judges of the Supreme Court in appeal, but the position was assumed to be different in view of the legislative amendment.

In Board of Revenue and Others Vs. A.M. Ansari and Others, , the Supreme Court continued:

...In Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon v. Travancore Rubber and Tea Co. [1967] 20 S.T.C. 520 (S.C) and Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon v. Midland Rubber and Produce Co. Ltd. [1970] 25 S.T.C. 57 (S.C), where the only facts established were that the assessee converted the latex tapped from its rubber trees into sheets and effected a sale of those sheets to its customers and the conversion of latex into sheets was a process essential for the transport and marketing of the produce, it was held that the department had not been able to discharge the onus of proving that the assessee was carrying on business and was, therefore, a dealer within the meaning of Section 2(b) of the Central Sales Tax Act, 1956. In Ramakrishna Deo Vs. The Collector of Sales Tax, , where the Maharaja of Jeypore had sold the sal trees from his forest for preparing sleepers, it was held that he was not a dealer within the meaning of the Orissa Act because he was not carrying on the business of selling or supplying the goods for the reason that the element of purchase, one of the necessary ingredients of the business, was absent.

We are inclined to agree with Dr. Pal that the ratio in Board of Revenue and Others Vs. A.M. Ansari and Others, is wholly applicable to the present facts and in view of the following conclusion reached in paragraph 22 of the judgment in Ansari's case¹:

In view of the foregoing discussion, we find ourselves unable to hold that the Government of Andhra Pradesh by holding auction of forest produce carried on business in the sale of that class of goods. As such, the respondents could not be made liable to pay the sales tax.

It must be held that the transactions under the contracts were not sales exigible to sales tax.

Question No. (5): Is the petitioner entitled to any relief against the threatened action ?

9. These applications must succeed. We accordingly hold that the demand for reimbursement of sales tax raised by opposite party No. 2 is not at all tenable as no sales tax is payable on the transactions. We direct that a writ shall issue quashing the letter of demand and prohibiting the opposite parties from enforcing the demand in any manner. The petitioner shall have its costs of the applications. One set of hearing fee of rupees two hundred and fifty is allowed for both the applications.

N.K. Das. J.

10. I agree.