
(1986) 09 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 282 of 1983

Straw Products Ltd.

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 18-09-1986

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Citation : (1987) 65 STC 20

Hon'ble Judges : G.G. Sohani, Acting C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; Additional Advocate-General, for the Respondent

Judgement

G.G. Sohani, Ag. C.J.

1. The judgment in this case will also govern the disposal of Misc. Civil Cases Nos. 282, 284, 285, 286 and 287 of 1983.

2. By these references u/s 44(1) of the M. P. General Sales Tax Act, 1958 (hereinafter referred to as the State Act), the Board of Revenue has referred the following question of law to this Court for its opinion :

Whether on the facts and under the circumstances of the case the railway freight in respect of the goods sold by the applicant and paid by the purchaser would form part and parcel for sale of goods u/s 2(o) of the M.P. General Sales Tax Act, 1958 and u/s 2(h) of the Central Sales Tax Act, 1956 ?

3. The material facts giving rise to these references, briefly, are as follows :

The assessee is engaged in the manufacture and sale of straw boards. In the assessment proceedings for the calendar years 1969, 1970 and 1971, under the State Act and the Central Sales Tax Act, 1956 (hereinafter referred to as the Central Act), the assessee contended that railway freight which was deducted from the sale price and paid by the purchaser should not be treated as part of

the sale price. This contention was not upheld by the Assistant Commissioner of Sales Tax. The appeals preferred by the assessee in that behalf before the Deputy Commissioner of Sales Tax were rejected. On further appeal before the Tribunal, the Tribunal upheld the order passed by the Assistant Commissioner of Sales Tax in that behalf. Aggrieved by the orders passed by the Tribunal, the assessee sought reference and it is at the instance of the assessee that the aforesaid question of law has been referred to this Court for its opinion.

4. Now the finding of the Tribunal is that the price charged by the assessee from the purchaser is f.o.r. destination. The Tribunal has reproduced Clause 5(d), one of the conditions of sale, which is as follows: "Delivery of any goods shall be complete as soon as the goods are delivered to the railways for loading at the railway station or to any other carrier. The buyer must take delivery of goods on arrival at the destination notwithstanding any delay in transit. The buyer must accept railway receipt and/or company's bill as correct without further proof." The Tribunal has further found that the deduction in respect of railway freight was given by the assessee because the goods were despatched "freight to pay" and that the purchaser had paid the freight. In view of these facts found by the Tribunal, the question for consideration before us is whether the railway freight could be held to be a part of the consideration payable to the assessee.

5. For deciding the question arising in this case, we may usefully refer to the decision of a Division Bench of this Court in *Orient Paper Mills Ltd. v. Commissioner of Sales Tax*, M.P. [1983] 54 STC 195. The following observations in that decision are pertinent:

The law applicable on the point has recently been clarified by the Supreme Court in *Hindusthan Sugar Mills Vs. State of Rajasthan and Others*, . In a case of a contract of the description f.o.r. destination railway station, the freight is part of the consideration payable to the seller and forms part of the price. In this class of contracts, the delivery is complete at the destination railway station and the risk till then continues to remain with the selling dealer. The freight is also paid by the selling dealer as he has to arrange for the delivery at the destination railway station. The other class of cases is where the price is only f.o.r. destination railway station but the contract of sale is really not f.o.r. destination railway station. In this class of contracts although the price stipulated is f.o.r. destination railway station, the delivery is complete when the goods are put on rail and the risk also passes to the purchaser thereafter, making the railway the agent of the purchaser. The freight in this class of cases is payable by the purchaser though the price agreed upon is f.o.r. destination railway station. The price of the goods receivable in such cases is thus the f.o.r. destination price the less amount of freight payable by the purchaser.

We respectfully agree with the aforesaid observations.

6. In the instant case, we find that the condition as regards delivery referred to above makes it very clear that the delivery of the goods was complete at the

loading station when the goods were delivered to the carrier. The Tribunal has found that the freight was deducted from the price in the bills and was paid by the buyer. In these circumstances, the freight could not be held to form part of the sale price.

7. For the aforesaid reasons, our answer to the question referred to us is that in the circumstances of the case the railway freight in respect of goods sold by the assessee and paid by the purchaser would not form part of the sale price as defined by Section 2(o) of the Madhya Pradesh General Sales Tax Act, 1958 and by Section 2(h) of the Central Sales Tax Act, 1956.

8. The references are answered accordingly. In the circumstances of the case, the parties shall bear their own costs of these references.