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Court : Orissa

Decided On : Sep-13-1976

Reported in : [1978]41STC443(Orissa)

Judge : R.N. Misra and ;K.B. Panda, JJ.

Appeal No. : Special Jurisdiction Case No. 56 of 1975

Appellant : State of Orissa

Respondent : Pushraj Bijayakumar

Advocate for Def. : B.K. Mohanti, Adv.

Advocate for Pet/Ap. : Standing Counsel (S.T.)

Judgement :

R.N. Misra, J.

1. At the instance of the State, the Member, Additional Sales Tax Tribunal, has stated this case and referred the following two questions for opinion of this court:

(1) Whether, on the facts and in the circumstances of the case, the octroi duty paid by a dealer and subsequently realised from the customers, is a part of the sale price as defined under Section 2(h) of the Orissa Sales Tax Act and

(2) Whether, on the facts and in the circumstances of the case, the octroi duty paid by the assessee and subsequently realised by charging them separately in the bills has to be included in estimating the gross turnover and taxable turnover as defined under the Orissa Sales Tax Act?

2. The short facts are these: The assessee, a firm, is a registered dealer carrying on business within the town of Cuttack and within the jurisdiction of the Sales Tax Officer, Cuttack-I, East Circle. For the accounting period 1970-71, the assessee did not include in its return of gross turnover and taxable turnover, octroi to the tune of Rs. 16,542.72, which it had paid on the goods at the point of acquisition by it and which it had collected at the point of sale effected by it. Before the assessing officer, it took the plea that since octroi had not been included in the 'sale price' and had been charged separately, there was no liability to pay sales tax on octroi. The contention was negatived and the tax was demanded on the amount of octroi paid by theassessee and recovered at the point of sale from the purchasers. In first appeal, the assessee's contention failed, but the assessee succeeded in persuading the Member, Additional Sales Tax Tribunal, to uphold the claim of deduction. Thereupon, the State of Orissa has asked for the statement of the case.

3. Octroi undoubtedly is a tax. Section 131(1)(kk) of the Orissa Municipal Act authorises levy of octroi tax on goods brought within the limits of a municipality for consumption, use or sale therein. Undoubtedly, the taxation provided for in the Municipal Act is on the basis of the legislative entry No. 52 in List II of the Seventh Schedule of the Constitution. Under the scheme of the Sales Tax Act, it is open to the dealer to pass on the incidence of tax to the purchaser. 'Sale price' has a statutory definition in Section 2(h) of the Act and means:

The amount payable to a dealer as consideration for the sale or supply of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof, other than the cost of freight or delivery or the cost of installation when such cost is separately charged.

When the goods came into the hands of the dealer, octroi had already been paid by it. Mr. Mohanti concedes that octroi, keeping its true meaning in view, cannot be covered by the terms like 'cost of freight', 'cost of delivery' or 'the cost of installation'. The statutory definition specifically excludes these three items from being merged in 'sale price', but the inclusive part of the definition makes it clear that any sum charged or anything done by the dealer in respect of the goods except the named items would be 'sale price'. In view of the frank concession of Mr. Mohanti that octroi would not be covered by any of the three named items for the purpose of exclusion, octroi must certainly be included in 'sale price'. We see no justification for the view taken by the Member, Additional Sales Tax Tribunal, that if separately charged, octroi would be outside the ambit of the definition of 'sale price'.

4. The two questions referred are indeed one and the question is, whether octroi when separately charged by the dealer would be a part of 'sale price'. Our answer, for the reasons indicated, is against the assessee, i. e., octroi would not be exempted from taxation under the Orissa Sales Tax Act merely because it has been separately charged at the point of sale by the dealer.

We make no order for costs.

K.B. Panda, J.

I agree.

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