States Of Orissa vs M/ S. Utkal Distributors (P) Ltd on 13 December, 1965

Equivalent citations: 1966 AIR 1170, 1966 SCR (3) 55, AIR 1966 SUPREME COURT 1170

Author: S.M. Sikri

Bench: S.M. Sikri, J.C. Shah

PETITIONER:
STATES OF ORISSA

Vs.

RESPONDENT:
M/ S. UTKAL DISTRIBUTORS (P) LTD.

DATE OF JUDGMENT:
13/12/1965

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SUBBARAO, K.
SHAH, J.C.

CITATION:
1966 AIR 1170 1966 SCR (3) 55
CITATOR INFO :
RF 1991 SC 672 (6)

ACT:
Orissa Sales Tax Act, 1946-Ss. 2(h), 2(i) and 5(2)-State price' and 'Turnover'-Whether includes Central Sales-tax collected on sales of iron and steel goods by controlled stock-holder-Iron and Steel Control Order, 1956 and Iron & Steel (Control) Notification dt. Oct. 18, 1958--Effect of.

HEADNOTE:
In the course of assessment to sales tax for the last two quarters of 1957 under the Orissa Sales Tax Act, 1947 on the sales of iron and steel goods, the assessee company claimed a deduction from its gross turnover of an amount representing central sales-tax collected by it from

purchases and paid over to the central sales-tax authority. This claim was disallowed by the Sales Tax Officer and the Collector of Sales-tax confirmed this decision. However, on appeal, the Sales Tax Tribunal held that the central sales-tax realised by the assessee from its customers was not part of the price charged by it and, therefore, it did not fall within the definitions of "sale price" and "taxable turnover' in the Act. In coming to its conclusion, the Tribunal relied upon the fact (i) that the assesse was a controlled stock-holder under the Iron and Steel Control Order, 1956, and was not, therefore, entitled to charge a price higher than that fixed by the Government of India; and (ii) that by virtue of Condition No. 4(ii) of the Iron & Steel (Control) Notification dated Oct. 18, 1958 the customer was required to pay the controlled stock-holder the central sales tax incurred by the latter in obtaining the material and on the sale to the customer. The High Court, upon a reference, agreed with the Tribunal. On appeal to this Court,

HELD: In view of the fact that the price which the stock-holder was entitled to charge was statutorily fixed and the stock-holder was not entitled to and did not charge more, the central sales-tax paid under the provisions of the Iron and Steel (Control) Notification did not form part of the sale price paid by the customer to the assessee. [60 D-E]

The Deputy Commissioner of Commercial Taxes v. M. Krishnaswami Mudaliar & Sons, 5 S.T.C. 88 and Bata Shoe Co. Ltd. v. Member, Board of Revenue, West Bengal referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 64 and 65 of 1965.

Appeals by special leave from the judgment and order, dated April 12, 1963 of the Orissa High Court in Special jurisdiction Casa Nos. 38 and 39 of 1962. O. P. Malhotra and R. N. Sachthey, for the appellant. The respondent did not appear.

The Judgment of the Court was delivered by Sikri, J. These appeals by special leave are directed against the judgment of the Orissa High Court in a reference made to it under S. 24(1) of the, Orissa Sales Tax Act, 1947. The following questions were referred :

> "1. Whether in the facts and circumstances of the case, the Tribunal is right in holding that the Central Sales Tax paid by the opposite party at its purchase point and charged on to its customers does not form a part of the sale-price of the commodity sold so as to be taxable under the Orissa Sales Tax Act, 1947.

2. Whether, in the 'facts and circumstances, the allowance of the claim of the opposite party for deduction of Central Sales Tax collected from its customers is permissible under the provisions of the Orissa Sales Tax Act and the rules framed thereunder."

Before we examine the facts and circumstances of the case, it is convenient to set out the relevant provisions of the Orissa Sales Tax Act, 1947 (hereinafter called the Act) as it stood prior to the amendments made in 1958. In the Act, the definition of the expressions "sale price" and "turnover" in ss. 2(h) and 2(i) (omitting immaterial portions) were as follows :

"2(h)-'sale price' means the amount payable to a dealer as valuable consideration for-

(i) 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;....

2(i)-'Turnover means the aggregate of the sale prices and tax, if any, received or receivable by a dealer, in respect of the sale or supply of goods or carrying out of any contract effected or made during a given period.' "Taxable turnover" was defined in s. 5(2) of the Act as follows "5 (2) In this Act, the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom-

(b) the tax, if any, paid by the purchaser to the dealer".

These appeals are concerned with the assessments for the quarter ending September 30, 1957, and for the quarter ending December 31, 1957, but it would be sufficient if facts relating to the assessment for the quarter ending September 30, 1957, are given, because apart from figures there is no difference in the relevant facts. For the quarter ending September 30, 1957, the respondent, M/s Utkal Distributors (P) Ltd., hereinafter referred to as the assessee, claimed to deduct from its gross turnover the sum of Rs. 3,874.49 on the ground that it had paid this sum on the purchases made by it as central sales tax. The Sales Tax Officer disallowed the claim. On appeal, the Collector of Sales, Tax, Orissa, affirmed the order of the Sales Tax Officer. The, Sales Tax Tribunal, Orissa, in second appeal, however, came to the conclusion that there was no justification to disallow the deduction claimed by the appellant. The Tribunal held that the central sales tax realised by the assessee from its customers was not part of the price charged by it, and, therefore, it did not fall within the definitions of 'sale price' and 'taxable turnover'. The Tribunal relied on the fact that the assessee was a controlled stock holder under the Iron and Steel (Control) Notification, dated Calcutta, the 18th October, 1958, and by virtue of condition No. 4(ii) of' the Notification, the central sales tax paid by the customer was, not part of the price. Condition No. 4(ii) was to this effect "The customer shall pay to the Controlled Stock holder the Central Sales Tax incurred by the Controlled Stockholder in obtaining the material and also, pay such additional Central Sales Tax, if any, incurred on the sale to the Customer."

This Notification was issued under the Iron and Steel Control Order, 1956, which order was passed in exercise of the powers conferred by s. 3 of the Essential Commodities Act, 1955. Section 2 of the Control Order defined "Controlled Stockholder" as "a stock holder appointed by the Controller to hold stocks of iron or steel under such terms and conditions as he may prescribe from time to time." It further appears that under the Iron and Steel Control Order, read with the Iron and Steel (Control) Notification, a controlled stock-holder was not entitled to charge a price higher than that fixed by the Government of India. As stated earlier, in view of these provisions, the Tribunal came to the conclusion that central sales tax paid or realised by the assessee from the customers at the time of sale of iron and steel goods to them could not be treated as sale price of goods and could not be included in the taxable turnover. The Commissioner of Sales Tax being L9Sup. C1166-5 5 8 dissatisfied with the order of the Tribunal sought a refer ence to the High Court and the Tribunal referred the case under s. 24(1) of the Act, formulating two questions which have already been set out.

The High Court answered the questions in the affirmative. Before the High Court the counsel for the State urged that the expression "tax" occurring in the definition of "turnover" in s. 2(i) and in the definition of "taxable turnover' in s. 5 (2) (b) referred only to the sales tax paid under the Orissa Sales Tax Act and not to the tax paid under the Central Sales Tax Act, and that this was part of the consideration, and, therefore, the assessee was bound to include the central sales tax in the taxable turnover. Following The Deputy Commissioner of Commercial Taxes v. M. KrishnasKami Mudaliar & Sons(1) and Bata Shoe Co. Ltd. v. Member, hoard of Revenue, West Bengal (2) the High Court held that as the assessee was authorised as a controlled stock ',holder to realise central sales tax from the customers by a special notification issued by the Central Government, the case fell within the principle laid down in Deputy Commissioner of Commercial Taxes v. M. Krishnaswami Mudaliar & Sons.(1) The principle, according to the Madras High Court in Krishnaswami Mudaliar's(1) case was as follows "in our opinion, if we may say so with respect, this passage from the judgment of the learned Chief Justice of the Calcutta High Court in Bata Shoe Co. case(3) clearly brings out the distinction between cases where the dealer is not authorised by law to collect the tax but all the same adds it to the sale price in the bill of sale and collects it from the customer and cases where the dealer is so authorised. In the former case it is undoubtedly part of the purchase price, as all the collections made by the dealer from the purchaser must be treated as constituting part of the sale price. if, however, under the law, the dealer is empowered to pass on the sales tax to the purchasers, to collect it and pay it to the Government, what he is permitted to so collect under the law would continue to retain its character as tax and it Would never form part of the purchase price."

The High Court further observed that "the Union Government themselves fixed the price of iron material sold by him to his customers. He was not entitled to charge anything higher. In (1) 5 S.T.C. 88.

(2) 1 S.T.C. 193.

addition to that price he was permited to charge central sales tax which he was subsequently required to credit to Government. Section 9(A) of the Orissa Sales Tax Act says that any amount

collected by a registered dealer as sales tax from his purchasers shall be deposited by him in the Government Treasury. It is true that by its own force this section would apply only to Orissa Sales Tax Act. But by virtue of sub-section (2) of section 9 of the Central Sales Tax Act, 1957 now sub-section (3) in ocosequence of the amending Act of 1958] it would also apply to the Central Sales Tax collected by the Controlled Stockholder." Thus, following the principles laid down in the Madras decision, the Orissa High Court held that the central sales tax could never form part of the `sale price' as defined in the Orissa Sales Tax Act, and was rightly deducted while estimating the taxable turnover.

We may mention that the respondent was not represented before us. Mr. O. P. Malhotra, learned counsel for the appellant urged the following points before us :

> (1) That the expression "tax" in s. 2 (i) and s. 5 (2) (b) of the Orissa Sales Tax Act means the tax levied under the Orissa Sales Tax Act and not under the Central Sales Tax Act;
>
> (2) That the expression "valuable consideration" occurring in s. 2 (h) of the Orissa Sales Tax Act includes the central sales tax realised by the assessee; and (3) That the expression "any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof" included the central sales tax paid by the assessee at the purchase point.

As we have come to the conclusion that the expression "valu- able consideration" and the word "turnover" do not include the central sales tax paid by the assessee and that the answer to question No. 1 must be in the affirmative, as held by the High Court, it is not necessary to deal with question No. 2.

It is not necessary to decide whether the word "tax" in s. 2(1) and S. 5(2) (b) of the Orissa Sales Tax Act means the tax levied under the Orissa Sales Tax Act and not the tax levied under the Central Sales Tax Act. We will, however, assume for the purpose of this case that the expression "tax" in S. 2 (1) and S. 5 (2) (b) of the Act does not include central sales tax.

We have set out condition No. 4(ii) of the Iron and Steel (Control) Notification above. It seems to us that it is clear from this condition and the fact that the controlled stockholder was not entitled to charge a price higher than that fixed by the Government of India, that the valuable consideration for the sale was the price fixed by the Government of India and did not include the central sales tax which the customer had to pay to the assessee as a controlled stockholder. We do not rely on the provisions of s. 9 (A) of the Orissa Sales Tax Act or the principle laid down in Deputy Commissioner of Commercial Taxes v. M. Krishnaswami Mudaliar & Sons.(1) No arguments were addressed to us on this aspect and we express no opinion whether the principle laid down in the Madras decision and S. 9 (A) of the Orissa Sales Tax Act would apply to an authorisation to collect central sales tax under the provisions of the Iron and Steel Control Order, 1956. and the Iron and Steel (Control) Notification, dated October 18, 1958. In our opinion, the fact that the price which the stockholder was entitled to charge was statutorily fixed and the stockholder was not entitled to and did not

charge more are sufficient to enable us to come to the conclusion that the central sales tax paid under the provisions of the Iron and Steel (Control) Notification did not form part of the price paid by the customer to the assessee.

There is no force in the contention that the central sales tax realised by the assessee falls within the expression "any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof." The assessee by paying the central sales tax when he bought the goods did not do anything to the goods, and the tax was paid in respect of the transaction of purchase and not in respect of the goods.

In the result, agreeing with the High Court we answer question No. 1 in the affirmative, and we do not consider it necessary to answer question No. 2. The appeals fail and are dismissed. No costs.

Appeals dismissed..

(1) 5 S.T.C. 88.