

COMMISSIONER OF SALES TAX, U.P.

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v.

RAI BHARAT DAS & BROS.

AUGUST 30, 1988

[SABYASACHI MUKHARJI AND M.H. KANIA, JJ.]

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Central Sales Tax Act, 1956: s. 2(h)—Packing expenses incurred on putting the goods in deliverable state—Whether could be included in sale price—Whether exigible to tax.

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Section 2(h) of the Central Sales Tax Act, 1956 contemplates sale price as the consideration for the sale of any goods, inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof, other than cost of freight or delivery and cash discount.

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The assessee carried on the business of mining and sale of silica sand. The sales tax authorities sought to levy tax on the packing charges that he had received from the purchasers. The Tribunal found that there was an implied agreement for sending silica in gunny bags, that the expenses on packing were incurred in order to put the goods in deliverable state prior to the delivery, that these expenses were rightly included in the sale price and hence exigible to tax.

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The High Court came to the conclusion that since the Tribunal had not recorded the finding that there was implied agreement to sell the gunny bags by the assessee to its customers, the packing charges were mentioned and not cost of gunny bags and since the price of goods and the packing charges were separately charged the said charges could not be included in the sale price paid by the purchasers to the assessee.

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Allowing the appeal by special leave,

HELD: The High Court was in error in the view it took. [689B]

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Whether there is an implied agreement to sell packing material along with the product contained therein is a pure question of fact depending upon the circumstances of each case. In the instant case the Tribunal found that the packing in the gunny bags was done by the dealer in respect of the goods at the time of or before the delivery thereof, that it was done at the request of buyers as it was a convenient

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A mode of delivery and that the buyers had given directions for the quality of packing. In view of these facts found by the Tribunal, which must be taken to be conclusive, it could not be said that the parties did not intend to sell or buy the gunny bags. [687E-G]

B In view of the definition of s. 2(h) of the Act, anything which was integral part including any sum charged for anything done by the dealer in respect of the goods, may form part but anything supplied separately pursuant to a separate order, directions or specifications to the purchaser could not form part of the sale price. In the instant case the packing was done in order to putting the goods in deliverable state and incidental to the same. Such packing charges, therefore, could be included. The mere fact that price of silica was shown separately and the cost of packing was also shown separately makes no difference to the assessment of sales tax. [688D, F-G]

Commissioner of Taxes, Assam v. Prabhat Marketing Co. Ltd., 19 STC 84 and Jamana Flour & Oil Mill (P) Ltd. v. State of Bihar, 65 STC 462 applied.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2456 of 1986.

From the Judgment and Order dated 12.7.1982 of the Allahabad High Court in Sales Tax Revision No. 42 of 1982.

S.C. Manchanda and Ashok K. Srivastava for the Appellant.

The Judgment of the Court was delivered by

F **SABYASACHI MUKHARJI, J.** This is an appeal by leave from the judgment and order of the High Court of Allahabad, dated 12th July, 1982. The decision was rendered in a revision by the assessee which was directed against the order of the Sales Tax Tribunal. The year involved is the assessment year 1974-75.

G The assessee carried on the business of mining and sale of silica sand. The question was whether the sales tax could be charged from the assessee in respect of packing charges received by the assessee from the purchaser. The sales tax authorities as well as the Tribunal held that the assessee was liable to pay sales tax on the packing charges that he had received from the purchaser. From the facts found by the Tribunal it appears that there was a contract for packing the silica sand

in gunny bags and packing charges had been realised on the basis of int. tons though these were separately shown and were added up with the price of the silica sand and on the total sales tax was charged.

Section 2(h) of the Central Sales Tax Act, 1956 (hereinafter called 'the Act') provide as follows:

"sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged."

The Tribunal categorically found that there was a contract for packing the silica sand in sound gunny bags, hence, held that there was an implied agreement for sending silica in gunny bags though these could be sent loose in wagons. As mentioned hereinbefore, Section 2(h) contemplates sale price as the consideration for the sale of any goods unless any sum allowed as cash discount according to the practice prevailing in the trade, but inclusive of any sum *charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof* other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged. Hence, the short question is whether the price was charged for anything done in respect of the goods at the time of or before the delivery thereof.

The Tribunal also found that packing was done at the request of the buyer and that it was a convenient mode of delivery. The buyers had given directions for the quality of packing and it appears from the order form this all was done in respect of the goods for putting these in deliverable state and so the packing charges, according to the Tribunal, are eligible to tax in this case. The Tribunal clearly came to the conclusion that all the these expenses were incurred in order to put the goods in deliverable state prior to their delivery. As per the agreement these expenses were rightly included in the sale price and it could not be said that these were not part of the sale price. Hence the Tribunal held that the tax was rightly levied under the Act on the sale price so computed.

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A The High Court came to the conclusion that the Tribunal had not recorded the finding that there was an implied agreement to sell the gunny bags by the assessee to its customers. Packing charges were mentioned and not the cost of gunny bags. Packing charges for each metric ton obviously include labour charges. In view of the fact that the price of goods and the packing charges were separately charged,

B the High Court came to the conclusion that the packing charges could not be included in the sale price paid by the purchasers to the assessee. That is impugned in this appeal.

We are of the opinion, in view of the facts found by the Tribunal which must be taken to be conclusive, and in the light of Section 2(h) of the Act, the High Court was in error. In the facts of this case such packing charges could be included. There was an agreement to sell the gunny bags, as found by the Tribunal. The price of silica was shown separately and the cost of packing was also shown separately. In view of the definition of Section 2(h) of the Act, anything which was an integral part included any sum charged for anything done by the dealer in respect of the goods, may form part but anything supplied separately pursuant to a separate order, directions or specifications to the purchaser, could not form part of the sale price of the gunny bags. This was done in order to putting them in deliverable state and incidental to the same.

E In a slightly different state of facts this question came before this Court in *Commissioner of Taxes, Assam v. Prabhat Marketing Co. Ltd.*, 19 STC 84. There, the respondent sold hydrogenated oil which was exempt from sales tax under the Assam Sales Tax Act, 1947. The question was whether the value of the containers in which hydrogenated oil was sold could be assessed to sales tax under the Act. The High Court held that the value of the containers was not assessable to sales tax unless separate price had been charged for the containers. On an appeal this Court held that the value of the containers was assessable to sales tax under the said Act if there was an express or implied agreement for the sale of such containers and the mere fact that the price of the containers was not separately fixed, made no difference to the assessment of sales tax. This Court, however, came to the conclusion that where there was an agreement to sell packing material is a pure question of fact depending upon the circumstances of each case.

In this case this Court asked the question that the sales tax authorities had to address themselves the question whether the parties having regard to the circumstances of the case, intended to sell or buy

packing material and whether the subject-matter in the context of sale, was only an exempted article or packing material did not form part of the bargain at all. A

In that being the principle and the fact that here packing in the gunny bags was done by the dealer in respect of the goods at the time of or before the delivery, in our opinion, the High Court was in error in the view it took. This Court had to consider again this aspect of the matter in *Jamana Flour & Oil Mills (P) Ltd. v. State of Bihar*, 65 STC 462. There this Court held that whether there was an implied agreement to sell packing material along with the products contained therein, is a question of fact. B

In view of the principles enunciated in these two decisions, though the facts were different, and on the basis of the conclusive findings recorded by the Tribunal that there was a contract for packing the silica in sound gunny bags, the cost of packing materials had been realised, we are clearly of the opinion that the High Court was in error. C

In the aforesaid facts and circumstances of the case the judgment and order of the High Court are set aside and the order of the Tribunal is restored. There will, however, be no order as to costs. D

P.S.S.

Appeal allowed. E