
(1973) 12 AHC CK 0004
In the Allahabad High Court
Case No : Sales Tax Reference No. 400 of 1972

Commissioner of Sales Tax	Vs	APPELLANT
Jamuna Prasad		RESPONDENT

Date of Decision : 12-12-1973

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(6)

Citation : (1975) 36 STC 442

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : P.N. Pachauri, J.P. Bajpai and A.N. Mahajan, for the Respondent

Judgement

Satish Chandra, J.—The Judge (Revisions), Sales Tax, Aligarh, has referred the following question of law for the opinion of this court:

Whether, on the facts and in the circumstances of the case, can rice bran be included in the category of bhusi within the meaning of Notification No. ST-3471/X dated 16th July, 1956 ?

2. The assessee deals in rice bran and other commodities. In processing paddy the inner husk is separated and it is called by the name of polish or rice bran. According to the facts given in the statement of the case and in the revisional order, the rice bran is usually sold by the dealers as cattle fodder. It is also processed by the oil-mills for extracting oil. The assessee claimed that rice bran was exempt from sales tax by virtue of Notification No. ST-3471/X dated 16th July, 1956. The Sales Tax Officer repelled this claim. He held that rice bran was taxable as an unclassified item. This view was upheld in appeal. The assessee took the dispute in revision. The Judge (Revisions), Sales Tax, held that rice bran is the inner husk of rice. It will be covered by the term bhusi as used in the relevant notification and so it will be exempt from tax.

3. The notification dated 16th July, 1956, exempts from sales tax cattle fodder, which term is defined to include green fodder, chuni, bhusi, chhilka, chokar,

cotton seed, gowar and oil-cake. In Commissioner of Sales Tax, U. P., Lucknow v. Naveen Traders, Etawah 1973 U.P.T.C. 215, a Division Bench of this Court has held that rice with its outer husk is known as paddy and after the husk is removed the product is known as rice. Rice does not have any inner husk. The rice bran in respect of which exemption was claimed was nothing but powdered rice. "Bhusa" and "bhusi" as understood in common parlance are commodities obtained from stalk, leaves and husk of grains. "Rice bran" cannot be treated as "bhusi of rice". In view of this decision, the question referred to us has to be answered against the assessee.

4. On behalf of the assessee it was urged that the claim that rice bran was cattle fodder as such because it was commercially used as cattle fodder was specifically raised before the Judge (Revisions), but he has not given any finding on it obviously because he accepted the claim of the assessee on the limited ground that rice bran was bhusi which was included in cattle fodder. A perusal of the order of the Judge (Revisions) shows that the dealer's claim was that rice bran was exempt from tax as it was cattle fodder. The definition of cattle fodder in the notification dated 16th July, 1956, is Inclusive of green fodder, chuni, bhusi, chhilka, chokar, cotton seed, gowar and oil-cake. Evidently, if a commodity is not bhusi, chuni, chhilka, chokar, cotton seed, gowar or oil-cake, it will none the less be cattle fodder depending upon its characteristics and user. For the assessee reliance was placed upon Omrao Industrial Corporation (Pvt.) Ltd. Vs. Sales Tax Officer and Another, . In that case, it was held that de-oiled rice bran was cattle fodder. On the strength of this decision the learned counsel for the assessee submitted that the question referred to us requires reframing. According to him the question should be reframed as follows :

Whether, on the facts and in the circumstances of the case, rice bran was cattle fodder within the meaning of Notification No. ST-3471/X dated 16th July, 1956 ?

5. In S. Sankappa and Others Vs. The Income Tax Officer, Central Circle II, Bangalore, , it was held that:

The power to reframe a question may be exercised to clarify some obscurity in the question referred, or to pinpoint the real issue between the taxpayer and the department or for similar other reasons ; it cannot be exercised for reopening an enquiry on questions of fact or law which is closed by the order of the Tribunal.

6. In the present case, the Judge (Revisions) decided the limited question, that is, whether rice bran was bhusi. He did not apply his mind or give a finding on the wider question whether rice bran was cattle fodder under the aforesaid notification or otherwise. In this context it cannot be said that the question, referred to us, namely, whether rice bran was bhusi, either bears any ambiguity or requires further clarification. In our opinion, the power to reframe the question cannot be utilised to widen its ambit or to improve it. The question whether rice bran was included in cattle fodder was the specific question raised by the assessee before the Judge (Revisions). The Judge (Revisions), however, did not

give any finding on the question because he granted relief to the assessee on a limited question, namely, that rice bran was bhusi. Under the circumstances, we would not be justified in reframing the question as "whether rice bran was cattle fodder even though it is not bhusi".

7. The learned counsel for the assessee urged that if we refuse to reframe the question, the position would be that even though the assessee raised this question specifically before the Judge (Revisions), the assessee will now be precluded from having a finding on that point.

8. In Commissioner of Income Tax, Bombay City I, Bombay Vs. Jubilee Mills Ltd., Bombay, , it was held that after the High Court decides a reference the Appellate Tribunal has to decide the appeal again after rehearing the assessee and the Commissioner in the light of the observations of the High Court and according to law. These observations are equally applicable to a reference under the U. P. Sales Tax Act. Section 11(6) of the U. P. Sales Tax Act provides that the revising authority shall thereupon pass such orders as are necessary to dispose of the case in conformity with such judgment. This being the position, if the High Court decides a question, the revising authority will dispose of the revision by passing such orders as are necessary to dispose it of in conformity with the High Court's opinion. Thus, the revision is to be disposed of all over again by the revising authority by passing a suitable order in the light of this court's findings and according to law. The Judge (Revisions) will now have to dispose of the wider question raised by the assessee in the revision, namely, whether rice bran is cattle fodder as such. We are unable to agree with the learned counsel for the assessee that the Judge (Revisions) will refuse to address himself to this question or to give a finding upon it.

9. It was also argued on behalf of the assessee that the notification dated 7th June, 1948, which exempted rice bran from sales tax was still in force and was not superseded by the notification dated 31st March, 1956, as amended by the notification dated 16th July, 1956. In our opinion, this question is foreign to the question referred to us. In any event, there is no substance in the point. The notification dated 31st March, 1956, was issued in exercise of the powers conferred by Section 4 of the U. P. Sales Tax Act. It granted exemption only to goods mentioned in List II attached to it. Rice bran is not mentioned in this list. Therefore, the notification dated 7th June, 1948, which exempted rice bran from payment of sales tax stood superseded. This view is reaffirmed by the second clause of the notification dated 31st March, 1956, namely, the Governor of Uttar Pradesh is pleased to direct that with effect from 1st April, 1956, the goods specified in List II hereunder shall alone be exempt from payment of tax. Obviously, commodities which are not mentioned in List II will no longer be exempt from tax with effect from 1st April, 1958, and onwards. It cannot be held that rice bran was exempt from sales tax by virtue of the notification of 1948.

10. In the result, our answer to the question referred to us is in the negative, in favour of the department and against the assessee. In the circumstances of the

case, we however make no order as to costs.