
(2005) 08 UK CK 0004
In the Uttarakhand High Court

Commissioner of Sales Tax	Vs	APPELLANT
Siddarth Paper Mills Ltd.		RESPONDENT

Date of Decision : 31-08-2005

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2005) 2 UD 525 : (2007) 8 VST 265

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This sales tax revision was filed before the Allahabad High Court in the year 1992, from where it has been received by transfer by this Court, u/s 35 of the U.P. Reorganisation Act, 2000, for its disposal.

2. The revision, preferred u/s 11(1) of the U.P. Sales Tax Act, 1948, is directed against order/award dated March 4, 1992, passed by the Sales Tax Tribunal, Bareilly, Camp, Haldwani.

3. The following question of law is involved in this revision:

Whether the Sales Tax Tribunal was legally justified in holding that "rice husk" and "paddy husk" are two different commodities and has erred in law in interpreting the principle of law contained in Commissioner of Sales Tax Vs. Naveen Traders, ?

4. Heard learned Counsel for the parties and perused the record.

5. The assessee is a dealer dealing in the manufacture and sale of straw-board, etc. The matter relates to the assessment year 1989-90.

6. The dispute in the present case has arisen due to the fact that the assessing officer has imposed the tax at the rate of 4.4 per cent, treating the purchase of paddy husk as rice husk. The learned Tribunal has taken the view that the husk

purchased by the dealer is a paddy husk, which was an unclassified item. As such, the dealer was not liable to pay any tax on first purchase of said commodity. It has further been held that the assessing officer has wrongly treated purchase of paddy husk as that of rice husk. Learned Counsel for the Revenue referred to the principle of law laid down in Commissioner of Sales Tax Vs. Naveen Traders, and argued that paddy husk and rice husk are the same item and as such the learned Tribunal has erred in law in holding that the two are different. I have gone through the principle of law contained in the aforementioned case law. Nowhere in the said case law it has been held that paddy husk and rice husk are one and the same thing. What has been held in the said case is that "rice bran" is a different commodity as compared to "rice husk". In Commissioner of Sales Tax Vs. Naveen Traders, , it has been held that rice with its outer husk is known as paddy. After the husk is removed, the product is known as rice. It is further held that the "rice bran", in fact, is powdered rice, which is obtained in the polishing process. Therefore, in the opinion of this Court, the case law does not help the revisionist.

7. Admittedly, the dealer had purchased paddy husk for using it as fuel in their boiler. Under Notification No. 3712 dated June 5, 1985, the tax has been levied on the purchase of "rice husk". In Commissioner of Trade Tax v. U.P. Straw and Agro Product Ltd. [2004] UPTC 1125 it has been held that rice husk and paddy husk are two different commodities. Under the aforesaid notifications, what is taxable is purchase of rice husk and not paddy husk. Explaining the above expression, the Allahabad High Court in the said case has held that when the outer covering of rice is removed, the brownish rice is produced. The rice with its outer husk is known as paddy. The outer dry covering which is obtained while paddy is de-hulled, is known as paddy husk. Paddy husk is dry and does not have the contents of oil. On the other hand, rice husk having contents of the oil element is, in fact, included under the aforesaid notification on the first purchase of which the tax could have been imposed. It is only after the paddy husk is removed from rice, can the rice husk be obtained in the process of polishing of rice, which contains oil element.

8. Therefore, in view of the aforesaid discussion, I do not see any error of law committed by the learned Tribunal in holding that paddy husk and rice husk are two different items. Accordingly, the question of law is answered in favour of the assessee. The revision is dismissed.