(1971) 09 OHC CK 0004

In the Orissa High Court

Case No : 0.J.C. No. 257 of 1968

G. Azeez Basha and Co. — APPELLANT

Vs

Sales Tax Officer — RESPONDENT

Date of Decision : 20-09-1971

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 2
Central Excises and Salt Act, 1944 — Section 2

Citation : (1971) 37 CLT 1185 : (1972) 29 STC 352

Hon'ble Judges : G.K. Misra, C.J;B.K. Patra, J

Bench : Division Bench

Advocate : S.C. Roy, for the Appellant; S.C. Mohapatra, Standing Counsel (Sales Tax), for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The petitioner carries on the business of selling bidis prepared by hand and not with the aid of machines operated with or without the aid of power. He is a registered dealer under the Orissa Sales Tax Act (Orissa Act 14 of 1947), hereinafter to be referred to as the Act. Bidis are prepared with tobacco wrapped up with dried kendu leaves. The petitioner was assessed to sales tax on 29th January, 1968, by assessment order (annexure I) for the quarters ending 30th June, 1967, and 30th September, 1967. Petitioner''s case is that bidis are not exigible to sales tax and, as such, the assessment is contrary to law. Petitioner prays for issuing a writ of certiorari to quash the impugned assessment order and for issuing a writ of mandamus restraining the opposite party from realising the tax assessed. The learned standing counsel contends that hand-made bidis are liable to sales tax.

2. Relevant law and the notifications thereunder may be noticed.

3. Notification No. 33925 C.T.A. 130/57-F. (hereinafter to be referred to as 1957 notification) dated 30th December, 1957, runs thus :

In exercise of the powers conferred by Section 6 of the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) as amended by the Orissa Sales Tax (Second Amendment) Act, 1957 (Orissa Act 24 of 1957), and in supersession of all previous notifications on the subject, the State Government do hereby direct that with effect from the 1st January, 1958, the sale of goods specified in column (2) of the schedule annexed hereto shall be exempted from tax subject to the conditions and exceptions mentioned in column (3) thereof.

SCHEDULE

--- Conditions and exceptions Sl. No. Description of goods subject to which exemption has been allowed. --- 1 2 3 --- 35 Tobacco and all its products ---

This notification with regard to serial No. 35 remained effective till 1st July, 1967. Thus tobacco and all its products were not exigible to sales tax from 30th December, 1957, till 1st July, 1967.

4. By Notification No. 21278 C.T.A. 38/67-F. dated the 6th June, 1967 (hereinafter to be referred to as 1967 notification), an amendment was made to the 1957 notification thus :

In exercise of the powers conferred by Section 6 of the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947), the State Government do hereby direct that the following further amendment shall be made in the notification of the Government of Orissa in Finance Department No. 33925 C.T.A. 130/67-F. dated the 30th December 1957, namely:-

AMENDMENT

1. For the existing entry in column (2) against Sl. No. 35 of the schedule to the said notification the following shall be substituted:-

Tobacco as defined in Section 2(c) of the Additional Duties of Excise Goods of Special Importance) Act, 1957.

This amendment shall take effect from the 1st July 1967.

5. Section 2(c) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Central Act 58 of 1957), hereinafter to be referred to as 1957 Central Act, runs thus :

2. Definitions.-In this Act,-

(c) the words and expressions ''sugar'', ''tobacco'', ''cotton fabrics'', ''woollen fabrics'' and ''rayon or artificial silk fabrics'' shall have the meaning respectively assigned to them in items Nos. 1, 4, 19, 21 and 22 of the First Schedule to the Central Excises and Salt Act, 1944.

6. "Tobacco" as defined in item 4 of the First Schedule in the Central Excises and Salt Act, 1944 (Central Act No. 1 of 1944), hereinafter to be referred to as 1944 Central Act, so far as is relevant, runs thus :

THE FIRST SCHEDULE

-- Item No. Description of goods Rate of duty -- (1) (2) (3) -- Beverages and Tobacco 4. TOBACCO ''Tobacco'' means any form of tobacco, whether cured or un- cured and whether manufactured or not, and includes the leaf, stalks arid stems of the tobacco plant, but does not include any part of a tobacco while still attached to the earth. I. Unmanufactured per Kilogram tobacco- II. Manufactured per hundred tobacco--- (3) Biris in the Three rupees manufacture of which per thousand" any process has been conducted with the aid of machines operated with or without the aid of power. --

7. It would thus be seen that serial No. 35 of the schedule attached to 1957 notification, as amended by 1967 notification, gives the meaning of "tobacco" as defined in item 4 of the First Schedule of the 1944 Central Act.

This definition is very wide and comprehensive. It includes any form of tobacco whether cured or uncured and whether manufactured or not.

8. Section 2(f) of the 1944 Central Act defines "manufacture". It runs thus:

2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

(f) ''manufacture'' includes any process incidental or ancillary to the completion of a manufactured product; and

(i) in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, bins, cigarette or pipe or hookah tobacco, chewing tobacco or snuff.

Thus the definition of "tobacco" in item 4 of the First Schedule of the 1944 Central Act read with the definition of "manufacture" in Section 2(f)(i) of that Act leaves absolutely no room for controversy that bidis are manufactured tobacco. On this simple analysis bidis are exempt from tax under serial No. 35 of the schedule referred to in 1957 notification.

9. The learned standing counsel, however, relies on item 4(II)(3) of the First Schedule of the 1944 Central Act in support of the contention that only bidis in the manufacture of which any process has been conducted with the aid of machines operated with or without the aid of power are exempt from sales tax and that bidis rolled by hand are exigible to sales tax.

The contention though ingenious is not sound. The various classes of "tobacco" referred to under item 4 in the First Schedule to 1944 Central Act do not constitute a part of the definition of "tobacco". The classification so given in respect of the goods described in column (2) is only to indicate the rate of excise duty to be charged. The classification does not restrict the wide and comprehensive meaning of "tobacco" given in item 4. Bidis come within the definition of "tobacco" read with the definition of "manufacture". Serial No. 35 in the schedule of 1957 notification merely adopts the definition of "tobacco" as given in 1944 Central Act and has nothing to do with the rate of excise duty to be imposed and the classification of goods for that purpose. On the aforesaid analysis the contention urged by the learned standing counsel has no substance.

10. Our view gets support from S. T. & B. Merchants'' Association v. A. S. of Sales Tax [1960] 11 S.T.C. 808 SC, where a Division Bench of the Patna High Court arrived at the identical conclusion on construction of similar notifications under the Bihar Sales Tax Act.

11. On our aforesaid conclusion the writ application is allowed. A writ of certiorari be issued quashing the assessment order in annexure I and a writ of mandamus be issued restraining the opposite party from realizing sales tax assessed. In the circumstances, parties to bear their own costs.

B.K. Patra, J.

12. I agree.

