(1982) 03 OHC CK 0002

In the Orissa High Court

Case No : Special Jurisdiction Case No. 121 of 1977

Haribhagat Agarwalla APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 15-03-1982

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(2)(b)

Citation : (1982) 51 STC 355

Hon'ble Judges : R.N. Misra, C.J;B.K. Behera, J

Bench : Division Bench

Advocate : A. Agarwalla, S.C. Lal and S. Sharma, for the Appellant; The Standing Council (S.T.), for the Respondent

Judgement

R.N. Mishra, J.—At the instance of the assessee this Court under an application u/s 24(2)(b) of the Orissa Sales Tax Act, 1947 (hereinafter referred to is the "Act"), required the Member, Sales Tax Tribunal, to state a case and refer the following question for opinion of the court:

Whether, on the facts and in the circumstances of the case, there is sufficient material for holding that the assessee is liable for the tax demand raised against him ?

2. The assessee is a rice miller in Kalahandi District. In 1969-70 the assesses was a purchasing agent of the Food Corporation of India for paddy. He sold 4,410 pieces of gunny bags to the corporation at the total rate of Rs. 12,127.60. No sales tax was paid on this amount. The Revenue Officer and :he Sub-Divisional Officer had verified the stock held by the assessee on two liferent dates and had found a huge shortage though their findings were different regarding quantity. The assessing officer found that the assessee had not paid tax on the sales turnover of gunny bags as also the shortage in the stock of paddy. He took notice of the feature that it was the practice of the assessee to pay purchase tax on paddy by calculating backwards on the basis of the sale oi rice. Accordingly, demand was raised by treating the deficit as the turnover oi purchase of paddy

without payment of tax.

3. In the course of the assessment proceedings the assessee relied upon a verification of the stock by an officer of the Food Corporation of India and contended that the other two measurements were not appropriate and there was really no physical verification, while the verification made by the principal, i.e., the Food Corporation of India, was done thoroughly.

4. On reference to the records, we find that the measurement was made by the revenue officials by using a tape, which means that the entire thing was verified not physically but by a sampling method. A sampling method o verification may be useful for certain purposes but cannot be utilised as the basis for imposition of tax. On the other hand, the principal''s measuremen on the basis of which payment should have been made should be given greate; importance. According to the verification made by the principal''s representa tives, the shortfall was 61 quintals only. Mr. Agarwalla does not dispute th< statement of the learned standing counsel that it was the practice of thi petitioner to pay purchase tax by following the back calculation method. Sinci there was a shortfall of 61 quintals of paddy, it must be assumed that the paddj had been purchased but for some reason or other was not available to be con verted into rice and there was ultimately no supply or sale of rice to th corporation. In this position, it must be assumed that on 61 quintals n< purchase tax has really been paid. Mr. Agarwalla accepts this position. W< would accordingly hold that in the facts and circumstances of the case th'' assessee was liable to pay purchase tax on 61 quintals of paddy. Effect may b given to raise a demand of purchase tax against the assessee on the turnover o 61 quintals of paddy.

There would be no order for costs.

B.K. Behera, J.

5. I agree with my Lord the Chief Justice.