
(1974) 07 OHC CK 0012
In the Orissa High Court
Case No : S.J.C. No. 150 of 1971

Krupasindhu Sahu and Sons

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 08-07-1974

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 5(2)(A)(a)(ii)

Citation : (1975) 35 STC 270

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

Bench : Division Bench

Advocate : D. Bhuyan and K.C. Lenka, for the Appellant; The Standing Counsel (Sales Tax), for the Respondent

Judgement

G.K. Misra, C.J.—u/s 24(1) of the Orissa Sales Tax Act, 1947 (Act 14 of 1947) (hereinafter to be referred to as the Act), the Tribunal has referred the following question of law arising out of its appellate order passed on 26th December, 1970.

Whether, on the facts and circumstances of the case, the Tribunal was right in holding that there was contravention of the proviso to Section 5(2)(A)(a)(ii) inasmuch as the assessee purchased round logs from registered dealers on the basis of his registration certificate free of tax to resell them in Orissa but instead of doing so he converted them into sized wood and then resold the same ?

2. The undisputed facts are that the petitioner purchased logs from registered dealers free of tax to the extent of Rs. 29,551.50 for resale in Orissa. The logs were cut into sizes in saw mills and then were resold in Orissa. All the taxing authorities held that by conversion of logs into sized wood the petitioner contravened Section 5(2)(A)(a)(ii) of the Act.

3. Section 6(2)(A)(a)(ii) of the Act runs thus :

In this Act, the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom-

(a) his turnover during that period on....

(ii) sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for resale by him in Orissa....

Provided that when such goods are used by the registered dealer for purposes other than those specified in his certificate of registration, the price of goods so utilised shall be included in his taxable turnover.

The petitioner was the purchasing dealer. Timber is one of the goods specified in his certificate of registration as being intended for resale by him in Orissa. On the basis of such entry and a declaration given in form XXXIV under Rule 27(2) of the Orissa Sales Tax Rules the petitioner purchased timbers free of tax. The turnover in respect of such purchase was deducted from his gross turnover to determine the taxable turnover. Before resale, however, he sized the timbers and resold them in Orissa.

4. The question for consideration is whether the logs sized in the saw mills can still be styled as "timber" as specified in the petitioner's certificate of registration. In other words, whether logs originally purchased and those very logs sized after purchase are identical goods for the purpose of imposition of sales tax is to be determined.

5. The Supreme Court has now firmly ruled that in finding out the true meaning of the entries mentioned in a Sales Tax Act, what is relevant is not the dictionary meaning, but how those entries are understood in common parlance, specially in commercial circles : see *Ganesh Trading Co., Karnal v. State of Haryana* [1973] 32 S.T.C. 623 (S.C.).

6. Bereft of authorities we propose to analyse the meaning of the word "timber" as understood in common parlance, specially in commercial circles. It is to be emphasised that all that is wood is not timber though timber is wood. In common parlance timber ordinarily means long logs of wood used for purposes of beams and pillars in the construction of houses and such similar uses. After the felling of big trees and the chopping off of the branches of those trees the trunk of the tree is called timber. A very long piece of log may be cut into different pieces. If the pieces after cutting still remain long so as to be used as beams, pillars and such similar uses, the cut pieces would still be called timber. To illustrate, a timber originally 60 feet long is cut into three pieces of 20 feet each. Each of the three pieces retains sufficient length to be used as beams or pillars and would be still treated as timber in common parlance.

Take another illustration. After purchase of some timbers a dealer for the sake of convenience of transport may cut a portion from each end of the timber, may peel off the barks and polish the joints at some places of those timbers. Even after all these operations have been performed, the logs of wood would still be termed as timber.

In the aforesaid illustrations the goods sold do not differ in identity from the

goods purchased. The original timber would not be a thing different from the sized timber.

If, however, the original timber of 60 feet long is cut into thirty pieces of two feet each, none of the pieces is treated as timber. Similarly, timbers converted into firewood, rafters and planks are all wood but cannot be called timbers.

Thus, timber in common parlance in Orissa takes within its ambit only long and big sized logs of wood ordinarily used in house constructions as beams and pillars. Timbers can be used for other purposes such as planks, rafters and other wood products like tables and chairs. When timbers are so converted or are cut into very small sizes so as to be unfit for use as beams, pillars and similar such uses, they cannot be termed as timbers in common parlance though they retain their essential character as wood. The essential characteristic of timber as a commercial commodity is lost after such conversion.

7. We would now proceed to examine the authorities cited on either side.

In *Shaw Bros. and Co. v. State of West Bengal* [1963] 14 S.T.C. 878, a learned single Judge of the Calcutta High Court held that when planks are made from logs or damaged wood, a new kind of commodity is manufactured because plank made out of timber is not timber in its nascent state.

In *Bachha Tewari v. Divisional Forest Officer* [1963] 14 S.T.C. 1067, the same learned Judge held that when timber is chopped off and converted into firewood it would not be treated as timber.

On the test laid down by us, both these decisions were correctly decided.

In *State of Orissa v. Rajani Timber Traders* (1974) 1 C.W.R. 322, a Bench of this Court dealt with a similar question. The learned Judges observed :

Timber logs and sized timbers are certainly different commodities in the commercial sense though sized timbers are brought out only from timber logs by a particular process. One who has a need of timber logs would not be satisfied if sized timber is offered to him. Similarly, one requiring sized timber would not be satisfied if timber logs are supplied. There is a clear distinction between the two and they cater to different types of needs in the commercial market.

The aforesaid dictum has been too widely stated. It does not indicate the meaning of the word "timber" as used in common parlance in commercial circles. It does not also purport to specify the meaning of the expression "sized timber" as used in that judgment. As we have already analysed, timber would continue to be timber in certain circumstances even if it is sized while it would cease to be timber in a different set of circumstances of which we have given certain illustrations which are not exhaustive. The aforesaid Bench decision thus does not furnish a clear guidance to the taxing authorities as to in what circumstances sized timbers would cease to be timbers.

Reliance is placed by the petitioner on a Bench decision of the Andhra Pradesh

High Court in *G. Ramaswamy v. State of Andhra Pradesh* [1973] 32 S.T.C. 309. It would appear from that judgment that in Andhra Pradesh in common parlance the word "timber" takes within its ambit planks, rafters, cut sizes, etc. At page 315 their Lordships observed thus :

What must follow is that planks, rafters, cut sizes, etc., obtained from logs of wood according to the popular or commercial usage or the interpretation placed by the administration is "timber" within the meaning of item 63 of Schedule I to the Act.

On the analysis given by us we are unable, with respect, to subscribe to this conclusion. This decision is also distinguishable as the petitioners in that case asserted in their affidavits that timber in the commercial field means the planks, the rafters and the cut sizes and the Government did not offer any convincing denial to the contrary.

8. Coming to the facts of the case before us, we are somewhat surprised that none of the taxing authorities including the Tribunal has given any clear picture of the sized timber, to which they are referring (sic) relating to the conversion of the original timber purchased. The Sales Tax Officer merely states that the dealer cut the timber logs into sizes by saw mills. Similarly, the Assistant Commissioner of Sales Tax does not give a picture as to in what manner the timbers originally purchased were sized. The Tribunal also does not advert to it. All of them assume that the moment the timbers are sized in saw mills they lose their original character. Without recording a clear finding as to how the timbers were sized and they lost their original character and constituted a different commercial commodity, it is not possible for us to say that the taxing authorities were justified in invoking the proviso to Section 5(2)(A)(a)(ii). It is to be noted that the question referred to this court is somewhat incorrectly framed inasmuch as it speaks of contravention of the proviso. In fact, there is no contravention of the proviso if the dealer converted the timber originally purchased into a different commercial commodity. On the other hand, he would be held not to have sold timber inside Orissa and, as such, he violated the declaration given in form XXXIV under Rule 27 in conformity with the entry in his certificate of registration. There is no contravention of the proviso. Rather in case of violation the proviso would be applicable and price of the goods so utilised would be included in the taxable turnover of the dealer.

9. On the aforesaid analysis, we are clearly of the opinion that the taxing authorities acted contrary to law in invoking the proviso without indicating the nature of the conversion of original timbers. The Tribunal is to gather further facts as to in what manner the original timbers were sized and if such sizing changes the essential character of the timber.

10. The question referred to us is modified as follows:

Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the proviso to Section 5(2)(A)(a)(ii) is applicable inasmuch as the

assessee purchased round logs on the basis of his registration certificate free of tax to resell them in Orissa but instead of doing so he converted them into sized wood and then resold the same.

We answer the question by saying that on the finding recorded by the Tribunal it is not possible for us to say whether the timbers were converted into a different commercial commodity by the act of sizing them-

11. In the result, the reference is accepted as indicated above. In the circumstances, parties to bear their own costs. The reference fee deposited be refunded to the petitioner.

B.K. Ray, J.

12. I agree.