(1980) 09 OHC CK 0004

In the Orissa High Court

Case No : S.J.C. No''s. 125 and 174 of 1976

Mahabir Rice Mill — APPELLANT

Vs

State of Orissa — RESPONDENT

Date of Decision : 11-09-1980

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 24(1), 24(2)(b)

Citation : (1983) 54 STC 218

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

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

Judgement

R.N. Misra, J.—S.J.C. No. 125 of 1976 is a reference made by the Additional Sales Tax Tribunal u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the "Act") referring the following two questions for opinion of the Court:

(1) Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was justified in taking into consideration the report of the Inspector of the Food Corporation of India to come to the conclusion that the applicant dealt with the amounts found short by the said Inspector and whether the Tribunal was justified in assessing tax on those shortages noticed ?

(2) Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, is correct in law in bringing the tax liability of the assessee for the purchase of paddy and sale of rice which were admittedly transacted on account of the principal, F. C. I., as their agent and the agent''s failure to account to the principal ?

S.J.C. No. 174 of 1976 is a reference made by the Tribunal pursuant to an order of this Court on the assessee''s application u/s 24(2)(b) of the Act and the following question has been referred :

Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in applying the principles decided in [1972] STC 155 (sic), without considering and construing the agreement to hold that supply of gunny bags by the dealer to the Food Corporation of India is a sale ?

As the assessee is common and the matter relates to the same period of assessment, i.e., 1972-73, both the references were heard together and are being disposed of by a common order.

2. The assessee is a registered dealer. It dealt in several articles and was also acting as the purchase-cum-milling agent of the Food Corporation of India during 1972-73. The assessing officer on scrutiny of the accounts found that the assessee had supplied 228 quintals of rice to the Corporation after packing them in gunny bags. The assessee had been paid at the rate of Rs. 3.25 per quintal on account of gunny bags. He, therefore, held that the assessee was liable to sales tax on a turnover of Rs. 741 on account of sale of gunnies. The assessing officer further took note of the report of the Inspector of the Corporation on physical verification that there was a shortfall in the stock of superfine rice as also paddy. The assessing officer thereupon confronted the assessee''s agent and did not accept the explanation offered by him. He recorded the following finding:

...It is true that the dealer was acting as a sub-agent of the Food Corporation of India for the purpose of purchase and milling of paddy and storage of rice and paddy. But the agent is not certainly authorised to sell rice and paddy beyond the terms of agreement entered into by them. The Food Corporation of India who is the principal in relation to the dealer for the purpose of purchasing and milling of paddy has not certainly authorised the dealer to appropriate the stock of paddy and rice in the manner other than stipulated in the terms of agreement. Therefore, the Food Corporation of India moved the District Magistrate, Balasore, to take action against the dealer for having abused the terms of appointment of agency by him. Hence for the unauthorised action committed by the agent beyond the terms of agreement the principal cannot certainly be made answerable for huge discrepancy noticed in the stock kept at the custody of the dealer. The dealer even though admits the fact of such huge shortage he does not disclose any satisfactory channel as to how the stock found short on physical verification was disposed of by him. Thus in the absence of any clear manner of disposal, I arrive at the inevitable conclusion that the shortage occurred due to the fact that the dealer has sold away the stock of rice and paddy out of account....

He, therefore, proceeded to estimate the price of the shortfall by adopting prevailing Government rates and raised an additional demand.

3. The assessee appealed. The Assistant Commissioner came to hold :

...Except for the copy of the letter No. A/C. 15(3)/71-72 dated 10th August, 1972, of the District Manager, F. C. I., Balasore, to the Collector, Bala-sore, kept at page 21 of the relevant assessment record reporting shortage in paddy and rice found in course of physical verification made in June, 1972, there is no other basis supporting the disputed assessment. The said letter reported to the Collector, Balasore, that the agent was understood to have sold the foodgrains stocks at higher rates in contravention of the Price Control Orders. There is no proof in support of this statement reported to the Collector, Balasore. The departmental agency has also failed to make any independent enquiry to find out if the appellant actually indulged in out-of-account purchases of paddy or sale of rice. The relevant I. C. T.''s report which is the basis of the disputed assessment is available at pages 22 and 23 of the assessment record. The allegation is thus based on mere presumption of facts without any independent enquiry or independent proof. Without such independent proof the best judgment assessment cannot be sustained. Mere shortages also will not make a dealer liable to tax on purchases or sales as decided by the Honourable High Court in the case-law cited by the appellant. As rightly argued by the learned Advocate, the appellant has been paid for the packing of the rice delivered to the F. C. I. at specified rates on every quintal of rice and not for every gunny bag supplied. The payment is thus clearly for the packing of the goods delivered to the F. C. I. under the terms of the agraement. Therefore, the appellant cannot be held liable to pay any tax on the estimated sales of the gunny bags. The addition made to the returned turnover is therefore without any basis and cannot be allowed to stand....

4. The State preferred second appeal before the Tribunal and the Tribunal vacated the appellate order and restored the original order subject to certain modifications.

5. Admittedly, the assessee was working as agent of the Food Corporation during the relevant period. Dealings in paddy were subject to purchase tax and sale of rice was liable to tax during the relevant time. There is no material at all in the assessment record to support the fact that there has been any clandestine purchase of paddy or similar sale of rice. The only basis of the assessment proceeding is the report of the Quality Inspector of the Food Corporation. The assessee''s explanation that there had been damage to the stock in hand has not been taken into account and by an independent enquiry the same has not been found to be untenable. In the absence of any supporting material, merely on the report of the Inspector, the assessing officer should not have jumped to the conclusion that there had been purchase and sale making the assessee liable to tax. In our opinion, the Member, Additional Sales Tax Tribunal, also went wrong in reversing the order of the Assistant Commissioner of Sales Tax.

6. So far as the estimate of sale price of gunny bags is concerned, we think, the assessing officer was absolutely right. There is an agreement under which the agent is entitled to charge a price for the gunny bag and that has been taken on quintal basis. There is a clear finding that the assessee had as a fact charged at the rate of Rs. 3.25 for gunny bag. The Assistant Commissioner went wrong in holding that it was labour charges for packing.

7. Our answer, therefore, is:

On the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was not justified in vacating the appellate order of the Assistant Commissioner merely on the basis of the report of the Inspector of the Food Corporation of India.

This answer would cover both the questions referred by the Additional Sales Tax Tribunal.

So far as the other question is concerned, our answer is that the dealer was liable to tax on sale of gunny bags as estimated by the assessing officer. There will be no order for costs.

N.K. Das, J.

I agree.

