

(1987) 01 OHC CK 0021

In the Orissa High Court

Case No : Special Jurisdiction Case No. 47 of 1980

Mishra Zarda Traders

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 28-01-1987

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(4), 24(1)

Citation : (1987) 67 STC 391

Hon'ble Judges : H.L. Agrawal, C.J.; R.C. Patnaik, J

Bench : Division Bench

Advocate : B. Agarwala, for the Appellant; The Standing Counsel (C.T.), for the Respondent

Judgement

H.L. Agrawal, C.J.—The Additional Sales Tax Tribunal, Orissa, has stated a case u/s 24(1) of the Orissa Sales Tax Act, 1947 ("the Act" for short) and referred the following question of law for the opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was correct to hold that baba zarda zafrani pati scented chewing tobacco is essentially zarda and is not chewing tobacco and as such, is exigible to tax ?

2. The petitioner is a dealer carrying on business in all varieties of pan masala. On the basis of a "fraud report" of the Inspector of Commercial Taxes, Cuttack I Circle, a notice u/s 12(4) of the Act was served upon the petitioner, and on verification of the documents of his business, it was found that the commodity in question, namely, "baba zarda", was shown by him as a chewing tobacco under the tax-free sale. The Sales Tax Officer took the view that the article was "zarda" and as such was taxable. He accordingly included the turnover of sale of zarda in the taxable turnover and charged sales tax at the appropriate rate. The appeals filed by the petitioner before the Assistant Commissioner of Sales Tax and the Sales Tax Tribunal also failed, but on an application u/s 24(1) of the Act, the Tribunal has referred the above question for opinion of this Court.

3. Previously tobacco and its products were tax-free. Later on, chewing tobacco, gudakhu, pan masala, gundi, zarda and snuff were taken out of "tobacco" and all its products by Notification No. 3609-CTA-38/67-F dated 5th February, 1968, and the rate of tax on the sale thereof was prescribed at 3 per cent with effect from 1st April, 1968 as per Notification No. 3604-CTA-38/67-F dated 5th February, 1968. However, when some clamour was made, the words "chewing tobacco" were deleted from the entry with effect from 15th May, 1968. Obviously, therefore, chewing tobacco became a tax-free article, though the other items remained as taxable.

4. The question that now arises for consideration is as to whether the commodity in question, namely, "baba zarda zafrani pati scented chewing tobacco" is a chewing tobacco as such and thus tax-free or is "zarda" and a taxable item. In another case, namely, Second Appeal No. 447 of 1972-73, the Tribunal, by its decision dated 10th April, 1973, which is also referred to in the Tribunal's order, had taken the view that this commodity was not "zarda" and thus not exigible to sales tax as it was only a chewing tobacco notwithstanding its description as "baba zarda", which was only a trade name. The present Tribunal has taken the view that chewing tobacco means only the tobacco in its raw form not subjected to any process of manufacture and once it is processed by soaking it in jaggery water and adding flavouring essences to it, then the leaf is shredded and the shredded tobacco is then packed and labelled, it has undergone a process of manufacture which would change the nature of the commodity from chewing tobacco to zarda. The Tribunal has also looked to the product, and one file was also produced before us by Mr. Agarwala.

Mr. Agarwala placed strong reliance on the case of the State of Madras v. Bell Mark Tobacco Co. [1967] 19 STC 129 a case which had gone to the Supreme Court from the Madras High Court (Bell Mark Tobacco Company v. Government of Madras [1961] 12 SIC 126 where the question was as to whether the sale of chewing tobacco prepared from raw tobacco remained the same commodity as raw tobacco or became a manufactured product. The process of preparation of chewing tobacco was as follows:

The assessee purchased raw tobacco and after sprinkling jaggery or plain water on the bundles of tobacco allowed the tobacco to ferment for some days. Heat was thereby generated and the tobacco was well processed. Stalks of tobacco were broken and removed and sand and dust were also removed. After paying excise duty, the bundles of tobacco were brought to the premises of the factory. Jaggery juice was sprinkled on the tobacco and it was then cut into thin strips by shearing machines. This tobacco was allowed to dry for some days and flavouring essences were then sprinkled on it. It was then packed in special wrappers and these packets were known as chewing tobacco packets.

It was held that the various processes to which the raw tobacco was subjected amounted to a manufacturing process and, therefore, the chewing tobacco sold by the dealer was not the same commodity as the raw tobacco but was a

manufactured product.

Mr. Agarwala relied upon this case to show that even after all the processings of the raw tobacco as indicated above, it was held to be a chewing tobacco and, therefore, in the present case baba zarda which was also only a processed form of tobacco should be held only as a chewing tobacco.

The question in the Madras case was entirely different as to whether chewing tobacco after its manufacture remained the same commodity as raw tobacco for considering whether excise duty could be levied or not. This case, therefore, in my view does not help to solve the riddle before us.

5. No case laying down the distinction between "zarda" and "chewing tobacco" was cited at the Bar. Undisputedly, tobacco is the basic commodity for manufacture of zarda which is prepared after treating the tobacco in various forms. Mr. Agarwala also referred to the cases of the State of Gujarat v. Sakarwala Brothers [1967] 19 STC 24 (SC) Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, and the State of Orissa v. Satyabadi Sahu & Sons [1982] 51 STC 75 (Orissa) in support of his point.

In the first case, the question was as to whether patasa, harda and alchidana fall within the definition of "sugar" in entry 47 of Schedule A to the Bombay Sales Tax Act, 1959. In the second case, the question was whether dryer felts made out of cotton or woollen yarn by the process of Weaving according to the warp and woof pattern and commonly used as absorbents of moisture in the process of manufacture in paper manufacturing units fall within the ordinary and common parlance meaning of the word "textiles" in item 30 of Schedule B to the Punjab General Sales Tax Act, 1948. In the third case, the question was as to whether misri (sugar-candy) comes within the meaning of "sugar".

In my opinion, these cases are of no help for answering the present question.

6. On behalf of the department, learned Standing Counsel referred to the case of J. Shamdass Vs. State of Andhra Pradesh, . The Andhra Pradesh High Court was considering the question as to whether the levy of sales tax on zarda under the Andhra Pradesh General Sales Tax Act, 1957 was in accordance with law.

Before noticing the various observations made in this report, let me first notice the meaning of the word "zarda" (jarda) according to the Purnachandra Ordia Bhashakosh (Vol. III). According to that, jarda means "scented tobacco-powder chewed with betel".

Before the Andhra Pradesh High Court, the question was in a different form. There, the dealer had claimed exemption of sales tax on the sale of zarda as the Government notification had exempted "tobacco and all its products" along with some other commodities from tax under the Act. In those circumstances, it was contended on behalf of the dealer that since zarda is a tobacco product, it was exempted from tax within the purview of the said notification. It was observed by the court that "zarda, according to its dictionary meaning and in common

parlance, is nothing but a variety of chewing tobacco. Having regard to the substantial percentage of tobacco contents, zarda can certainly be held to be a tobacco product...". Referring to the definition of "tobacco" in the Central Excises and Salt Act, 1944, in the absence of its definition at any other place, it was held that it was very comprehensive to cover tobacco and all its products and thus zarda was not exigible to sales tax in view of the said notification.

7. I am afraid, even this decision will be of no assistance to the dealer for the simple reason that in spite of the fact that zarda may maintain its character as a variety of chewing tobacco and ordinarily is chewed with pan, the legislature has drawn a line of distinction between "chewing tobacco" as such and its more refined form "zarda". In my considered opinion, by simply labelling of the commodity "baba zarda" as scented chewing tobacco by the manufacture, it could not be said to be the same commodity which in common parlance is known as chewing tobacco which is taken by people in this part of the country with lime in its powder form by rubbing it with the thumb. The mode and the manner of consumption of the common chewing tobacco and zarda are entirely different. The legislature must be aware of this distinction while mentioning different products of tobacco in the entry in question and it certainly intended to make a distinction between "chewing tobacco" and "zarda". It may well be that "zarda" is also consumed by chewing the same with betel (pan) but it is not the relevant test. I have no doubt in my mind that while exempting "chewing tobacco" from the category of the taxable items and making it tax-free, but at the same time, keeping zarda as a taxable commodity, a distinction between chewing tobacco and zarda was accepted. It might have been intended that as this article is consumed by common people and the poorer section of the society, "chewing tobacco" should be exempted from sales tax, but its more luxurious refined form "zarda" should be kept as a taxable commodity. "Baba zarda" under which brand name the commodity in question is being sold is a highly sophisticated and refined form of tobacco. The manufacturer himself has named it as "zarda". In common parlance also, this brand is being sold as "baba zarda" without the long tail added by the manufacturer, namely, zafrani pati scented chewing tobacco.

8. I would, therefore, conclude by answering the question in favour of the department and against the dealer.

Their will be no order as to costs.

R.C. Patnaik, J.

9. I agree.