
(2020) 10 OHC CK 0011
In the Orissa High Court
Case No : Sales Tax Revision No. 78 Of 2006

Mohanilal @ Mohanlal Sitani	Vs	APPELLANT
State Of Orissa		RESPONDENT

Date of Decision : 13-10-2020

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(4)
Tamil Nadu General Sales Tax Act, 1959 — Section 17

Citation : (2020) 10 OHC CK 0011

Hon'ble Judges : Mohammad Rafiq, CJ; B.R. Sarangi, J

Bench : Division Bench

Advocate : S. Mohanty, D. K. Sahoo

Final Decision : Dismissed

Judgement

Mohammad Rafiq, CJ

1. This Sales Tax Revision seeks to challenge the ex parte order 18.03.2006, passed by the Full Bench, Orissa Sales Tax Tribunal, Cuttack (for short,

the Tribunal) in S.A. No.1571 of 1999-2000. The Tribunal by the impugned order set aside the order of the Assistant Commissioner of

Commercial Taxes, Sambalpur Range, Sambalpur, dated 30.11.2000 passed in Sales Tax Appeal No.AA.44 (SAIII) of 1999-2000, allowing the appeal

and raising the demand of additional tax against the petitioner in the assessment under Section 12(4) of the Orissa Sales Tax Act (for short, the

Act) for the year 1996-97, and thereby allowed the appeal preferred by the State of Orissa-opposite parties and restored the assessment of the

petitioner for the said year.

2. The question, which was considered by the Tribunal, was whether exemption from taxation granted to sale of firewood can be extended to sale of

firewood to be used as raw material for manufacturing of paper.

3. Mr. S.Mohanty, learned counsel for the petitioner-Mohanilal @ Mohanlal Sitani (assessee) argued that the Tribunal wrongly allowed the appeal of

the Revenue Department by relying on the judgment of the Apex Court in the case of A. Subramanyam v. State of Tamil Nadu (and other

appeals), reported in (2003) 130 STC-41, whereas ratio of the aforesaid judgment does not apply to the facts of the present case. The Supreme Court

in the aforesaid judgment held that when the firewood was sold with the object of being converted into pulp for manufacturing rayon, it was not being

sold as firewood at all. But in the case of the petitioner, firewood was supplied to M/s. Orient Paper Mill pursuant to supply order under Annexure-4,

which does not specify the object for which such firewood is to be used. The Tribunal therefore was not justified in mechanically applying the

judgment of the Supreme Court in A. Subramanyam (supra). Mr. S. Mohanty, learned counsel for the petitioner in support of his case has relied upon

a judgment of this Court in the case of Straw Products Limited v. State of Orissa and others, reported in (1990) 34 STL 67 (Ori).

4. Mr. D. K. Sahoo, learned Standing Counsel for Commercial Tax Department-opposite parties has supported the impugned order passed by the

Tribunal.

5. Perusal of the impugned order indicates that the Tribunal, after analyzing the order passed by the assessing officer, who has made reference to the

registration certificate as well as the purchase orders of M/s. Oriental Paper Mill, indicating the specifications of the firewood, which M/s. Oriental

Paper Mill required from the respondent and also indicating that wood of such specification was meant to be used as raw material for manufacturing

of paper, has given its finding in Paras-6 to 8 of the impugned order, which being most relevant to the case, are reproduced hereunder:-

6. There is absolutely no dispute that firewood sold by the respondent to M/s Oriental Paper Mill, Brajrajnagar was used as raw

material for manufacture of paper. In this connection, the learned assessing officer also made reference to the registration certificate as

well as the purchase orders of M/s Oriental Paper Mill. Paragraph 2 & 3 of the grounds of appeal reproduced above showing the

specifications of the firewood which M/s Oriental Paper Mill required from the

respondent indicate that wood of such specification was meant to be used as raw material for manufacture of paper.

7. The learned ACST appears to have passed the impugned order on the basis of principle laid down by the Honâ??ble Court in the

decision of *Straw Products Ltd. & Ors. (supra)*. However, in the decision reported in (2003) 130 STC 41: *A Subramanyam Vrs. State of*

Tamil Nadu, the Honâ??ble Apex Court held:

â??The wood sold by the appellant may be used and described as firewood. But when it was sold with the object or being converted into

pulp for manufacturing rayon, it was not being sold as firewood at all. The exemption is granted to firewood meant to be as firewood. The

exemption cannot be extended to sales of wood for manufacture of rayon even though such wood is capable of being used as firewood and

is generally used as such. The exemption is obviously for the benefit of people who buy or sell firewood for the purpose of using the same

as firewood. This exemption is not for the benefit of persons who sell wood for manufacture of rayon pulp.â??

8. The law laid down by the Honâ??ble Apex Court made with regard to firewood used as raw material for the purpose of manufacture of

rayon pulp is also squarely applicable to the firewood sold for manufacture of paper.â??

6. The Supreme Court in *A. Subramanyam (supra)*, was dealing with an identical issue of the sale of firewood in the State of Tamil Nadu where the

notification issued under Section 17 of the Tamil Nadu General Sales Tax Act, 1959 exempted sale of firewood from sales tax. The question in that

case was whether the timber supplied for manufacturing of pulp cannot come within the scope of the exemption granted by the Government. The

High Court following its earlier decision in *A.H.K. and Company v. State of Tamil Nadu* [1980] 46 STC 117 (Mad.) concluded that even though

the parties in the agreement described the wood as firewood, but the supply of wood was for making pulp. The agreement clearly indicated that

neither of the two parties intended that the timber should be used as firewood. The High court therefore held that such goods cannot be called

firewood at all and were not exempt from tax. The argument before the Supreme Court on behalf of assessee was that the goods sold by the

petitioner were indisputably of the character of firewood and will have to be treated as firewood, regardless of the use of which the goods has been

put. Repelling that argument, the Supreme Court in para-3 of the said judgment held as under:

“3. We are unable to uphold this argument. The wood sold by the appellant may be used and described as firewood. But when it was sold

with the object of being converted into pulp for manufacturing rayon, it was not being sold as firewood at all. The exemption is granted to

firewood meant to be as firewood. The exemption cannot be extended to sales of wood for manufacture of rayon even though such wood is

capable of being used as firewood and is generally used as such. The exemption is obviously for the benefit of people who buy or sell

firewood for the purpose of using the same as firewood. This exemption is not for the benefit of persons who sell wood for manufacture of

rayon pulp.”

In our view, approach taken by the Tribunal is eminently just and proper. Entry of Firewood at serial no. 13B of the Schedule to the exemption

notification No. 20206-CTA-14/76F dated the 23rd April, 1976 intended the such firewood to be used as fuel and not as a raw material for

manufacturing of paper. Once the firewood is put to any other use than as fuel, it would not be entitled to exemption of tax. It is trite that an

exemption notification has to be construed strictly. A person claiming exemption provision to relieve him of tax liability must explain clearly that he is

covered by the relevant provision. Unlike ordinary taxing statute, in the event of ambiguity, an exemption clause or provision has to be construed in

favour of revenue. We may in this connection usefully refer to the following observations of the Constitution Bench of the Supreme Court in para 62

and 66 of the report in Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company & ors, (2018) 9 SCC 1.

“62. The ratio in Mangalore Chemicals case was approved by a three Judge Bench in Novopan India Ltd. v. CCE. In this case, probably for the

first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/assessee when there is ambiguity.

The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows:

16. We are, however, of the opinion that, on principle, the decision of this Court in *Mangalore Chemicals and in Union of India v. Wood Papers*

Ltd., referred to therein, represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of

the assessee, assuming that the said principle is good and sound, does not apply to the construction of an exception or an exempting provision, they

have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he

is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State.

66. To sum up, we answer the reference holding as under:

66.1 Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes

within the parameters of the exemption clause or exemption notification.

66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the

subject/assessee and it must be interpreted in favour of the Revenue.

66.3. The ratio in *Sun Export* case is not correct and all the decisions which took similar view as in *Sun Export* case stand overruled.

The judgment of this Court relied upon by the petitioner in *Straw Products Limited* supra, does not in any manner deal with the question involved in

the present case whatsoever.

7. In view of the above, we do not find any merit in this revision petition so as to warrant any interference, which is accordingly dismissed.

As Lock-down period is continuing for COVID-19, learned counsel may utilize the soft copy of this order available in the High Court's website or

print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587, dated 25.03.2020.