
(1975) 10 OHC CK 0012

In the Orissa High Court

Case No : S.J.C. No's. 1, 2, 3 and 4 of 1974

Orissa Co-Operative Handicrafts Corporation Ltd.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 30-10-1975

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 5(1)

Citation : (1976) 42 CLT 63 : (1976) 38 STC 131

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

Bench : Division Bench

Advocate : B.K. Mohanti and S.R. Das, for the Appellant; The Standing Counsel (S.T.), for the Respondent

Judgement

R.N. Misra, J.—These are four references made u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the "Act") made by the Member, Additional Sales Tax Tribunal, Orissa, at the instance of the assessee. The years concerned are 1966-67, 1967-68, 1968-69 and 1969-70. In respect of the first three years, the following question has been referred for opinion of the court :

Whether, under the facts and circumstances of the case, it is correct to hold that khadi silk is taxable as per provision in entry at serial No. 8 of Chapter IV at seven per cent or it is tax-free and comes under entry at serial No. 24 of Chapter I of the rate chart, which relates to khadi, hand-spun and hand-woven cloth and hand-spun fabrics ?

2. In respect of the last year, the following questions have been referred for opinion of the court:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that khadi silk is taxable and is covered by the entry at serial No. 8 of Chapter IV of the rate chart and taxable at the rate of seven per cent ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that tassar cloth is taxable and is covered by the entry at serial

No. 8 of Chapter IV of the rate chart and taxable at seven per cent ?

2. The assessee is a society registered under the Orissa Co-operative Societies Act and deals in silk and tassar products. There is no dispute regarding the total taxable turnover and the entire dispute arises out of the claim of the assessee that sale of silk and tassar products by it was not liable to sales tax as the same are included in the entry in serial No. 24 of the exemption schedule, while according to the taxing department, these are items covered by serial No. 8 of the list of goods taxable at a higher rate.

3. The Sales Tax Officer held that the assessee was liable in respect of the turnover of both the items at seven per cent, while the first appellate authority took the view that tassar goods did not come within the purview of the entry at serial No. 8 and, therefore, it was liable to tax at the general rate of tax provided in Section 5(1) of the Act, *z. e.*, 5 per cent.

4. The Tribunal, on the other hand, has taken the view that sale of tassar would be tax-free, while sale of silk goods would have to be taxed at seven per cent as per entry in serial No. 8 in so far as the first three years are concerned. In respect of these years, the Tribunal's decision in regard to the tassar goods has become final. The assessee questions the decision of the Tribunal in regard to sale of silk goods. In regard to the last year, the Tribunal has found both tassar and silk goods to be taxable at seven per cent.

5. u/s 5(1) of the Act, tax payable by a dealer is to be levied at five per cent on the taxable turnover. The first proviso authorises the State Government by notification to fix a higher rate of tax not exceeding seven per cent or a lower rate of tax on purchase or sale of any specified goods. Notification No. 33927-F. dated 30th December, 1957, has been made in exercise of the aforesaid power fixing both higher and lower rate of tax in respect of named goods.

Section 6 of the Act authorises the State Government by notification and subject to such conditions and exceptions as may be specified to exempt from tax the sale of any goods or class of goods. Notification No. 33925-F. of 30th December, 1957, has been made in exercise of such statutory power. The assessee claims that sale of khadi silk and khadi tassar goods comes within the ambit of serial No. 24 of the notification made in exercise of powers u/s 6 of the Act. Therefore, such sales are exempt from tax. The department claims that tassar is silk and in terms of serial No. 8 of the notification made in exercise of the powers conferred by the first proviso to Section 5(1) of the Act, sale of such commodities is liable to be taxed at seven per cent. The two entries are to the following effect :

24. Khadi handloom woven yarn and khadi ... handloom woven cloth and khadi ready-made garments

8. All silk goods including all mill-made Seven per cent." or powerloom woven pure silk fabrics and pure silk cloth of handloom origin.

According to the Tribunal, "tassar" is not "silk". Nothing has been placed before

us to take a contrary view. Admittedly, the manufacturing process is somewhat similar, but silk and tassar are different commercial commodities. There is no scope to confuse one for the other. The first appellate authority had taken a similar view. The Tribunal, without strictly examining that aspect of the matter, came to examine whether khadi hand-spun tassar would not come within the entry at serial No. 24 and holding that it does, came to the conclusion that tassar articles would not be liable to tax. We endorse the conclusion of the Tribunal that tassar articles are not liable to tax because they do not come within the entry at serial No. 8 of the notification of taxable commodities.

6. In regard to silk goods, we find that item No. 8 in the list of taxable goods is very specific and appears to be pervasive. Law is fairly settled that the entries have to be harmoniously construed so that there may not be any confusion, in that view of the matter, silk goods would be exigible to sales tax as prescribed under item No. 8 of the list of taxable goods. During the first three years, the entry ran thus :

All silk goods excluding all mill-made or powerloom woven pure or artificial silk fabrics but including pure silk cloth of handloom origin when the price exceeds rupees ten a piece.

There is no finding at all on such score. It was necessary for the Sales Tax Officer to find out the turnover in respect of sale of such handloom items where sale exceeded Rs. 10 a piece. That has not been done. Therefore, it becomes necessary that the matter should be remanded for further investigation by the assessing officer. In the first three years that part of the turnover relating to sale of khadi silk where the price exceeds rupees ten a piece, would be taxable at seven per cent. In the last year, such investigation is not necessary and the rate of tax has to be seven per cent on the turnover of khadi silk.

Sale of tassar cloth would not at all be taxable for the reasoning given by the Tribunal while disposing of the appeals relating to the first three years.

7. Our answers to the two questions referred, therefore, are :

(1) On the facts and in the circumstances of the case, the Tribunal was correct in holding that khadi silk is taxable at seven per cent being covered by entry in serial No. 8 of the list of taxable goods.

(2) On the facts and in the circumstances of the case, the Tribunal is not right in holding that sale of tassar cloth is taxable and it is covered by entry in serial No. 8 of the schedule of taxable goods.

As success is divided, we direct parties to bear their own costs.

K.B. Panda, J.

8. I agree