
(1972) 08 OHC CK 0002
In the Orissa High Court
Case No : S.J.C. No. 326 of 1969

Ram Chandra Badrinarayan	Vs	APPELLANT
State of Orissa		RESPONDENT

Date of Decision : 22-08-1972

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(3), 5(2)(A)(a)(ii), 6(2)(A)(a)(ii)

Citation : (1974) 33 STC 83

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

Bench : Division Bench

Advocate : R. Mohanty and N. Patra, for the Appellant; Standing Counsel (S.T.), for the Respondent

Judgement

R.N. Misra, J.—This is a reference u/s 24(3) of the Orissa Sales Tax Act (hereinafter referred to as the Act). This court called upon the Tribunal to refer the following question of law and state a case for determination of the said question:

Whether the proviso to Section 5(2)(A)(a)(ii) has been violated by sale of mung and chana in the shape of mung dal and besan?

2. The assessee is a registered dealer bearing No. CUI 1318. When he came to be assessed for the quarter ending 30th June, 1963, the Sales Tax Officer found that the petitioner had purchased mung, chana, biri and peas by giving declaration as required under the Act that he would resell such goods in the State of Orissa and had thus been exempted from payment of sales tax. Subsequently, he converted some mung and biri to dal. Similarly, he converted chana and peas to besan. To the extent the assessee converted the goods purchased on the basis of declarations into either dal or besan the assessing officer took action under the proviso to Section 5(2)(A)(a)(ii) of the Act and raised demand. The assessee disputed the demand in appeal. From the appellate order it transpires that similar demands had been raised against the assessee for four quarters at a time being quarters ending 30th June, 1963, 30th September,

1963, 31st December, 1963, and 31st March, 1964. The assessee has, however, confined his challenge to the quarter ending 30th June, 1963, in this case.

3. The Assistant Commissioner as also the Sales Tax Tribunal upheld the assessment by holding that the assessee had attracted the liability under the proviso to Section 5(2)(A)(a)(ii) of the Act and the demand was, therefore, justified.

4. Section 5(2)(A) of the Act deals with "taxable turnover". "Taxable turnover" is said to mean --

A dealer's gross turnover during any period which remains after deducting therefrom:

(a) his turnover during that period on --

(i) the sale of any goods notified from time to time as tax-free u/s 6 and of the packing materials, if any, in respect of such goods.

(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 and on sales to a registered dealer of containers or other materials for the packing of such goods.

The proviso is to the following effect:

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.

Under Rule 27(2) a statutory form has been prescribed. A claim laid for deduction has to be evidenced by a declaration in such form.

5. To answer the question called for all that is necessary to be determined is whether there has been a violation in the declaration of the assessee that the goods purchased by him for resale in Orissa have really been so resold. A single point taxation system has been adopted under the Orissa Sales Tax Act. The point of taxability is open to be fixed u/s 8 of the Act. Ordinarily, that point is postponed until in a series of sales the goods ultimately passes to a consumer or to an unregistered dealer. The method of obtaining a declaration as referred to above and postponing the point of taxability is the method adopted under the Act to give effect to the single point of taxation. If the assessee, who has given the declaration and has become entitled to deduction in respect of the goods covered by the declaration from his taxable turnover, does not violate the terms of the declaration, no liability accrues against him in regard to the exempted turnover. If, however, there is a violation of the terms of declaration when such goods are not resold in Orissa, under the proviso the price of such goods so utilised (in violation) is to be added back to the taxable turnover.

6. Before we proceed further we think it appropriate to modify the question

slightly because from the records of the case it transpires that the alleged violation was not only in respect of mung and chana, but also in respect of biri and peas. We shall, therefore, reframe the question in the following way:

Whether the proviso to Section 5(2)(A)(a)(ii) has been violated by sale of mung and bin in the shape of dal and chana and peas in the shape of besan?

It has now to be found out whether the goods which the assessee purchased on giving declarations that such goods would be resold in Orissa have been sold in the shape of such goods or not. Mr. Mohanty for the assessee contends that biri and mung have not lost their identity when sold in the shape of dal and must be taken to be the same goods. Similarly, chana and peas sold as besan continue to be the same goods and, therefore, there has really been no violation of the conditions in the declarations. The learned standing counsel's contention is that the assessee has violated the conditions by not selling the same goods as he purchased by giving the declarations, but having converted the goods into something different from what it had been at the time of the assessee's purchase upon furnishing of the declarations. The learned counsel for both sides have referred to us a series of cases of different High Courts and of the Supreme Court in support of their respective stands. These cases, however, do not throw any direct light on the point. Particular provisions in different State laws of sales tax, Rules made under the Central Excise Act or other statutory orders led to disputes which came to be resolved in these decisions. In some of these decisions what was decided was whether there was any manufacturing process in converting one goods to another. In some other decisions, whether a particular commodity was covered by the term "cereals" or "pulses" was decided. Whether patasa or harda prepared out of sugar would still be sugar was decided by their Lordships of the Supreme Court in *State of Gujarat v. Sakarwala Brothers* [1967] 19 S.T.C. 24 (S.C.). In *Channulal Motilal v. Commissioner of Sales Tax* [1965] 16 S.T.C. 297(gau), batasa, chiranji and mishri were sugar was decided. In *State of Madras Vs. M.R. Krishnaswami Naidu and Others, etc.,*, their Lordships of the Supreme Court were considering the correctness of the assessee's claim to the lower rate of taxation u/s 3(3) of the Madras General Sales Tax Act, 1959. In *Ghasi Ram Hari Ram v. Commissioner of Sales Tax* [1972] 30 S.T.C. 88 (sc), a Bench of the Delhi High Court was considering what items would be covered by the expression "all forms of rice". In *State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others,*, their Lordships were considering whether cotton seeds were a distinct commercial goods different from ginned cotton. In *Ganesh Trading Co. Vs. The State of Haryana and Another,*, a learned single Judge of that court came to hold that paddy and rice were two different commodities in the ordinary sense of the term, and one could not be equated with the other. The learned Judge was prepared to adopt the standard of substantial identity for testing the correctness of the contention as to whether paddy and rice form the same commodity.

7. What is necessary in the present case for determination is as to whether sale

of mung dal and bin dal can be taken to be sale of mung and biri respectively, and sale of peas besan and chana besan can be taken to be sale of peas and chana respectively. One has ultimately to take a common sense view of the matter. The terms as understood in the commercial sense and with reference to their use must be kept in view in order that a correct conclusion may be reached. Would a man going to the market to buy biri or mung purchase dal of that commodity and, similarly, would a man going to the market to buy chana or peas be satisfied if besan of that commodity is offered? Dal or broken mung and biri may often form a good substitute for whole mung or whole biri and one may be a good substitute for the other.

8. The identity of the goods is often based upon the use of the commodity. Mung and biri as whole or broken ones may be available to be used for the same purpose and except in some instances be good substitute for one another. In *Tilok Chand Prasan Kumar Vs. The Sales Tax Officer*, the Allahabad High Court has treated the two to be the same commodity. In the popular and commercial sense whole mung and biri and dal made out of it may really be classed as the same goods. True there is some transformation when the whole mung or biri is broken and by look the two commodities may be different, but in view of the fact that they are mostly put to the same use and in the popular and commercial sense not much difference is maintained between the one and the other, sale of mung and biri in the shape of dal may be taken as sale of such goods. As such, resale of dal in place of mung or biri would not give rise to a violation of the condition of the declaration and, as such, would not attract liability under the proviso to Section 6(2)(A)(a)(ii) of the Act.

9. Besan, however, must stand on a very different footing. Not only is there a change in the form, but there is also brought into existence a commodity of very different use. Adopting the same test as indicated above, besan cannot be accepted in the popular and commercial sense to be the same commodity as peas or chana. Besan does not have the same use as chana or peas and one needing chana or peas would not be prepared to accept its besan in its place. When the assessee purchases chana or peas with the undertaking that he would resell them in Orissa, but converts the same into its besan and sells, there is really a violation of the condition in the declaration giving rise to the tax liability under the proviso.

10. Our answer to the question, therefore, shall be that there is no violation of the declaration contemplated u/s 5(2)(A)(a)(ii) of the Act by sale of biri and mung in the shape of dal, but there is such violation when peas and chana are converted into besan and sold as such. We direct both parties to bear their costs of this reference.

B.K. Ray, J.

11. I agree.