(1981) 03 OHC CK 0017

In the Orissa High Court

Case No : Special Jurisdiction Case No. 89 of 1977

Rameswarlal Muralidhar APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 10-03-1981

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 24(1), 5(2)(A)(a)(ii)

Citation : (1982) 50 STC 312

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

Bench : Division Bench

Advocate : A. Agarwalla, for the Appellant;

Judgement

R.N. Misra, C.J.—The Member, Additional Sales Tax Tribunal, Orissa, has stated this case u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the "Act") and has referred the following two questions for opinion of the court :

(i) Whether, on the facts and in the circumstances of the case, paper and exercise books which are manufactured out of paper, are one and the same thing or two different things ?

(ii) Whether, on the facts and in the circumstances of the case, the assessee by making purchase of paper tax-free by giving declaration in form No. XXXIV specifically mentioning therein that the purchases are for resale will be adjudged guilty of violating such declaration for resale, if he has sold those very papers purchased for resale after converting them into exercise books when his registration certificate also entitled him to make purchases for manufacture ?

2. The petitioner is a registered dealer carrying on business in mill-made paper, exercise books and other stationery articles. He became a registered dealer under the Act with effect from 1st December, 1964. As per his certificate of registration he was authorised to make purchase free of tax for resale of paper, exercise books, office stationery and printing ink. He obtained amendment of his certificate of registration with effect from 22nd September, 1965, and became

entitled to purchase the following commodities for resale free of tax :

(i) board

(ii) cover

(iii) drawing books

(iv) binding books

(v) binding registers

(vi) refrigerator and its spare parts

(vii) electrical goods and appliances

(viii) gunnies

(ix) water-cooler.

He was also authorised to make purchases free of tax for use in manufacture :

(i) paper

(ii) boards

(iii) covers

(iv) drawing books

(v) registers.

For the assessment year 1971-72, petitioner showed a G.T.O. of Rs. 11,63,158.59 and taxable turnover of Rs. 4,85,312.57. On scrutiny, the assessing officer found that the petitioner had purchased paper worth Rs. 21,297 from Titaghur Paper Mills Company Limited free of tax on the basis of declarations, but had converted such paper into exercise books and sold such exercise books. The assessing officer applied the proviso to Section 5(2)(A)(a)(ii) of the Act and raised additional tax demand of Rs. 1,573.89.

3. The assessee''s first appeal was dismissed. Before the Additional Tribunal, the assessee maintained that there was no violation of the terms of the declaration so as to give rise to the application of the proviso.

The proviso at the relevant time read thus :

Provided further that where any goods specified in the certificate of registration are purchased by a registered dealer free of tax after furnishing a declaration as being intended for resale in Orissa, but are utilised by him for any other purpose, the price of the goods so purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer.

The question of manufacture is irrelevant while dealing with this aspect. Rightly the assessee''s counsel did not address us on that aspect. The short question for consideration, therefore, is whether when a dealer purchases paper on the basis of declarations and converts such paper into exercise books and sells them as such, he commits violation of the undertaking in the declaration. Admittedly, paper and exercise books are different marketable commodities. One who looks for paper would ordinarily not be satisfied when he is supplied exercise books. It is true that exercise books are made out of paper, but they are cut into a specified size and are put to a use different from what paper can be used for. It may be that exercise books and paper when used qua paper serve the same purpose, but "paper" as such before conversion into exercise books is amenable to multiple use and there are certain specific purposes for which such paper can be used while in the converted form of exercise books, such purposes cannot be served. There is a direct decision of this Court in an unreported case between the parties in Rameswarlal Muralidhar v. State of Orissa (S.J.C. No. 2 of 1976) disposed of on 26th July, 1979 (reported in [1980] 45 STC 115(SC), where it has been held that exercise books are not "paper" and constitute a different marketable commodity. The tests applied by the Supreme Court in Ganesh Trading Co., Karnal Vs. State of Haryana and Another, or in the case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, clearly support the view that when out of one commodity amenable to multiple uses another commodity is made with limited or particular use, the two would not be the same. The assessee''s counsel relied upon a recent decision of the Supreme Court in the case of Maharaja Book Depot Vs. State of Gujarat, in support of his stand that paper and exercise books constituted the same commodity. There is nothing in the decision which supports such a proposition. The Supreme Court in Maharaja Book Depot Vs. State of Gujarat, was concerned with the provisions of the Essential Commodities Act and the Gujarat Essential Articles Dealers'' Regulation Order made under the Central Act. The Gujarat Order in serial No. 14 put paper including newsprint, paper board, straw board and exercise note books in one entry. The court was examining whether note books were beyond the purview of paper for a very different purpose. We do not think that any support is gatherable for the present purpose from that decision. We are not, therefore, inclined to take a view different from what has been taken in Rameswarlal Muralidhar v. State of Orissa (S.J.C. No. 2 of 1976) [1980] 45 STC 115 where the question directly arose for determination.

4. Our answer to the question referred, therefore, is against the assessee by concluding that-

on the facts and in the circumstances of the case, paper and exercise books which are manufactured out of paper are not one and the same thing but are two different things and on the facts and in the circumstances of the case, the assessee by making purchase of paper tax-free upon giving declaration in form XXXIV specifically mentioning therein that the purchases were for resale, would violate the declaration for resale if he has sold such paper purchased for resale after converting the same into exercise books.

There would be no order for costs.

B.N. Misra, J.

5. I agree.

