
(1987) 09 OHC CK 0008
In the Orissa High Court
Case No : S.J.C. No. 18 of 1981

Samaleswari Store

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 02-09-1987

Acts Referred:

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

Citation : (1988) 68 STC 228

Hon'ble Judges : H.L. Agrawal, C.J.; D.P. Mohapatra, J

Bench : Division Bench

Advocate : Arijit Pasayat, for the Appellant; Standing Counsel (Commercial Taxes), for the Respondent

Judgement

H.L. Agrawal, C.J.—The Sales Tax Tribunal, Orissa, on making a reference u/s 24(1) of the Orissa Sales Tax Act, 1947 (for short, "the Act"), has referred the following questions of law for determination by this Court:

(1) Whether, on the facts and in the circumstances of the case, the learned Member, Additional Sales Tax Tribunal, was justified in holding that sales tax and not purchase tax was leviable on dal with effect from 1st October, 1974 ? and

(2) Whether, on the facts and in the circumstances of the case, the learned Member, Additional Sales Tax Tribunal, was justified in holding that dal does not come within the ambit of the expression "all forms of gram" and is therefore not subject to purchase tax with effect from 1st October, 1974 and is subject to sales tax from the said date ?

2. The facts:

For the assessment year 1975-76, the assessing officer, while making the assessment u/s 12(4) of the Act, imposed sales tax on the transactions of different kinds of dal made by the dealer and raised an additional demand of Rs. 5,437 on the ground that dal was a different item than gram and could not be included in any form of gram, a notified commodity. The dealer, however,

challenged this imposition on the ground that dal, being one of the forms of gram and already subjected to purchase tax with effect from 1st October, 1974 was not liable to further tax. The dealer, however, also failed before both the appellate forums.

3. It may be mentioned that by Notification No. 36360-F. dated 28th September, 1974, "all forms of horsegram, blackgram, jowar and khesari" were made taxable at the purchase point with effect from 1st October, 1974. All forms of green gram(mung), hill gram(arhar), maize, ragi, etc., were similarly included in the list for levy of purchase tax by notification dated 15th March, 1975. The Tribunal has taken the view that the expression "all forms of gram" could include only all varieties of gram, big or small, irrespective of their colour, and dal, being different from gram, the expression could not be stretched to include dal within its ambit.

4. Let us consider the meaning of the word "form". The Revenue authorities have interpreted this word as seen above to include all varieties of gram. In my opinion, the expression "form" is not referable only to its varieties.

The meaning of the word "form" according to the Chambers Twentieth Century Dictionary is:

Shape: a mould: something that holds, shapes, etc.

The Lexicon Webster Dictionary gives the meaning of the word "form" inter alia as follows:

External shape or appearance considered apart from colour or material; a particular shape;

I am therefore inclined to take the view in favour of the dealer that when the notification stated all forms of gram and not all varieties of gram, then obviously, it intended to include the various species and some of its by-products as well. Some of the decisions which I may presently refer to also support this view that unless gram was reduced into an entirely different species, such as, besan or shattu, it continued to remain as a broken form of gram itself.

Now let us proceed to consider some of the cases.

Reliance was placed by the dealer at the reference stage on the unreported decision of this Court in S.J.C. No. 15 of 1976 dated 16th July, 1980 (State of Orissa v. Baijnath Flour Mills) where it was laid down that:

Dals made out of grams were not to be considered as a different commodity but as one of the forms of gram.

which led to the making of the reference.

5. Here, the two reported decisions of this Court on the point may be noticed, the first one being the case of Ram Chandra Badrinarayan v. State of Orissa [1974] 33 STC 83. There, a registered dealer had purchased mung, chana, biri

and peas on furnishing the declaration for reselling the said commodities within the State of Orissa, but converted some mung and biri into dal and chana and peas into besan and sold the dal and besan. The assessing officer assessed the dealer under the proviso to Section 5(2)(A)(a)(ii) of the Act to the extent of the conversion of the goods purchased on the basis of the declaration which was also upheld by the higher authorities. But on reference, this Court held that there might be some transformation of the commodities in question and by look, the two commodities may appear to 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. The resale, therefore, was held not to violate the above provision of law or the condition of the declaration attracting any liability. But this plea was rejected with respect to conversion of chana and peas into besan.

The same view was also taken in Baijnath Flour Mills" case (S.J.C. No. 15 of 1976 dated 16th July, 1980--Orissa High Court). There, the dealer having similarly purchased grams had sold them after breaking them into pieces (dana). On a reference made to this Court at the instance of the Revenue, relying upon the decision in Ram Chandra Badrinarayan's case [1974] 33 STC 83 (Ori) the reference was answered against the Revenue.

6. In the meantime, a Bench of this Court in the case of State of Orissa v. Haji Ebrahim Haji Jamal Noor Mohammed & Co.[1975] 35 STC 275 had occasion to consider an almost similar question. The dealer after purchasing grams on furnishing the declaration converted them into dal and sold as such. On a similar question being raised as to whether the proviso to Section 5(2)(A)(a)(ii) of the Act was attracted, it was held by the Bench that:

In common parlance and in commercial sense, green gram and black-gram and dal produced out of them are different commodities and that they cannot be treated as the same goods.

* * * Though dal after conversion was sold inside Orissa, it was not sold in the same form in which the goods were originally purchased on the basis of the declaration and, therefore, the proviso to Section 5(2)(A)(a)(ii) was attracted.

The Court refused to follow the earlier decision in [1974] 33 STC 83 (Ori) (Ram Chandra Badrinarayan v. State of Orissa) on the ground that it had lost its force in view of the decision of the Supreme Court in Ganesh Trading Co., Karnal v. State of Haryana [1973] 32 STC 623 a decision though reported earlier, yet rendered after the Orissa decision.

In the case before the Supreme Court, the facts were that after purchase of paddy (on payment of purchase tax), the dealer had sold the commodity after converting it into rice. It was therefore observed that rice and paddy being two different things in "ordinary parlance" and when paddy is dehusked and rice produced, there is a change in the identity of goods. The learned Judges of this

Court in the later decision came to hold that:

As, however, the matter is concluded by a Supreme Court decision, it is unnecessary to refer the matter to a larger Bench, which itself would be bound by the Supreme Court decision. *Ram Chandra Badrinarayan v. State of Orissa* [1974] 33 STC 83 (Ori) does not lay down good law on this point.

7. The above observation was noticed by this Court in the unreported decision in *Bajinath Flour Mills*" case (S.J.C. No. 15 of 1976 dated 16th July, 1980) and the earlier view in [1974] 33 STC 83 (Ori) (*Ram Chandra Badrinarayan v. State of Orissa*) was reiterated. The Supreme Court case was distinguished on the ground that the case of paddy and rice was entirely different as "there would be hardly any identity except that one was contained within the other before conversion. The two commodities meet different needs of the people. But in the case of a gram and a dana, the position was different as "whether it was in the original form as the whole gram or it was in broken form of 2 to 3 pieces, i.e., dana, did not really bring into existence any new goods"...".

8. Obviously, dal is also nothing else than the broken form of gram and when we have got two direct Division Bench decisions dealing directly with the case of gram and its conversion into dal or dana. I would refrain from referring to various other decisions which were cited at the Bar relating to some commodities, such as, sugar-sugar candy, coal-charcoal, pineapple fruit processed into pineapple slices, wool and knitting wool, etc., for the sake of analogy.

9. Before closing, however, I may also refer to another recent decision of this Court to which I happened to be a party. One is *Bijoy & Co. v. State of Orissa* (S.J.C. No. 157 of 1979 disposed of on 11th December, 1986). In this case, the reference was made to consider the effect of entry 1(J) in the notification u/s 5 of the Act. In this case, the dealer had sold blackgram after converting it into dal which was disallowed from his taxable turnover and it was held by this Court that:

The blackgram even after it was converted into dal did not cease to be a pulse or cereal.

It may well be that the ambit of entry 1(J) being wide enough to cover cereals and pulses including all forms of gram and various other whole grains including besan and shattu and construed strictly, cannot be held to lay down the relevant ratio for the purpose of the present case, but none the less, it lends support at least to the proposition that dal and gram belong to the same "family" and it can be safely noted that their nature of user in many ways is also similar.

The decision in [1974] 33 STC 83 (Ori) (*Ram Chandra Badrinarayan v. State of Orissa*) was again referred to by a Full Bench of this Court in the case of *State of Orissa v. Bharat Saw Mill* [1980] 46 STC 389 with approval.

10. On a circumspection of all the facts and circumstances as well as the authorities discussed above, I have no doubt in my mind to reach the conclusion

that the decision of this Court in the case of Ram Chandra Badrinarayan v. State of Orissa [1974] 33 STC 83 is still a good law holding the field. Once I come to this conclusion, the answer to both the questions must be given in favour of the dealer and against the department,

The dealer therefore did not contravene the provisions of Section 5(2)(A)(a)(ii) of the Act.

11. In the result, the reference is accepted and the questions are answered accordingly, but in the circumstances I shall make no order as to costs.

D.P. Mohapatra, J.

12. I agree.