
(2009) 08 OHC CK 0029
In the Orissa High Court

Shalimar Chemical Works Ltd.

APPELLANT

Vs

State of Orrisa and Others

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Orissa Value Added Tax Act, 2004 — Section 102A

Citation : (2009) 108 CLT 809 : (2009) 2 OLR 748 : (2010) 28 VST 52

Hon'ble Judges : Indrajit Mahanty, J;B.P. Das, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Das, J.—The petitioner has filed the aforesaid two writ petitions. W.P. (C) No. 9356 of 2006 has been filed seeking to challenge a letter dated 5.8.2005 (Annexure-4) issued by the Sales Tax Officer, Cuttack 1 Central Circle, Cuttack to the petitioner informing him that "coconut oil" is liable to be taxed " 12.5% VAT on sale price, as well as the revisional order passed by the Special Additional Commissioner of Sales Tax Central Zone Cuttack in Revision Case No. CUI-272/05-06 (Annexure-5), affirming the view taken by the Sales Tax Officer, Cuttack.

2. In W.P.(C) No. 15482 of 2007, the petitioner has challenged the validity of the Notification dated 31.5.2007 by which amendment of entry Serial No. 47 of Part-II of Schedule-B to the Orissa Value Added Tax Act, 2004 (in short "OVAT Act") as well as insertion of an explanation to entry Serial No. 125 of Part-II, Schedule-B to the Orissa Value Added Tax Act, 2004 has been challenged.

3. Mr. Pati, learned Counsel appearing for the petitioner asserts that the petitioner deals with "coconut oil" and the said product is covered under Serial No. 124-Vanaspati (Hydrogenated Vegetable oil) and ghee and/or under Serial No. 125, i.e., Vegetable oil including Gingili oil and Bran oil. Accordingly, it is submitted that since the petitioner's product namely, "coconut oil" is covered either under Serial 124 or 125 of Part-II to Schedule-B to the Orissa Value Added

Act, 2004, the same is not available to be taxed " 12.5% and instead is liable to be taxed " 4%. Further challenge has been made to the notification of the Finance Department bearing SRO No. 343/07 dated 31.5.2007 published in the Orissa Gazette Extraordinary in its issue No. 974 dated 31.5.2007 incorporating an explanation to the Schedule-B, Part-II of the OVAT Act, 2004 to the following effect:

Explanation:- For the purpose of this entry "vegetable oil" shall not be construed to include and shall always be deemed not to have included coconut oil.

4. Since the challenge in these two writ petitions were interrelated and were filed by the self-same petitioner, on the consent of the learned Counsel appearing for the parties, both the writ petitions are taken-up together for disposal.

5. Mr. Pati, learned Counsel for the petitioner states that "coconut oil" is sold by the petitioner for use as a medium of cooking and therefore, the same ought to have been accepted as edible oil or vegetable oil and no justification exists for any differential treatment of "coconut oil" and levy of tax at higher rate i.e., 12.5% instead of 4% as is leviable for edible oil or vegetable oil. Thus it is contended that same has resulted in unfair discrimination against the petitioner.

6. Mr. Kar, learned Counsel appearing for the Revenue on the other hand submits that the very-same issue was raised by the petitioner also before the West Bengal Taxation Tribunal who was pleased to reject the same. The judgment of the Tribunal in the case of Sahalimar Chemical Works Limited v. CST West Bengal and Ors. has been reported in (2008) 12 VST 485.

In the said judgment the tribunal came to hold that "coconut oil" is not generally used by the consumers in West Bengal as an edible oil and accordingly further hold that consumption pattern of "coconut oil" in West Bengal clearly indicates that "coconut oil" cannot be treated as edible oil in West Bengal.

7. It was further held that the claim of the petitioner that "coconut oil" would be covered under the broad expression of "vegetable oil" and was similarly rejected on the ground that "coconut oil" had been expressly excluded from the expression "vegetable oil" in the relevant entry in the West Bengal Value Added Tax Act. Apart from the above the tribunal has also come to a finding that the legislature treated "coconut oil" as a specific commodity and since there was no specific entry of "coconut oil" in the schedule with the incorporation of the specific exclusion of coconut oil from vegetable oil with effect from 1.2.2006, it has to be accepted, that in the State of West Bengal "coconut oil" was not used as cooking oil and generally used as "hair oil" and the legislature had the necessary discretion in classifying goods for levy of tax at different rates. The tribunal further came to hold that in the absence of any specific definition of any particular item reliance was required to be placed on as to how the products were understood and treated in the local market and therefore, rejected the plea of the petitioner that "coconut oil" should be taxed as "edible oil".

8. Learned Counsel for the Revenue further states that the Hon"ble Orissa High Court in the case of Una Subba Rao v. State of Orissa and Anr. reported in (1986) 61 STC 49 came to hold that the legislature was competent to pick and choose articles for taxation. So long as the competence of the legislature to tax "sugar-candy", which is commercially a different product from "sugar" is accepted, it cannot be said that the sales tax authorities were wrong in treating "sugar-candy" as one different from "sugar". This Court came to a finding that sugar-candy was sold in the market as a separate commodity apart from sugar and the fact that sugar-candy was separately mentioned indifferent schedules of the Sales Tax Act indicates that the legislature intended to treat them differently while subjecting sugar-candy to tax and exempting sugar from tax.

9. In so far as W.P.(C) No. 15482 of 2007 is concerned, Mr. Kar, appearing for the Revenue states that the amendment brought about by the Impugned notification was merely "clarificatory in nature", clarifying an earlier ambiguous provision. Even though such an amendment is not given retrospective effect yet, such amendment is an useful aid in construing the earlier provision. In this respect he placed reliance upon the judgment of the Hon"ble Supreme Court in the case of Thiru Manickam and Co. Vs. The State of Tamil Nadu, In this respect Mr. Kar submits that the explanation introduced by the impugned notification dated 31.5.2007 as noted herein above being merely clarificatory in nature, even though such amendment was not given retrospective effect, yet, the same can be a useful aid in construing the earlier provision.

10. Schedule-B Part-II of the OVAT Act, 2004 contains the list of goods taxable " 4% and Part-III of the same schedule contains declaration that all other goods except those specified in Schedule-C shall be liable for taxation " 12.5%.

11. In the OVAT Act, 2004 Entry-27 had provided for edible oils, oil cake and de-oiled cake. This entry under went an amendment by the Orissa Value Added Tax Amendment Act, 2005 (Orissa Act 11 of 2005 notified in the official gazette on 9th September, 2005) and by virtue of said amendment the item of edible oil is thereafter mentioned at Serial No. 47 of Part-II of the Schedule-B which provided for "edible oil other than coconut oil". Vide the said amendment Serial No. 124-Vanaspati (Hydrogenated Vegetable Oil) and ghee and Serial No. 125-Vegetable oil including gingili oil, bran oil was also incorporated.

12. Further amendment was made vide notification dated 31.5.2007 vide SRO No. 343-07 in exercise of the powers conferred by Section 102A of the Orissa Value Added Tax Act, 2004 whereby other amendments were carried out to Part-II of Schedule B, whereby the impugned "explanation" to the entry at Serial No. 125 was introduced.

13. The contention of the petitioner is that the petitioner's product namely "coconut oil" ought to be accepted as Vanaspati oil or Vegetable oil under Serial 124 and 125 is wholly without any basis since "coconut oil" has been mentioned in Serial No. 47 by excluding the same from being treated as "edible oil".

14. From the above it is crystal clear that the legislative mandate was to treat "coconut oil" differently from edible oil in entry 47 and therefore, the claim of the petitioner that "coconut oil" would come under Serial 124 and 125 cannot be accepted. In the aforesaid premises it is clear that the intent of the legislation was to exclude "coconut oil" from Part-II of Schedule-B of the OVAT Act and consequently making the same taxable " 12.5% under Part-III of the Schedule-B.

15. We are of the considered view that like the State of West Bengal, in the State of Orissa, "coconut oil" is not generally used as medium of "cooking oil" but it is widely used as "hair oil" and therefore, we are in complete agreement with the views expressed by the West Bengal Taxation Tribunal in the case of Shalimar Chemical Works Ltd. (supra).

16. In the light of the aforesaid facts and reasons we are afraid that both the writ petitions merit no further consideration and are hereby dismissed, but in the circumstances without cost.

I. Mahanty, J.

I agree.