
(1988) 04 OHC CK 0018
In the Orissa High Court
Case No : S.J.C. No's. 68-69 of 1981

Shree Hanuman Rice Mill

APPELLANT

Vs

The State of Orissa

RESPONDENT

Date of Decision : 04-04-1988

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 24, 6, 6A

Citation : (1988) 70 STC 316

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

Bench : Division Bench

Advocate : B. Agarwala, for the Appellant; A.B. Misra, Standing Counsel (S.T.), for the Respondent

Judgement

K.P. Mohapatra, J.—Member, Additional Sales Tax Tribunal has referred the following questions u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the "Act"):

(1) Whether, on the facts and in the circumstances of the case, the calculation of tax in question on sale of rice in course of inter-State trade to unregistered dealer first by doubling sales tax rate on rice and holding it at 8 per cent and therefrom reducing the purchase tax paid on purchase of paddy as held by the Member, Additional Sales Tax Tribunal is correct ?

(2) Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was correct in holding that production of declaration in form F is not mandatory and the assessee-dealer is permissible to adduce alternative evidence in place of production of such declaration in form F in support of its claim of tax relief ?

2. Facts may be stated. The dealer carries on business of purchasing paddy inside the State and after converting the same into rice in its rice mill at Chandabali, it sells the same in course of inter-State trade and commerce. In the assessment year, 1978-79 it disclosed turnover of Rs. 2,57,204 in respect of sale

of rice to unregistered dealers in course of inter-State trade and commerce. Further, it disclosed turnover of Rs. 1,41,435 showing branch transfer to places outside the State, but did not produce declarations in form F in support of such transfers. The Sales Tax Officer imposed tax at the rate of 8 per cent in respect of both the turnovers and on appeal, the Assistant Commissioner of Sales Tax upheld the assessment. The dealer preferred second appeal before the Sales Tax Tribunal which came to be disposed of by the Member, Additional Sales Tax Tribunal on 19th December, 1980. The Member, Additional Sales Tax Tribunal, held that in view of the provisions of Section 15(c) of the Central Sales Tax Act ("CST Act" for short), imposition of tax at the rate of 8 per cent on the turnover of Rs. 2,57,204 was correct, but with regard to the turnover of branch transfers he took a different view and relying upon Notification No. F. 28/2/74-ST dated 22nd January, 1974 issued by the Ministry of Finance, Government of India, New Delhi, held that production of declarations in form F was not mandatory and the transactions could be proved by the dealer by adducing evidence otherwise. Accordingly, he directed that opportunity should be given to the dealer to adduce other evidence in support of the turnover of the branch transfers to the tune of Rs. 1,41,435.

3. The dealer filed an application for reference u/s 24(1) of the Act with regard to the conclusion arrived at by the Member, Additional Sales Tax Tribunal, and at its instance, the first question has been referred. The State of Orissa, represented through the Commissioner of Sales Tax filed another application for reference with regard to the mandatory nature of production of declaration in form F for branch transfers and at its instance, the second question has been referred;

4. So far as the second is concerned, the matter is no longer *res integra* in view of the decisions reported in [1987] 67 STC 262 (Ori) (State of Orissa v. Orissa Small Industries Corporation) and [1988] 68 STC 153 (Ori) (State of Orissa v. Ramnarayan Sitaram). It was held that u/s 6A of the Central Sales Tax Act, form F was not conclusive proof that the inter-State transfers were otherwise than by way of sale. The assessing officer has the jurisdiction to make further enquiry as to whether the transactions covered by form F were sales, or mere transfers as claimed by the dealer. The dealer might thus prove his claim in any other manner also. Moreover, the word "shall" used in Sub-rules (5) and (7) of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, being in a procedural statute, could not be held to be mandatory, when non-compliance was not to have adverse effect. Learned counsel appearing for both parties did not dispute the above proposition. Therefore, the question is answered in the affirmative.

5. Now coming to the first question, the undisputed fact is that the dealer's turnover of sale of rice to unregistered dealers in course of inter-State trade and commerce during the year under assessment was Rs. 2,57,204. According to the contention of Mr. B. Agarwala, learned counsel appearing for the dealer, the rate of tax shall be less than 8 per cent, whereas, Mr. A. B. Misra, learned Standing Counsel for the sales tax department, urged that in the facts and circumstances

of the case, levy of tax at the rate of 8 per cent was correct. It is not disputed on either side that paddy is exigible to purchase tax at 4 per cent and rice including broken rice is exigible to sales tax at the rate of 4 per cent. Sections 8(2A) and 15(c) of the CST Act which are relevant for the purpose of answering the question are quoted below for easy reference :

8. Rates of tax on sales in the course of inter-State trade or commerce.-

* * * (2-A) Notwithstanding anything contained in Sub-section (1-A) of Section 6 or Sub-section (1) or Clause (b) of Sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

* * * 15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.-

* * * (c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in Sub-clause (i) of Clause (i) of Section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy.

According to Section 8(2A), therefore, tax has to be calculated at twice the rate of sale or purchase which would amount to 8 per cent, but Section 15(c) makes a concession. If the rice which is the subject-matter of the inter-State sale is procured out of paddy purchased in the State leviable with purchase tax, the amount of tax shall be reduced by the amount of tax levied at such rate. In other words, if the dealer is able to prove that he purchased paddy leviable with purchase tax in the State, converted the said paddy to rice by milling process and then sold the rice to unregistered dealers in course of inter-State trade and commerce, then only it will be entitled to the concession of reduction of tax by the amount levied at such paddy. If, on the other hand, the dealer has purchased paddy inside the State and has also sold rice to unregistered dealers in course of inter-State trade and commerce without establishing that the rice sold was converted from the paddy purchased by milling process it will not be entitled to the concession of reduction of tax. In this case, the statement of facts submitted by the Member, Additional Sales Tax Tribunal, does not disclose that rice sold to unregistered dealers in course of inter-State trade and commerce was procured out of the paddy purchased in the State and converted into rice by milling process in the dealer's rice mill at Chandabali. Therefore, it is not possible to look to any other material while exercising power of reference, so as to hold in favour of the dealer that the rice sold in course of inter-State trade and commerce was procured out of the paddy purchased inside the State by milling process. In this connection, reference is made to two decisions of the Andhra

Pradesh High Court reported in Aitha Narasaiah and Co. and Another Vs. The State of Andhra Pradesh and Another, and The State of Andhra Pradesh Vs. Srinivasa Trading Co., . In the first case, placing reliance on Ganesh Trading Co., Karnal Vs. State of Haryana and Another, , and some other decisions, it was held that paddy and rice are two different commodities. It was further held that by virtue of Section 8(2A) read with Section 15(c) of the CST Act and items 21 and 22 of the Third Schedule of the Andhra Pradesh General Sales Tax Act read with explanation III thereto, where rice procured out of tax suffered paddy was sold in the course of inter-State trade, the Central sales tax payable on rice should be reduced by the amount of Andhra Pradesh tax paid on the corresponding purchase of paddy. In the second case, it was held that if an assessee purchases paddy referred to in Section 14(i)(i) of the CST Act and pays tax under the State law, the tax leviable under the Act on rice procured out of such paddy and sold in the course of inter-State trade or commerce has to be reduced by the amount of tax levied on such paddy by the State law by virtue of the provisions of Section 15(c) of the CST Act. In this view of the matter, according to provisions of Section 8(2A) read with Section 15(c), tax was rightly calculated at twice the rate applicable for sale of rice to unregistered dealers in course of inter-State trade and commerce. Therefore, levy of tax at the rate of 8 per cent is correct. The question, however, seems to have been framed incorrectly and in a misleading manner. It is reframed as follows :

Whether on the facts and circumstances of the case, the Member, Additional Sales Tax Tribunal, is correct in holding that the dealer was liable to pay sales tax at the rate of 8 per cent on the turnover of sale of rice in the course of inter-State sale ?

The first question as reframed is answered in the affirmative.

6. The reference is answered accordingly. Hearing fee is settled at Rs. 250.

H.L. Agrawal, C. J.

7. I agree.