(1994) 10 OHC CK 0012

In the Orissa High Court

Case No : S.J.C. No. 100 of 1990

State of Orissa APPELLANT

Vs

Arun Trading Company RESPONDENT

Date of Decision : 28-10-1994

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(2A)
Orissa Sales Tax Act, 1947 — Section 6

Citation : (2002) 125 STC 335

Hon'ble Judges : K.L. Issrani, J;G.B. Patnaik, J

Bench : Division Bench

Judgement

1. On an application being filed by the department u/s 24(1) of the Orissa Sales Tax Act, 1947, the Tribunal has referred the following question for opinion of this Court :

"Whether, on the facts and in the circumstances of the case, the interpretation of the learned Tribunal that as per serial No. 30-D of the rate chart of exempted goods under Orissa Sales Tax Act, oil-cake is generally tax-free, is legally correct and if its sale in course of inter-State trade is not subject to tax under Central Sales Tax Act?"

The short facts are that the dealer deals with oil-cake. The books of accounts were examined in an assessment proceeding under Rule 12(5) of the Central Sales Tax (Orissa) Rules, 1957 and it was found that 303 bags of oil-cake had been sold in course of inter-State trade and commerce. The dealer did not produce any declaration in forms "C" and "F" in support of the transaction of oil-cake. It also did not pay the Central sales tax over the sale turnover of oil-cake. The assessing officer rejected the claim of the dealer and levied tax at the rate of 10 per cent. The Assistant Commissioner, in appeal, confirmed the order of assessment. In the second appeal, the Tribunal came to the conclusion that the oil-cake being exempt from levy of tax under serial No. 30-D of the list of tax-free goods, the transaction therein cannot be exigible to tax under the Central

Sales Tax Act. The Tribunal also negatived the finding of the appellate authority that only under specified circumstances, i.e., when the oil-cake is sold as feed and fodder the same is tax-free. The Tribunal having allowed the second appeal, the State had made the application u/s 24(1) of the Orissa Sales Tax Act, 1947 and as such the Tribunal has formulated the question for the opinion of this Court.

2. Under the list of goods exempted from tax notified in exercise of powers u/s 6 of the Orissa Sales Tax Act, 1947 serial No. 30-D provides :

"30-D. Sale of feed and fodder such as husk, straw, hay, grass, oil-cake including de-oiled cake and manufactured mixed balanced feed for cattle, poultry and pig."

Under Section 8(2A) of the Central Sales Tax Act, 1956 if sale or purchase of a goods is exempt from tax generally, the same shall not be leviable under the Central Sales Tax Act. The Explanation to Sub-section (2A) provides that a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods. If the enumeration contained in serial No. 30-D of the list of goods exempted from levy of Orissa sales tax is examined, it is difficult for us to accept the contention of the Revenue that sale or purchase of oil-cake is exempt only in certain specified circumstances. Oil-cake is essentially used as a cattle feed. What is exempted is sale of feed and fodder for cattle. The words "husk, straw, hay, grass, oil-cake" are merely enumerative and illustrative. In view of the findings arrived at by the Tribunal negativing the conclusion of the appellate authority, there cannot be any manner of doubt that the oil-cake under serial No. 30-D of the list of exempted goods is exempted generally, and consequently the sale or purchase thereof is not liable to levy of tax under the provisions of the Central Sales Tax Act. In the circumstances, we answer the question posed in favour of the assessee and against the department.

