
(1973) 05 OHC CK 0012
In the Orissa High Court
Case No : S.J.C. No. 214 of 1972

State of Orissa

APPELLANT

Vs

Atmaram Prahalad Roy

RESPONDENT

Date of Decision : 15-05-1973

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 8

Citation : (1973) 32 STC 218

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

Bench : Division Bench

Advocate : B.S. Agarwalla, R.S. Agarwalla and R. Sharma, for the Respondent

Judgement

R.N. Misra, J.—The Member, Sales Tax Tribunal of Orissa, has referred the following questions u/s 24(1) of the Orissa. Sales Tax Act (hereinafter referred to as the Act) for our determination :

(1) Whether in the facts and circumstances of the case, the dealer is entitled to exemption of Central sales tax on the turnover of sales on the purchase of which tax has been levied inside the State ? Would it make any difference if the purchase tax had not been paid by the dealer but by his vendor who was the first purchaser ?

(2) Whether in the facts and circumstances of the case, the Tribunal was right in allowing the exemption claimed and reducing the assessment to returned figure and thereby accepting the return of the dealer?

2. The assessee is a registered dealer under the Central Sales Tax Act (hereinafter referred to as the Central Act) bearing No. GAC-I-5-45 and deals in mahua seeds as one of the items of trade. Mahua seeds are declared goods under the Central Act. During 1967-68 the assessee sold mahua seeds in the course of inter-State trade. On scrutiny of the assessee's accounts it transpired that he had claimed exemption on a turnover of sale to the tune of Rs. 23,686 of mahua seeds on the ground that purchase tax had been paid at the first point on

these goods. Mahua seed is exigible to purchase tax in Orissa u/s 3-B of the Act. Mangulu Sahu had paid purchase tax on the mahua seeds in question. The assessing officer did not allow exemption as claimed. The assessee appealed. The first appellate authority confirmed the assessment. In second appeal by the assessee the Tribunal found :

The sole point for consideration in this appeal is if the claim of exemption towards payment of tax on the sale turnover of mahua seeds worth Rs. 23,686 would be accepted since purchase tax had been paid on this mahua flower by the first purchaser, namely, Mangulu Sahu & Co., a registered dealer under the Orissa Sales Tax Act. That mahua flower (should be seeds) is a declared goods on which purchase tax had been paid by Mangulu Sahu & Co. is not disputed nor the appellant's despatching the same beyond Orissa is disputed. The department's contention is if Mangulu Sahu & Co. itself would have exported mahua beyond Orissa in the course of inter-State trade then only the exemption would have applied, not in the case of the present assessee who had not paid the purchase tax himself. The department takes its stand on the notification of 8th December, 1966, bearing No. 43637-C. T. A.-200/66-F. I do not think such a narrow construction as given by the department to the notification is permissible. The exemption contemplated in the notification is on the declared goods. It makes no difference between the dealer who had paid the purchase tax himself on the declared goods and another who had not paid the purchase tax and is thus a subsequent purchaser from the one who had initially paid the purchase tax. I do not agree that there is any emphasis put by this notification on the dealer which is obviously attached to the goods that are declared.

In the reference application made by the State of Orissa it was contended before the Tribunal that Section 15 of the Central Act imposed restrictions and conditions in regard to levy of tax on sales or purchases of the declared goods within the State. Sub-section (a) thereof provides that tax payable inside the State shall not exceed the prescribed rate and also such tax shall not be levied at more than one stage. Sub-section (b) provides for refund of sales tax levied on the intra-State sale or purchase when such goods are sold in the course of inter-State trade or commerce, but subject to conditions, if any, provided in the State law.

3. Sections 8(5) and 15(b) of the Central Act are relevant for our purpose. Those provisions are as follows :

8(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the official Gazette, direct that in respect of such goods or classes of goods as may be mentioned in the notification and subject to such conditions as it may think fit to impose, no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sale by him from any such place of business of any such goods in the course of inter-State trade or commerce or that the tax on such sales shall be calculated at such lower rates

than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification.

15. Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely....

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

4. In exercise of the power vested in the State of Orissa under Sub-section (5) of Section 8 of the Act, the following notification had been made on 8th December, 1966 :

No. 43637-C. T. A.-200/66-F.-In exercise of the powers conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (74 of 1956), the State Government having been satisfied that it is necessary to do so in the public interest hereby direct that in respect of all declared goods sold in the course of inter-State trade or commerce, no tax under the said Act shall be payable by any dealer, having his place of business in the State in respect of the sale by him of such goods where tax has been levied and collected in respect of the sale or purchase of such declared goods u/s 5(1) of the Orissa Sales Tax Act, 1947, subject to the following conditions, namely :-

(i) the burden of proving that the tax u/s 5(1) of the Orissa Sales Tax Act, 1947, has been levied and collected in respect of any such declared goods shall lie on the dealer and

(ii) the dealer shall not claim refund under Clause (b) of Section 15 of the Central Sales Tax Act, 1956, read with Section 14-B of the Orissa Sales Tax Act, 1947, of the tax levied and collected u/s 5(1) of the Orissa Sales Tax Act, 1947, from the dealer or such tax has not been refunded to him.

5. The learned standing counsel for the department contends that the scheme under the two statutes is such that one set of tax whether under the Orissa Act or the Central Act is exigible in the case of declared goods. The purport of the notification is that if the assessee satisfies that the goods which ultimately is exported in the course of inter-State trade or commerce had been taxed in his hands within the State he would not have to pay tax under the Central Act. To be entitled to the benefit under the notification-that is, exemption from sales tax under the Central Act-the assessee has to prove that tax under the Orissa Act has been levied and collected in respect of such declared goods and refund of such tax shall not be claimed or has not been made. Before the Tribunal the assessee had contended that under the scheme of the Orissa Act purchase tax is paid at the first point and subsequent purchases are no more exigible to

purchase or sales tax. In respect of declared goods the Central Act also prohibits levy of tax at more than one point. The assessee had, therefore, contended that the first condition under the notification had been satisfied. Identity of the goods and not the identity of the person in whose hands the intra-State sale or purchase had been taxed was material according to the assessee. The revenue had, however, contended that unless the goods which ultimately came in the stream of inter-State trade or commerce had been taxed in respect of the intra-State sale in the hands of the same person, the benefit was not available. The stand of the State was supported by a decision of the Andhra Pradesh High Court in *Rafeeq Ahmed v. State of A. P.* [1969] 24 S.T.C. 430, where a similar notification had been construed in the background of the provisions of the Central Act.

6. The provisions of the Central Act contained in Section 15 have in the meantime been amended by Central Act 61 of 1972 and we are told at the Bar by the learned counsel for both sides that this has now come into force. Section 15(a) has been amended retrospectively from 1st October, 1958. Sub-section (b) of Section 15 before amendment provided that the refund would be admissible to such person in such manner and subject to such conditions as may be provided in any law in force in that State. By the amendment in place of "shall be refunded to such person" the words "shall be reimbursed to the person making such sale in the course of inter-State trade or commerce" have been substituted. The spirit of the amendment appears to emphasise on the position that if the declared goods had been taxed under the State Act in regard to the intra-State sale or purchase, the tax under the State Act is refundable. The purpose of the amendment seems to be to establish beyond doubt the position that in regard to declared goods only one set of tax is exigible. Uniformity of the rate of tax has been maintained by the statute and if it has been paid on the intra-State sale or purchase, a second set of tax under the Central Act is not payable. But if the Central tax has been levied it is made refundable on proof of the fact that on the same goods at an earlier point tax under the State Act had been paid.

7. The only question of difference between the learned counsel for the parties is as to whether the person paying the intra-State tax must be the assessee under the Central Act. We do not find support for the stand of the revenue because the two statutes, so far as this aspect of the matter is concerned, are complimentary to each other and one pattern has been followed in both the statutes. Ordinarily, under the Orissa Act purchase tax or sales tax is payable only at one point which is to be prescribed. For purchase tax the first point has been prescribed. Once at the first point purchase tax has been paid it merges into the price and subsequent purchases of the same goods in the trade channel are not exigible to further tax. The scheme under the Central Act did not postulate identity of the dealer for the purposes of getting the benefit provided thereunder. If the goods had already been made liable to tax in the course of intra-State trade, the benefit could be earned. Admittedly, the mahua seeds have already been taxed at the first purchase point and when the assessee acquired the mahua seeds the

incidence of purchase tax had been passed on to him having merged into the price. In fact in that sense he had suffered the incidence of the purchase tax.

The two conditions of the notification are that the assessee must prove that tax under the Orissa Act had been paid and that the said tax would not be claimed by way of refund u/s 15(b) of the Central Act. The assessee in this case, for the reasons we have indicated above, must be held to have satisfied the first condition and since he purported to declare that he would not claim refund of it u/s 15(b) of the Central Act, he also satisfied the second condition. Under the notification, therefore, he had no liability to pay tax under the Central Act as it was not payable by him.

8. The learned standing counsel for the revenue contended that the notification was bad. It is not for us in exercise of our reference jurisdiction to decide whether the notification is ultra vires. It is the State's notification and that it was bad had never been contended and at any rate in our reference jurisdiction we are not competent to hold that it is bad even if it is really bad.

9. Our answers to the questions shall, therefore, be:

(1) On the facts and in the circumstances of the case, the dealer is entitled to exemption of Central sales tax on the turnover of sales on the purchase of which tax had been levied inside the State. It would not make any difference if the purchase tax had not been paid by the dealer but by his vendor who was the first purchaser.

(2) On the facts and in the circumstances of the case, the Tribunal was right in allowing the exemption claimed and thereby reducing the assessment to the returned figure and thus accepting the return of the dealer.

We make no order as to costs of this reference.

B.K. Ray, J.

10. I agree.