(1982) 03 OHC CK 0011

In the Orissa High Court

Case No : Special Jurisdiction Case No''s. 209 and 210 of 1977

State of Orissa APPELLANT

Vs

Habib Rahimutulla and Co. RESPONDENT

Date of Decision : 15-03-1982

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 5(1)

Citation : (1982) 51 STC 403

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

Bench : Division Bench

Advocate : A. Pasayat, for the Respondent

Judgement

R.N. Misra, C.J.—These are references made by the Member, Additional Sales Tax Tribunal, u/s 24(1) of the Orissa Sales Tax Act at the instance of the revenue. The following three questions have been referred :

(1) Whether, on the facts and in the circumstances of the case, is the Member, Additional Sales Tax Tribunal, legally correct to say that on reading of the terms of agreement the assessee is only required to charge Rs. 3.25 for each quintal of rice supplied and not as consolidated commission to cover the procurement charges including handling, storage, interest, shortage, gunny depreciation, etc. and milling charges ?

(2) Whether, on the facts and in the circumstances of the case, should not the contract as per terms of the agreement be held as divisible ?

(3) Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, is correct in law to have held that on the sale of gunny bags sold to the Food Corporation of India and the Collector, tax is payable at the rate of 3 per cent instead of 7 per cent or 8 per cent, as the case may be ?

2. At the hearing of the applications, the only question which the learned standing counsel pressed is in relation to taxability of gunny bags used as

containers and the rate at which such turnover is subjected to sales tax. We are concerned with the periods 1971-72 and 1972-73. In the first year the assessee received Rs. 74,054.09 while in the second year it received Rs. 25,770.30. In the mid-year of 1971-72, the rate of tax for containers was enhanced from 7 to 8 per cent. The assessing officer found that out of the total receipts, Rs. 44,574.90 was exigible to tax at 7 per cent while for the remainder in both the years the rate of tax would be 8 per cent. The Tribunal in second appeal reduced the rate of tax on sale price of gunny from 7 per cent or 8 per cent to 3 per cent by relying upon the fifth proviso to Section 5(1) of the Orissa Sales Tax Act which provides that the sale of containers of taxable goods, when sold with such goods but not charged separately, shall be subject to payment of tax at the same rate as the goods contained therein. The Tribunal proceeded to say:

In this case, the gunny was supplied along with rice. Hence, in fitness of things, the gunny should be taxed at 3 per cent and not at 7 per cent and 8 per cent as done. A point may arise that the price of gunny has been separately charged. But I may say that as per the terms of the agreement, the assessee is only required to charge Rs. 3.25 for each quintal of rice supplied. Hence the price of gunny has intimate connection with the supply of rice even though separately charged. Hence the rate of tax on gunny is 3 per cent and not 7 per cent and 8 per cent as done.

3. That sale of gunny would be taxed is not in dispute. The only question is what would be the appropriate rate of tax. Admittedly, under the contract there was an obligation for supply of rice in bags on the part of the assessee and the Tribunal relying on this part of the agreement has invoked the fifth proviso to Section 5(1) of the Act. Admittedly, at the relevant time rice was exigible to purchase tax at 3 per cent. The direction of the Tribunal to reduce the tax on the sales turnover of gunny bags on the basis of the fifth proviso, therefore, is not open to challenge. We would accordingly answer the question referred to us by saying that the sales turnover of gunny bags during the period in question has been rightly taxed at 3 per cent.

There would be no order for costs.

B.K. Behera, J.

4. I agree with my Lord, the Chief Justice.