(1987) 09 OHC CK 0020

In the Orissa High Court

Case No : Special Jurisdiction Case No''s. 33 and 34 of 1981

State of Orissa APPELLANT

Vs

Jagadamba Flour and Dal Mills RESPONDENT

Date of Decision : 17-09-1987

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 24(1), 5(2)(A)(a)(ii)

Citation : (1988) 68 STC 234

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

Bench : Division Bench

Advocate : S.P. Dalai, for B. Agarwala, for the Respondent

Judgement

H.L. Agrawal, C.J. and P.C. Misra, J.—The Member, Additional Sales Tax Tribunal, Orissa, has stated the cases and referred the following common question of law u/s 24(1) of the Orissa Sales Tax Act, 1947, for opinion of this Court:

Whether, on the facts and in the circumstances of the case, the learned Member, Additional Sales Tax Tribunal, was justified to hold that the application of the proviso to Section 5(2)(A)(a)(ii) of the Orissa Sales Tax Act, 1947 was not attracted inasmuch as there was no violation of the conditions of the declaration ?

2. The dealer is a firm carrying on business in cereals and pulses. It manufactures dal from pulses and grams purchased from registered dealers on furnishing declaration forms for resale in Orissa. During the assessment years 1974-75 and 1975-76, the dealer had made certain purchases of mung and mote on the basis of declaration and sold them after converting them into dal.

3. The Sales Tax Officer took the view that the dealer had contravened the provision of Section 5(2)(A)(a)(ii) of the Act by selling the pulses after converting the same into dal and accordingly raised further demands for the assessment years in question.

4. The dealer failed before the first appellate authority but succeeded in second

appeal before the Tribunal which ultimately has made these two references.

5. The matter need not be discussed in great detail since this Court in several cases including a recent case, i.e., S.J.C. No. 18 of 1981 (Samaleswari Store v. State of Orissa [1988] 68 STC 228) decided on September 2, 1987, dealing with exactly a similar point, has held that the dealer by such conversion did not contravene the said provision of law. It is conceded at the Bar that this case is squarely covered by the decision of the aforesaid case (S.J.C. No. 18 of 1981) (Samaleswari Store v. State of Orissa [1988] 68 STC 228.

6. Accordingly, our answer to the question must be given in favour of the dealer and against the Revenue. No costs.

