(1987) 04 OHC CK 0013

In the Orissa High Court

Case No : S.J.C. No. 109 of 1980

State of Orissa APPELLANT

Vs

Jagannath Prasad and S.B. Bhadudi RESPONDENT

Date of Decision : 20-04-1987

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 5(2)

Citation : (1988) 69 STC 353

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

Bench : Division Bench

Advocate : Standing Counsel Commercial Taxes, for the Appellant; A. Pasayat, R. Chimanka and A.C. Jena, for the Respondent

Judgement

S.C. Mohapatra, J.—This is a reference at the instance of the Revenue u/s 24(1) of the Orissa Sales Tax Act, 1947. The following question of law arising out of the second appellate order of the Sales Tax Tribunal has been referred to this Court for decision:

Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal was correct in holding that the opponent is not liable to pay purchase tax on his purchase turnover of mohua flower in addition to the compounding tax payable under Rule 90-B for sale of outstill liquor ?

2. The dealer carries on the business of manufacture and sale of liquor. For the purpose, it purchases mohua flower which is liable to purchase tax. In respect of the year 1976-77 it was assessed to tax on the purchase of mohua flower but in second appeal the Tribunal held that in view of the provisions in Rule 90-B of the Rules made under the Orissa Sales Tax Act which came into force with effect from 1st May, 1976, the dealer is not liable to pay tax on the purchase of mohua flower.

3. Rule 90-B reads as follows :

90-B. Compounding of tax on outstill liquor, tari and pachwai.-A dealer who carries on business in outstill liquor, tari and pachwai and who is liable to pay tax under the provisions of the Act shall pay in lieu of the tax assessable on his taxable turnover, under the provisions of the Act, a sum equal to six per cent of one and one half times of the consideration money payable to Government in the Excise Department for obtaining the exclusive privilege to vend such commodities.

A plain reading of this rule makes it clear that a special mode of computation of tax has been provided in the Rules in respect of dealers who carry on business in outstill liquor, tari and pachwai. There is no dispute that the dealer carries on business in outstill liquor. For the said purpose he purchases mohua flower. Purchase of mohua flower is not a separate business of the dealer. It is ancillary to the business carried on by the dealer. Rule 90-B provides for computation of taxable turnover. It does not say that the taxable turnover in respect of sale of outstill liquor only will be computed in the manner provided therein. Hence, the interpretation of the rule includes the turnover of purchase of mohua flower also. The assessing officer is not required to determine the taxable turnover u/s 5(2) of the Act. Rule 90-B is the special mode of computation which has full application to the facts of the case.

"Taxable turnover" as provided in Section 5(2) of the Act is that part of the gross turnover after deductions. "Gross turnover" is the aggregate of the sale turnover and purchase turnover. When the legislature has provided a special mode of computation in respect of taxable turnover in Rule 90-B, the same shall prevail and the purchase turnover is not to be dealt with separately.

4. In conclusion, my answer to the question is that the Sales Tax Tribunal was correct in holding that the dealer is not liable to pay purchase tax on his turnover of purchase of mohua flower in addition to the compounding tax payable under Rule 90-B for sale of outstill liquor.

5. In the result, the reference is answered in favour of the dealer. No costs.

H.L. Agrawal, C.J.

I agree.

