

(1973) 05 OHC CK 0002

In the Orissa High Court

Case No : Special Jurisdiction Case No. 131 of 1970

State of Orissa

APPELLANT

Vs

Janata Medical Hall

RESPONDENT

Date of Decision : 04-05-1973

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(2)(b), 5(2)(A)(a)(ii)

Citation : (1974) 33 STC 88

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

Bench : Division Bench

Advocate : N.N. Bhattacharya, for the Respondent

Judgement

R.N. Misra, J.—This is a reference made to this court pursuant to a direction issued on 2nd February, 1971, in exercise of the powers vested in this court u/s 24(2)(b) of the Orissa Sales Tax Act (hereinafter called the Act). The question that has been referred is as follows:

Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the dealer who purchases acids and chemicals free of sales tax on the strength of his registration certificate and by giving declarations to the selling registered dealers that these goods were intended for resale, has not violated those declarations when he used these acids and chemicals in preparation of mixtures for sale and has no liability to pay tax in accordance with the proviso to Section 5(2)(A)(a)(ii) of the Orissa Sales Tax Act, 1947?

2. The assessee is a registered dealer and sells allopathic patent medicines and mixtures. The assessing officer while examining its books of account found that it had purchased chemicals in solid and liquid form on the strength of its registration certificate free of tax, but did not resell them in Orissa in the same form in which they were purchased, but prepared mixtures out of them on the prescriptions issued by doctors. The assessing officer, therefore, estimated the purchase value of the chemicals to be Rs. 40 and he added the amount to the

taxable turnover. The corresponding tax demand came to Rs. 2 only. The assessee had paid tax on the sale of mixtures.

3. The appellate authority did not accept the assessee's contention that he was entitled to exemption. In second appeal, the Tribunal took the view that as the assessee was not a manufacturer of medicines, he had no liability under the Act. As the reasonings of the Tribunal though brief are somewhat peculiar, we propose to extract the same here:

It was urged on behalf of the appellant that it had not used the chemicals in any manufacture, but had sold them by mixing them up as per prescription of the doctor. The department took this preparation of mixture as manufacture.

So the point for consideration is if the preparation of any mixture under prescription is deemed to be a manufacture so as to amount to violation of the declaration to resale. The learned State Representative relied on a case law reported in *North Bengal Stores Ltd. v. Member, Board of Revenue, Bengal* [1946] 1 S.T.C. 157, which is followed in *Badri Prasad Prabha Shankar v. Sales Tax Commissioner, U.P.* [1963] 14 S.T.C. 208. The first case is the case of a dispensing chemist which supports the view taken by the department. The second case is slightly different wherein tobacco crushed is taken to be commercially a different article from tobacco.

On behalf of the appellant reliance is placed on a decision of the Allahabad High Court reported in *Dr. Sukh Deo v. Commissioner of Sales Tax, Lucknow* [1963] 14 S.T.C. 581. There their Lordships held that preparation of medicines on prescription did not amount to a manufacture of medicines. The learned State Representative also relied on a case reported in *Dr. Baldev Raj v. State of Punjab* [1969] 24 S.T.C. 50. It is a case of the Punjab High Court wherein a doctor when dispensing prescription was taken to be a dealer. In this case, the view taken by the Allahabad High Court has not been considered.

The latest case law appears to have been reported in *Commissioner of Sales Tax, U.P. Vs. Dr. Sukh Deo*, This is the case of the Allahabad High Court, referred to above (*Dr. Sukh Deo v. Commissioner of Sales Tax, Lucknow* [1963] 14 S.T.C; 581) which was disposed of by the Supreme Court in favour of the assessee against the appeal filed by the U.P. State. There their Lordships held that a medical practitioner who gives medicines from the dispensary on his prescription is not a manufacturer. This view of their Lordships of the Supreme Court seems not to have been placed before the Punjab High Court when their Lordships decided the case reported in *Dr. Baldev Raj v. State of Punjab* [1969] 24 S.T.C. 50. The U.P. case is slightly different in that it is in the context of a notification. Yet the principle laid down by their Lordships of the Supreme Court is all pervasive. Accordingly, I would hold that the appellant is not a manufacturer of medicines and hence not liable under the Orissa Sales Tax Act....

4. The impugned assessment was based on the finding that the assessee had by utilising his certificate of registration avoided payment of tax at the time he

purchased the chemicals. Under the scheme of the Act, a single point taxation system has been adopted. The point of taxability is open to be fixed u/s 8 of the Act. Under the Act that point has been postponed until in a series of sales the goods ultimately pass on to a consumer or to an unregistered dealer. The postponement is dependent upon a declaration given by the purchasing registered dealer to the effect that he buys to resell in Orissa. If the assessee, who has given the declaration and has become entitled to the benefit of buying without payment of tax, violates the condition, under the proviso to Section 5(2)(A)(a)(ii) of the Act, the price at purchase point (upon which tax should have been paid if no declaration had been given) is addible to his taxable turnover.

5. In this case, the assessee purchased chemicals. Admittedly, he had resold them not as chemicals, but in a different form. It was not necessary to find out whether there was a manufacturing process carried on by the assessee. If the assessee resold the commodity, he had purchased in terms of the declaration furnished by it, action under the proviso to Section 5(2)(A)(a)(ii) of the Act could not be taken. After reviewing a number of cases in S.J.C. No. 326 of 1969 (Ram Chandra Badrinarayan v. State of Orissa [1974] 33 S.T.C. 83), disposed of by us on 22nd August, 1972, in a case of this type, we indicated:

One has ultimately to take a common sense view of the matter. The terms as understood in the commercial sense and with reference to their use must be kept in view in order that a correct conclusion may be reached. Would a man going to the market to buy biri or mung purchase dal of that commodity and, similarly, would a man going to the market to buy chana or peas be satisfied if besan of that commodity is offered? Dal or broken mung and biri may often form a good substitute for whole mung or whole biri and one may be a good substitute for the other.

6. In the mixtures which the assessee had sold the chemicals had lost their identity. A new goods has come into existence. A customer would not buy the mixture in satisfaction of his demand of the chemical. The chemical as such may be put to many uses, but when it is mixed and prepared as mixture, the chemical as such loses its identity and mixture is no substitute of the chemical.

7. The Tribunal's approach to the matter seems to be wholly untenable. Whether the assessee was a manufacturer was not at all necessary to be examined.

8. Mr. Bhattacharya appearing for the assessee next contended that in view of the finding that the tax has already been paid on the sale of the mixture, there is no scope for adding the purchase price of the chemicals to the taxable turnover of the assessee. This contention seems to be fallacious. It is true, as we have already noticed, that a single point taxation method has been adopted under the Act. But it is too well-known that such a benefit would be available only when the scheme of the Act is followed. Where a registered dealer buys without giving a declaration, he obviously pays tax at the time of purchase and when he sells to an unregistered dealer or a consumer, he pays another set of tax on the same

goods. When the registered dealer gives a declaration and buys on its basis without paying the tax, he obliges himself to comply with the terms of the declaration. If he makes a breach, the benefit which he had taken is provided by the statute to be withdrawn and the tax which he would have paid at the time when he purchased the goods is attempted to be collected by adding the purchase price to the taxable turnover of the dealer.

9. Our answer to the question referred to us shall, therefore, be --

On the facts and in the circumstances of the case, the Tribunal was wrong in holding that the dealer who purchased acids and chemicals free of sales tax on the strength of his registration certificate and by giving declaration to his selling registered dealer that goods were intended for resale has not violated those declarations when he used the acids and chemicals in preparation of the mixtures for sale and that the dealer has no liability to pay tax in accordance with the proviso to Section 5(2)(A)(a)(ii) of the Act. The question is, therefore, answered in favour of the revenue. The amount of tax was very small, but an interesting question having been raised had got to be answered. We, however, do not propose to make any order for costs against the assessee in this reference.

B.K. Ray, J.

I agree.