(1990) 08 OHC CK 0015

In the Orissa High Court

Case No : S.J.C. No''s. 43 and 44 of 1984

State of Orissa APPELLANT

Vs

Laxmi Industries RESPONDENT

Date of Decision : 02-08-1990

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 5, 6

Citation : (1991) 81 STC 43

Hon'ble Judges : S.C. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : A.B. Mishra, for the Appellant; A.K. Ray, S. Ray and P. Mohanty, for the Respondent

Judgement

S.C. Mohapatra, J.—This is a reference u/s 24(1) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as "the Act"), at the instance of the Revenue on the following question :

"Whether, on the facts and in the circumstances of the case, the learned Judicial Member was justified to hold that sugar-candy is tax-free although it has been specifically made taxable at 4 per cent from May 1, 1976 by Finance Department Notification No. 20215 dated April 23, 1976."

2. During years 1978-79 and 1979-80 the dealer was manufacturing and selling sugar-candy amongst other articles. The Sales Tax Officer found that the dealer has not paid tax on the turnover representing sale price of sugar-candy and imposed tax on such turnover. The dealer preferred appeals challenging that sugar-candy is not taxable, since it is same as sugar which is exempted from tax in the notification u/s 6 of the Act. It relied upon a decision reported in [1982] 51 STC 75 (Orissa) (State of Orissa v. Satyabadi Sahu & Sons), where it has been held that sugar-candy being same as sugar, is tax-free. The Assistant Commissioner did not accept the contention of the dealer and dismissed the appeals. In second appeals the Tribunal allowed both the appeals. Aggrieved by the aforesaid decisions of the Tribunal, applications for reference were filed on

the basis of which statement of the cases have been made on the question extracted earlier.

3. Mr. A.B. Mishra, learned Standing Counsel appearing for the Department, submitted that in the notification u/s 5 of the Act sugar-candy has been specifically mentioned to be taxable at 4 per cent on the sale turnover with effect from May 1, 1976. Accordingly, sugar which is exempted from tax u/s 6 of the Act is a different commercial commodity and would not include sugar-candy any further. Mr. A.K. Ray, learned counsel for the dealer, on the other hand, submitted that there is no difference between sugar and sugar-candy as has been held in [1982] 51 STC 75 (Orissa) (State of Orissa v. Satyabadi Sahu & Sons) and therefore sugar which includes sugar-candy is also exempted from tax under the Act. Notification u/s 5 of the Act making sugar-candy taxable at 4 per cent would be of no avail.

4. Sugar ordinarily would include sugar-candy. Sugar is the genus and sugar-candy is the specie. When sugar-candy is not specifically dealt with as a separate commercial commodity, for the purpose of taxation it would come within category of sugar. Where, however, sugar-candy is treated as a different commercial commodity than sugar for the purpose of taxation a taxing authority cannot treat sugar-candy as sugar. In the decision reported in [1982] 51 STC 75 (Orissa) (State of Orissa v. Satyabadi Sahu & Sons) sugar-candy is not held to have been a separate place in the notification u/s 5 of the Act. Previously, sugar was the only category of goods which was tax-free in serial No. 37 of the notification u/s 6 of the Act. There was no serial with regard to sugar-candy. In notification dated April 23, 1976, u/s 6 of the Act which came into force from May I, 1976, sugar was tax-free commodity in serial No. 37 and in notification dated April 23, 1976, u/s 5 of the Act which came into force from May 1, 1976, the same day sugar-candy was mentioned in serial No. 78 as taxable at four per cent. Intention of notifying authority is thus clear and the same was not the situation in [1982] 51 STC 75 (Orissa) (State of Orissa v. Satyabadi Sahu & Sons) or the decision relied upon in the said decision. Therefore, with effect from May 1, 1976 sugar-candy is taxable and would not be tax-free as sugar.

5. Question for both the years 1977-78 and 1978-79 is to be answered in the negative against the dealer by stating that the Judicial Member was not justified to hold that sugar-candy is tax-free although it has been specifically made taxable at four per cent from May 1, 1976, by Finance Department Notification No. 20215 dated April 23, 1976.

6. There shall be no order as to costs.

J.M. Mahapatra, J.

7. I agree.

