(1981) 07 OHC CK 0002

In the Orissa High Court

Case No : Special Jurisdiction Case No. 144 of 1977

State of Orissa APPELLANT

Vs

Mahadev Panda and Sons RESPONDENT

Date of Decision : 25-07-1981

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

Citation : (1983) 53 STC 381

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

Bench : Division Bench

Advocate : S.C. Mohapatra, for the Respondent

Judgement

R.N. Misra, C.J.—The Member, Additional Sales Tax Tribunal, Orissa, has stated this case u/s 24(2) of the Orissa Sales Tax Act and referred the following question for opinion of the court:

Whether, on the facts and in the circumstances of this case, the finding of the Member, Additional Sales Tax Tribunal, that M/s. Binayak Sabat & Sons of Berhampur was the commission agent of the appellant till the point of sale, is not perverse and is consistent with the facts and materials on record ?

2. The assessee, a registered dealer in cloth, ready-made garments, seasonal goods, etcetera, at Balliguda in the district of Phulbani in respect of the assessment year 1971-72 claimed deduction of Rs. 43,035.02 out of the turnover u/s 5(2)(A)(a)(ii) of the Orissa Sales Tax Act as representing sales to registered dealers. The claim having been disallowed by the assessing officer, the assessee carried an appeal to the Assistant Commissioner who upheld the rejection. In second appeal, the claim was allowed by holding :

Regarding the second point it is now settled that the appellant can effect sales through commission agent. The commission agent may act as his agent, but he may also sell them as the principal after purchasing them from the principal. In this case the Binayak Sabat & Sons was actually the commission agent. But when he thought of selling the goods he has purchased them from the appellant, he being a registered dealer and having issued declarations for the entire sale proceeds, what he paid to the appellant is not material. The appellant has produced declaration for the entire price of the goods and not prices he received. In that view the deductions claimed by the appellant should have been allowed.

3. The Tribunal, in our view, did not apply the appropriate tests for finding out whether Binayak Sabat & Sons worked as commission agents or as buyers from the assessee. Several tests are available to determine as to whether there is a sale outright and the person meddling is a purchaser, or it is a case of commission agency where the goods are held for a known principal and sold by the commission agent, or even when title is not with the commission agent, the commission agent is selling on his own without disclosing the principal. These aspects have not been examined by the Tribunal. Who held legal custody of the articles at the relevant time should have been found out. If there was a loss while the goods were in the custody of the alleged commission agent, who would have borne the loss-the owner or the commission agent-should have also been found out. We are of the opinion that unless the matter is examined with reference to these aspects, it is difficult indeed to hold whether Binayak Sabat & Sons were purchasers or commission agents qua the transactions. We decline to answer the question referred, but would suggest that while giving effect to our order, the Tribunal might hear the parties again, examine the question keeping the points indicated above and come to its conclusion in accordance with law.

There would be no order for costs.

B.N. Misra, J.

I agree.