**(1976) 04 OHC CK 0012**

**In the Orissa High Court**

**Case No :** S.J.C. No. 99 of 1974

State of Orissa APPELLANT

Vs

Mahamaya Coconuts RESPONDENT

**Date of Decision :** 02-04-1976

**Acts Referred:**
Central Sales Tax Act, 1956 — Section 14

**Citation :** (1976) 38 STC 120

**Hon'ble Judges :** R.N. Misra, J;N.K. Das, J

**Bench :** Division Bench

**Advocate :** A. Agarwalla, for the Respondent

# Judgement

R.N. Misra, J.—On direction of this court on an application made u/s 24(2) of the Orissa Sales Tax Act at the instance of the State, the Member, Additional Sales Tax Tribunal, has stated a case and referred the following question for opinion of the court:

Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, is correct in holding that dry coconuts are oil-seeds and, as such, declared goods as per the description given u/s 14(vi) of the Central Sales Tax Act, 1956?

2. The assessee is a partnership firm and its main business is to deal in coconuts -- watery and dry -- in the course of intra-State as also inter- State trade. For the period 1968-69, the assessee filed a return showing gross turnover at Rs. 1,77,513.05, which was accepted by the assessing officer. The assessing officer did not agree with the assessee that the entire turnover including the price of gunny containers was to be taxed at three per cent on the basis that coconuts were oil-seeds as defined in Section 14(vi) of the Central Sales Tax Act and, therefore, the maximum rate of tax would not exceed three per cent. The assessing officer valued the gunny containers at Rs. 26,658,30 and assessed the same at 10 per cent. He divided the turnover under two heads and, on the sale

value of dry coconuts amounting to Rs. 18,672, he assessed the tax at the rate of 10 per cent treating the same not to be oil-seeds.

3. The Assistant Commissioner of Sales Tax sustained the demand, but, in second appeal, the Member, Additional Sales Tax Tribunal, took the view that the sale of dry coconut was exigible to tax only at 3 per cent. So far as the gunnies were concerned, no challenge against taxation of the turnover at 10 per cent was advanced.

4. When this application was heard, this court found that the materials placed on record were not adequate for answering the question. Accordingly, the Member, Additional Sales Tax Tribunal, was requested to furnish an additional statement of facts. Now an additional statement has been furnished. It has been found as a fact that coconuts are usually of four types:

(i) Panichi coconuts, meaning coconuts with fully developed kernel and plucked after being ripe ;

(ii) Mam coconuts, i. e., when a part of the kernel is spoiled in course of storing, it is partly spoilt;

(iii) Sunvamaru or bhutakhia coconuts in which there is absolutely no kernel and were completely spoiled in course of storing ; and

(iv) Khurud coconuts, i.e., papichi coconuts in course of storing become completely dried.

Undoubtedly, oil is produced from kernel, i.e., the white substance contained within the shell. It is conceded that when there is no kernel at all, i.e., when coconut is of the third variety indicated above, it is incapable of producing any oil. Therefore, sunvamaru variety of coconut can never be oil-seed. Sale price of sunvamaru coconuts, therefore, is exigible at the normal rate and does not attract application of Section 14(vi) of the Central Sales Tax Act.

Panichi coconuts, mam coconuts and khurud coconuts are all capable of producing oil. In fact, maru coconuts have no other alternate use and are exclusively used for producing oil. Panichi coconuts (first variety) as also khurud coconuts have alternate use but they are very much capable of producing oil and, in fact, often are used as oil-seed. The learned standing counsel, therefore, concedes that all other varieties of coconuts except sunvamaru or bhutakhia as classified above would go as oil-seed. It must, however, be pointed out that watery coconut (locally called paid or dabo) may or may not contain any kernel at all. Even where the beginning of a kernel is in formation, it is in such a stage that no oil is available out of it. We would, therefore, agree with the learned standing counsel that paido (watery coconut) in its proper sense is not oil-seed.

5. It is unnecessary to refer to the authorities for reaching the conclusion on such a question though both sides placed several decisions before us for our consideration. In view of what has been said above, our answer to the question

referred to us shall be :

The Member, Additional Sales Tax Tribunal, was correct in holding that dry coconuts are oil-seeds and, as such, are declared goods as per the description in Section 14(vi) of the Central Sales Tax Act, 1956.

We make no order for costs.

N.K. Das, J.

6. I agree

 