
(1978) 03 OHC CK 0009

In the Orissa High Court

Case No : Special Jurisdiction Case No. 182 of 1975

State of Orissa

APPELLANT

Vs

Nagindas Jewellers

RESPONDENT

Date of Decision : 06-03-1978

Acts Referred:

Citation : (1978) 42 STC 186

Hon'ble Judges : R.N. Misra, J;P.K. Mohanti, J

Bench : Division Bench

Judgement

R.N. Misra, J.—At the instance of the State, the Member, Additional Sales Tax Tribunal, has referred two questions for opinion of the court.

(1) Whether, on the facts and in the circumstances of the case, the Additional Tribunal was justified to delete the sale proceeds of silver bullion amounting to Rs. 12,934.20 by admitting sale patties issued by the commission agents of the assessee at the second appellate stage?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal's reading of the statutory language of entry No. 27 and entry No. 1 of the schedule relating to tax on gold and silver ornaments, is correct and whether the decision of the Tribunal that gold and silver ornaments will be taxed at the rate of 5 per cent after 15th May, 1970, is correct ?

2. The assessing officer as also the first appellate authority had not agreed to accept the stand of the assessee that silver bullion worth Rs. 12,934.20 had been sold in Bombay and was, therefore, not exigible to Orissa sales tax. For the first time in second appeal the assessee produced the sale patties from commission agents from Bombay. The Member, Additional Sales Tax Tribunal, accepted the same and gave relief by deleting the sum of Rs. 12,934.20 from the taxable turnover. Relying on a Bench decision of this Court in the case of State of Orissa v. Desraj Jagadish Prasad, Kesinga [1974] 33 S.T.C. 576 and the language of Rule 61 of the Orissa Sales Tax Rules, learned standing counsel contends that

it was not open to the Member in second appeal to admit the documents unless steps as provided in Rule 61 were taken. Admittedly, no such step had been taken. Therefore, the second appellate authority was not justified in relying upon the sale patties as additional evidence.

3. So far as the second question is concerned, the point seems to have already been answered in a series of cases. For the reasons indicated in the decision reported in *Bavchand and Co v. State of Orissa* [1976] 38 S.T.C. 42, we would hold that for the period in question, the taxable turnover in dispute was liable to be assessed at the rate of 7 per cent.

4. Our answers to the two questions, therefore, are :

(1) The Member, Additional Sales Tax Tribunal, in the facts of the case, was not justified in deleting the sale proceeds of silver bullion amounting to Rs. 12,934.20, by admitting the sale patties issued by the commission agents of the assessee at the second appellate stage, from the taxable turnover.

(2) The Additional Sales Tax Tribunal was wrong in holding that the turnover in dispute was liable to assessment at 5 per cent and under the relevant entry it was liable to be taxed at 7 per cent.

As there is no appearance of the assessee in spite of service of notice, we make no order for costs.

P.K. Mohanti, J.

I agree.