
(1974) 11 OHC CK 0005
In the Orissa High Court
Case No : S.J.C. No"s. 94, 95 and 96 of 1973

State of Orissa

APPELLANT

Vs

Patel Saw Mill

RESPONDENT

Date of Decision : 19-11-1974

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1), 5(2)(A)(a)(ii)

Citation : (1976) 37 STC 392

Hon'ble Judges : S.K. Ray, J;K.B. Panda, J

Bench : Division Bench

Advocate : R.K. Mohapatra, for the Appellant; J.K. Patnaik, D.S. Nanda and A. Pasayat, for the Respondent

Judgement

K.B. Panda, J.—This is a reference made by the Member, Sales Tax Tribunal, u/s 24(1) of the Orissa Sales Tax Act, 1947 (Act 14 of 1947) (hereinafter referred to as the Act) at the instance of the State of Orissa posing the following two points of law said to be arising out of its judgment dated 4th December, 1972, for answer by this court:

(1) Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal, is right in holding that conversion of logs into different sizes and shapes does not amount to manufacture and production of a different commodity ?

(2) Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal, is right in holding that there is no contravention of the provisions contained in the proviso to Section 5(2)(A)(a)(ii) of the Orissa Sales Tax Act, when the opponent converted logs and timbers into different sizes and sold the same inside the State of Orissa ?

2. The opposite party, Patel Saw Mill, is a registered dealer carrying on business in logs and timbers. It purchased logs from various sources, processed the same in its mill and sold sized timbers either in the State of Orissa or in the course of

inter-State trade and commerce.

3. Admittedly, the assessee-opposite party purchased the logs and timber from registered dealers free of tax by furnishing declarations under Rule 27(2) of the Orissa Sales Tax Rules, 1947 (hereinafter referred to as the Rules), and resold the same after converting the same into different shapes such as planks, rafters, railway sleepers, beams, ribs and other sized timbers by processing the same in its saw mill. This turnover of the assessee had escaped regular assessment made by the Assistant Sales Tax Officer, Sambalpur Circle III, Jharsuguda. Accordingly, he initiated proceedings u/s 12(8) of the Act for the years 1961-62, 1962-63 and 1963-64. Following a decision of the Calcutta High Court in *Shaw Bros. and Co. v. State of West Bengal* [1963] 14 S.T.C. 878, the assessing officer held that by converting the logs into planks, beams, rafters, etc., a different commodity had come into existence and, therefore, the transaction attracted the proviso to Section 5(2)(A)(a)(ii) of the Act. Accordingly, he taxed the turnover and levied an extra demand.

The assessee preferred appeals before the learned Assistant Sales Tax Officer, Sambalpur Circle III, Jharsuguda, who confirmed the assessments of the first two years, but reduced the assessment of the third year, i.e., 1963-64. He, however, annulled the penalty imposed u/s 12(8) of the Act on the ground that there had been no concealment of the turnover by the assessee.

The assessee as against that order filed Second Appeals Nos. 1001 to 1003 of 1966-67, respectively, before the Tribunal, who, by its consolidated order dated 4th December, 1972, held that the conversion of logs into different sizes for different uses did not amount to manufacture and production of different commodities. According to the Tribunal, the logs were only sawn and converted into different sizes for convenience of marketing and also for use, and thus there was no contravention of Section 5(2)(A)(a)(ii) of the Act. The learned Tribunal relied on a decision of the High Court of Madhya Pradesh reported in 14 S.T.C. 101 palpably wrong for *Mohanlal Vishram v. Commissioner of Sales Tax, Madhya Pradesh, Indore* [1969] 24 S.T.C. 101, and interpretation of the term "manufacture" as given by their Lordships of the Supreme Court in *AIR 1960 S.C. 171* palpably wrong for *Union of India (UOI) Vs. Delhi Cloth and General Mills*,

4. As against this decision of the Tribunal, the State of Orissa filed an application for reference and, accordingly, the above two questions have been referred to us in S.J.C. Nos. 94 to 96 of 1973, which were heard together and will be governed by this common judgment. At the time of argument, the learned counsel for both the parties did not raise any question of inter-State sale and, therefore, both the questions can be redrafted thus:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there was no contravention of the proviso to Section 5(2)(A)(a)(ii) of the Act, inasmuch as the assessee purchased logs and timbers from

different registered dealers on the basis of his registration certificate free of tax to resell them in Orissa, but instead of doing so, he converted them into planks, railway sleepers, rafters, beams, ribs and other sized timbers and other kind of timbers and resold the same ?

5. Section 5(2)(A)(a)(ii) of the Act runs thus:

5. Rate of tax....

(2)(A) In this Act, the expression "taxable turnover" means that part of a dealer's gross turnover during any period, which remains after deducting therefrom:--

(a) his turnover during that period on--

(i) ...

(ii) sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for resale by him in Orissa and on sales to a registered dealer of containers or other materials for the packing of such goods :

Provided that when such goods are used by the registered dealer for purposes other than those specified in his certificate of registration, the price of goods so utilised shall be included in his taxable turnover.

6. It is conceded by Mr. Pasayat, the learned counsel for the opposite party, that, in fact, the assessee had purchased logs from registered dealers free from sales tax on the basis of his registration certificate and has converted them into beams, rafters, railway sleepers, etc., and thereafter sold the commodity in Orissa. He conceded further fairly that there has been violation in respect of some of the items like railway sleepers but contended that there has been no contravention in respect of other items, namely, planks, rafters and beams, etc., or sized timbers. On an examination of the registration certificate of the opposite party it is seen that initially it had obtained a certificate under the Act only for timber. Subsequently by an amendment the following items have been included : "Timber, sized timber, khunta, logs, firewood, pakala." This amendment in the certificate was made with effect from 27th March, 1965. This shows that after the impugned assessment, it thought fit to amend its registration certificate.

7. The simple question for consideration is whether having in the registration certificate the authority to purchase only timber free from sales tax, the same being intended for resale by him in Orissa, the assessee has violated the conditions by converting the same into planks, railway sleepers, etc., and thereby brought different commodities into existence and thus has not sold timber as such entailing payment of tax under the proviso to Section 5(2)(A)(a) (ii) of the Act. It was contended on the side of the State that there is no decision on this point of this court, though there are appropriate decisions of other High Courts.

8. Mr. Pasayat, on the other hand, relied much on a Bench decision of this Court in *Krupasindhu Sahu & Sons v. State of Orissa* [1975] 35 S.T.C. 270 (S.J.C. No. 150 of 1971 disposed of on 8th July, 1974). That case is quite distinguishable. The point for consideration that arose in that case was :

Whether the logs sized in the saw mills can still be styled as "timber" as specified in the petitioner's certificate of registration. In other words, whether logs originally purchased and those very logs sized after purchase are identical goods for the purpose of imposition of sales tax is to be determined.

9. We do not think the point is any more *res Integra*. The Supreme Court has laid down that in the absence of any definition of any expression in the Sales Tax Act, meanings of such expressions are to be understood in their common parlance as adopted in commercial circles (see *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, . It would not be appropriate to invoke the definition given in any other Act for any such expression. In the instant case, we have to accept the ordinary meaning of the expression "timber". In the case [1975] 35 S.T.C. 270 relied on by Mr. Pasayat, he laid emphasis on certain portions, which we do not think has been interpreted in its proper perspective. Therein, it is said:

...all that is wood is not timber though timber is wood. In common parlance timber ordinarily means long logs of wood used for purposes of beams and pillars in the construction of houses and such similar uses. After the felling of big trees and the chopping off of the branches of those trees the trunk of the tree is called timber. A very long piece of log may be cut into different pieces. If the pieces after cutting still remain long so as to be used as beams, pillars and such similar uses, the cut pieces would still be called timber. To illustrate, a timber originally 60 feet long is cut into three pieces of 20 feet each. Each of the three pieces retains sufficient length to be used as beams or pillars and would be still treated as timber in common parlance.

Take another illustration. After purchase of some timbers a dealer for the sake of convenience of transport may cut a portion from each end of the timber, may peel off the barks and polish the joints at some places of those timbers. Even after all these operations have been performed, the logs of wood would still be termed as timbers.

In the aforesaid illustrations, the goods sold do not differ in identity from the goods purchased. The original timber would not be a thing different from the sized timber.

If, however, the original timber of 60 feet long is cut into thirty pieces of two feet each, none of the pieces is treated as timber. Similarly, timbers converted into firewood, rafters and planks are all wood but cannot be called timbers.

Thus, timber in common parlance in Orissa takes within its ambit only long and big sized logs of wood ordinarily used in house constructions as beams and pillars. Timbers can be used for other purposes such as planks, rafters and other

wood products like tables and chairs. When timbers are so converted or are cut into very small sizes so as to be unfit for use as beams, pillars and similar such uses, they cannot be termed as timbers in common parlance though they retain their essential character as wood. The essential characteristic of timber as a commercial commodity is lost after such conversion.

We do not think, this decision lays down a proposition which supports the case of the assessee. When, admittedly, the assessee purchased timbers and in its saw mill converted them into planks, railway sleepers, rafters, beams, ribs and sized timber, obviously the timbers have undergone a process of manufacture in which they have lost their quality of being called as timbers. A customer who wants a timber and goes to the market for such purpose will not be satisfied if a beam or a rafter or a railway sleeper is offered to him. Neither a customer who is after a beam or a rafter would be satisfied if a log of timber is offered to him. Beams, rafters and railway sleepers and planks have all different utilities and are used for different purposes. A beam cannot take the place of a rafter and neither can take the place of a railway sleeper. Railway sleepers are generally required by the railways while beams and rafters are used as house building materials. The illustration given in the aforesaid decision quoted above far from laying down, as a general proposition, that timbers even after their conversion into another commodity, which has a separate existence in the commercial market, yet remain as timbers, makes it clear that "if the original timber of 60 feet long is cut into thirty pieces of two feet each, none of the pieces is treated as timber". It further clarifies the position that timbers converted into firewood, rafters and planks are all wood but cannot be called "timber". This is what has been done in the instant case and as such the goods purchased under the declaration, free from sales tax, for resale in Orissa, have been sold in a different shape altogether, which goes by a different name in ordinary parlance in the commercial market. The ultimate finding in the quoted case [1975] 35 S.T.C. 270 of this court is immaterial for, in that case, the court, as a fact found:

...it is not possible for us to say whether the timbers were converted into a different commercial commodity by the act of sizing them.

But in the instant case, conversion of the timbers into a different commercial commodity like planks, rafters, beams and ribs are all admitted. Thus on facts, they are quite distinguishable. If the argument advanced by Mr. Pasayat basing on this decision of the court--which obviously it does not mean--is accepted, it would lead to absurdity. For instance, tables, chairs, almirahs, book-cases and a variety of finished goods are prepared from timber, after being cut into different shapes and sizes. Therefore, it cannot be said that tables, chairs, door-frames, etc., are timbers. They are only wooden materials or wooden furniture as distinguished from steel or cane furniture. A piece of timber can be well-compared with a big piece of cloth called a *than* containing several yards or metres. But that cloth when cut into pieces and converted into shirts, trousers, covers and the like, though such goods essentially remain to be cotton products,

yet lose their essential quality of being called yarn and assume a different name in the commercial market, created with a distinct object to meet the varying demands of the consumers. In the case of *Shaw Bros. and Co. v. State of West Bengal* [1963] 14 S.T.C. 878, sawing of planks from timber has been considered to amount to manufacture and it is said :

Sawing of planks from timber or sizing the same amounts to manufacture and the person carrying on such a business is a manufacturer.

When planks are sawed out of logs, what is produced is a different thing from logs capable of being put to different uses.

10. In the case of *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, , already referred to, their Lordships have held :

Although rice is produced out of paddy, it is not true to say that paddy continued to be paddy even after dehusking. Rice and paddy are two different things in ordinary parlance. Therefore, when paddy is dehusked and rice produced, there has been a change in the identity of the goods.

The appellants carried on the business of buying paddy and after getting it husked either in their own mills or in other mills sold the rice to Government and other registered dealers. On the purchase of paddy the appellants paid purchase tax as provided in the Punjab General Sales Tax Act, 1948. In computing the total turnover of the appellants for levying sales tax, the appellants claimed exclusion of the turnover relating to paddy over which purchase tax had been paid.

Their Lordships held :

The appellants were not entitled to the deduction.

In that case, their Lordships have considered the case of *State of Madhya Bharat (now State of Madhya Pradesh) v. Hiralal*¹, and observed thus :

In support of their contention, that the meaning given in the commercial circles is not of the essence and what is of essence is the identity of the goods, the learned counsel for the appellants relied on the decision of this court in *The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji*, . There the relevant entry read "iron and steel". The question was whether when a dealer purchased scrap iron locally and imported iron plates from outside and after converting them into bars, flats and plates in his mills, sold them in the market, they continued to be "iron and steel". This court ruled that in spite of the change effected because of the process the goods had undergone, the goods sold in the market did not cease to be "iron and steel". We do not think that this decision is of any assistance to the appellants because both the goods purchased as well as sold were "iron and steel".

In that case, their Lordships also took into consideration several other Supreme Court decisions and finally concluded thus :

Now, the question for our decision is whether it could be said that when paddy was dehusked and rice produced, its identity remained. It was true that rice was produced out of paddy but it is not true to say that paddy continued to be paddy even after dehusking. It had changed its identity. Rice is not known as paddy. It is a misnomer to call rice as paddy. They are two different things in ordinary parlance. Hence quite clearly when paddy is dehusked and rice produced, there has been a change in the identity of the goods. In this view, it is not necessary for us to refer to the decisions of some of the High Courts read to us at the time of hearing.

11. This view of their Lordships of the Supreme Court has been followed by another Division Bench of this Court in the case of *State of Orissa v. Haji Ebrahim Haji Jamal Noor Mohammed & Co.* [1975] 35 S.T.C. 275 (S.J.C. Nos. 194 and 195 of 1972 disposed of on 26th July, 1974) and therein an earlier decision of this court in *Ramchandra Badrinarayan v. State of Orissa* ILR 1972 Cutt. 1322 and *Tilok Chand Prasan Kumar Vs. The Sales Tax Officer*, were discussed and held to be no more good law. A Bench of this Court held following the view of the Supreme Court that after conversion of black-gram and green-gram into dal they become two different commodities and thus the proviso to Section 5(2)(A)(a)(ii) is applicable.

12. On the aforesaid analysis, we would hold that beams, rafters, planks and railway sleepers are not timbers, though they are made of wood. By a process of manufacture in the saw mill of the assessee, the timbers were converted into different commodities known in the commercial market differently and utilised for different purposes and sold in that converted form but not in its nascent form as timber. Thus, the proviso to Section 5(2)(A)(a)(ii) of the Act is squarely attracted.

13. Accordingly, we would allow these references answering the question in the affirmative in favour of the revenue against the assessee. Hearing fee Rs. 100.

S.K. Ray, J.

I agree.