(1974) 01 OHC CK 0029

In the Orissa High Court

Case No : S.J.C. No''s. 136 and 137 of 1971

State of Orissa — APPELLANT

Vs

Rajani Timber Traders — RESPONDENT

Date of Decision : 25-01-1974

Acts Referred:

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

Citation : (1974) 40 CLT 466 : (1974) 34 STC 374

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

Bench : Division Bench

Advocate : None, for the Respondent

Judgement

R.N. Misra, J.—These are references made u/s 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the Act) by the Sales Tax Tribunal at the instance of the revenue. The corresponding account periods are 1965-66 and 1966-67. The question referred for determination is the following:

Whether, in the facts and in the circumstances of the case, the conversion of round timber logs into sized timbers brought about a different commercial commodity and the sale thereof was a violation of the undertaking given in the declaration and thereby the proviso to Section 5(2)(A)(a)(ii) of the Sales Tax Act is attracted?

The assessee is a registered dealer who purchased round logs of timber on the basis of his certificate of registration undertaking to resell that commodity within the State of Orissa and thereby avoided to pay sales tax in view of the position obtaining under that Act that such sale when supported by a declaration would not be subjected to tax. It has been found that he converted such logs into sized timber and sold the same. The question for consideration was as to whether by the conversion in the hands of the assessee he had not brought into existence a different commercial commodity for sale violating the undertaking given in the declaration that he would resell the commodity which he had purchased on the authority of the certificate of registration.

2. To answer a question of this type one usually asks the question to himself as to whether the action of the dealer has brought about a new commercial commodity different from the one which he had purchased. Timber logs and sized timber are certainly different commodities in the commercial sense though sized timbers are brought out only from timber logs by a particular process. One who has a need of timber logs would not be satisfied if sized timber is offered to him. Similarly one requiring sized timber would not be satisfied if timber logs are supplied. There is a clear distinction between the two and they cater to different types of needs in the commercial market. The learned standing counsel relies upon two decisions reported in Shaw Bros, and Co. v. State of West Bengal [1963] 14 S.T.C. 878 and Bachha Tewari v. Divisional Forest Officer [1963] 14 S.T.C. 1007. He also places reliance on the principle indicated in a recent decision of the Supreme Court in Ganesh Trading Co. v State of Haryana [1973] 32 S.T.C. 623 . A Bench of this Court had occasion to examine a case of this type, though not relating to timber, in Ram Chandra Badrinarayan v. State of Orissa ILR 1872 Cut. 1322, where, relying on a series of decisions, the real test to be applied to a case of this type was indicated. The Supreme Court: in the case referred to above (Ganesh Trading Co. v. State of Haryana [1973] 32 S.T.C. 623 was dealing with a case of paddy and rice. It was rightly indicated that rice comes out, of paddy after undergoing a particular process; yet. the two were different commercial commodities and cater to different needs.

3. In view of what we have said above, the irresistible conclusion shall be that the two commodities are different and when the assessee purchased timber with an undertaking that he would resell timber in Orissa, but got it processed to sized timber and sold the purchased commodity in the shape of sized timber, there had been a violation of the undertaking in the declaration and, accordingly, he had been rightly assessed following the provision of Section 5(2)(A)(a)(ii) of the Act.

4. Our answer to the question, therefore, shall be in the affirmative, namely, the conversion brought about a different commercial commodity, and the sale thereof in violation of the undertaking made the assessee liable to be treated under the proviso to Section 5(2)(A)(a)(ii) of the Act. Since there is no appearance for the assessee, we make no order as to costs.

B.K. Ray, J.

I agree.

