

(1982) 01 OHC CK 0010

In the Orissa High Court

Case No : Special Jurisdiction Case No. 40 of 1977

State of Orissa

APPELLANT

Vs

Satyabadi Sahu and Sons

RESPONDENT

Date of Decision : 21-01-1982

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(2)(b)

Citation : (1982) 51 STC 75

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

Bench : Division Bench

Judgement

R.N. Misra, C.J.—This court at the instance of the State of Orissa in exercise of powers u/s 24(2)(b) of the Orissa Sales Tax Act, 1947, called upon the the Member, Additional Sales Tax Tribunal, Orissa, to state a case and refer the following question for opinion of the court:

Whether, on the facts and in the circumstances of the case, the second appellate authority was justified in holding that misri (sugar-candy) was a tax-free article coming within the exemption of entry 34 of the list of exempted goods?.

2. In the case of State of Gujarat v. Sakarwala Brothers [1967] 19 STC 24 (SC) the question for consideration was whether sugar included misri. The Commissioner of Sales Tax held that "sakar" (sugar-candy) was a form of sugar and was covered by the definition of "sugar". The Gujarat High Court also came to the same conclusion. In the Supreme Court the point was recanvassed. The Supreme Court referred to the definition of "sugar" in the First Schedule to the Central Excises and Salt Act, 1944 and ultimately came to the conclusion,

...We are accordingly of opinion that the word "sugar" in item No. 47 is intended to include within its ambit all forms of sugar, that is to say"-sugar of any shape or texture, colour or density and by whatever name it is called....

and after saying so, they affirmed the decision of the Gujarat High Court. The learned standing counsel for sales tax places reliance on a Division Bench

decision Commissioner of Sales Tax Vs. Puran Chand and Sons, of the Delhi High Court which has been reported as an appendix to another decision of their Court reported in the case of Commissioner of Sales Tax, Delhi Vs. Nangumal Ram Kishore, at 284. Therein a different view has been taken. In view of the categorical decision of the Supreme Court, to which unfortunately no reference has been made by the Delhi High Court, we do not think it would be appropriate for us to prefer the view indicated by the Delhi High Court to State of Gujarat v. Sakarwala Brothers [1967] 19 STC 24 Delhi. We accordingly follow the ratio of the decision of the Supreme Court and hold that sugar-candy would come within the meaning of sugar and since admittedly sugar is a tax-free article, sugar-candy at the relevant time being included in the sugar would also have the advantage of being treated as a tax-free article. The question, therefore, must be answered against the revenue and we hold that the Tribunal came to the correct conclusion. Since there is no appearance for the other side, there would be no order for costs.

B.K. Behera, J.

3. I agree.