(1986) 12 OHC CK 0014

In the Orissa High Court

Case No : S.J.C. No. 69 of 1979

State of Orissa APPELLANT

Vs

Satyanarayan Ramshankar RESPONDENT

Date of Decision : 02-12-1986

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(8), 5(2)(A)(a)(ii)

Citation : (1987) 65 STC 268

Hon'ble Judges : H.L. Agrawal, C.J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : J.B. Patnaik, for the Appellant; None, for the Respondent

Judgement

H.L. Agrawal, C.J. and S.C. Mohapatra, J.—The Member, Additional Sales Tax Tribunal, Orissa, Cuttack, has stated a case with the following question of law for opinion of this Court u/s 24(1) of the Orissa Sales Tax Act, 1947 (for short "the Act"):

Whether on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was correct in law to hold that there was no violation of the proviso to Section 5(2)(A)(a)(ii) of the Orissa Sales Tax Act and accordingly, the assessment completed u/s 12(8) of the same Act was unwarranted ?

2. For the assessment year 1973-74, the Assistant Sales Tax Officer, Cuttack I East Circle, Cuttack, disallowed the purchase of dhania on the basis of declaration by the dealer on the ground that the dealer sold the commodity after making a change in the original shape of the commodity from dhania to dhania seeds which according to the department was a contravention of the proviso to Section 5(2)(A)(a)(ii) of the Act and accordingly, a further sales tax to the tune of Rs. 25,493.15 was raised on the purchase of the commodity in question. The dealer failed before the Assistant Commissioner of Sales Tax, Cuttack Range, in appeal, but succeeded before the Tribunal. The Tribunal took a view that

essentially the commodity remained the same and thus there was no contravention of the above proviso of the Act. The relevant materials in shape of evidence on the record which have been referred to in the statement of facts are to the effect that the dealer used to get the dhania cleaned by the coolies after separating the chopa from dhania and to sell the same. This operation was manually done. On this ground the Tribunal rejected the plea of the department that after separating the chopa from dhania the commodity ceased to be dhania, but it was kernel.

3. On examining the facts of the case, it is difficult to accept the contention of Mr. Patnaik, the learned standing counsel for the department, that by applying the process of separating the chopa from dhania, the nature of the commodity was changed. There was no material change in the nature of the commodity which could deprive the dealer from the benefit of purchasing the same on declarations for resale under the certificate of registration.

4. We, therefore, find no merit in this reference and the answer to the question referred by the Tribunal must go against the petitioner and in favour of the dealer. In the circumstances, we shall leave the parties to bear their own costs.