(1987) 04 OHC CK 0023

In the Orissa High Court

Case No : S.J.C. No. 83 of 1980

State of Orissa APPELLANT

Vs

Shiv Prasad Ashok Kumar RESPONDENT

Date of Decision : 24-04-1987

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1)

Citation : (1987) 63 CLT 742 : (1988) 69 STC 26

Hon'ble Judges : H.L. Agrawal, C.J;R.C. Patnaik, J

Bench : Division Bench

Advocate : B.K. Mohanti, S.B. Choudhury, R.L. Bose and P.K. Misra, for the Respondent

Judgement

R.C. Patnaik, J.—On an application by the Revenue u/s 24(1) of the Orissa Sales Tax Act, 1947, the following question of law has been referred to this Court for opinion along with the statement of case:

Whether, on the facts" and in the circumstances of the case, the Member, Sales Tax Tribunal, was legally correct in holding that the opponent is not liable to pay purchase tax on his purchase turnover of mohua flower in addition to the compounding tax payable under Rule 90-B for sale of outstill liquor ?

2. The opponent, a dealer in outstill liquor and registered as such in Koraput I Circle, Jeypore, was assessed to tax on the turnover of sale of outstill liquor for the year 1976-77 under Rule 90-B of the Orissa Sales Tax Rules which came into force with effect from 1st May, 1976. In addition thereto he was assessed to tax on the turnover of purchase of mohua flower whereas sale of outstill liquor was brought within the tax net with effect from 1st May, 1976. Purchase of mohua flower was taxable during the year 1976-77. The first appellate authority held that till 30th April, 1976, the dealer was paying tax on the turnover of sale of outstill liquor which was inclusive of the turnover of purchase of mohua flower out of which outstill liquor was prepared. Outstill liquor being tax-free till 30th April, 1976 and the taxable turnover being the gross turnover minus the value of

the tax-free goods, that was the turnover of purchase of mohua flower, the taxable turnover included the purchase turnover of outstill liquor. Hence, the Assistant Commissioner concluded that the purchase turnover of mohua flower was no longer sought to be taxed separately from 1st May, 1976. On appeal by the Revenue, the Tribunal upheld and followed the reasonings of the first appellate authority and on motion by the Revenue, reference has been made to this Court.

3. It cannot be disputed that outstill liquor is wholly different from mohua flower. Mohua flower is one of the ingredients in the preparation of outstill liquor. The turnover of purchase of mohua flower was exigible to tax. With effect from 1st May, 1976 the turnover of sale of outstill liquor became taxable. It did not ipso facto follow that the turnover of purchase of mohua flower ceased to be taxable with effect from 1st May, 1976. Reliance has been placed by the first appellate authority as well as the Tribunal on Rule 90-B which reads as under :

90-B. Compounding of tax on outstill liquor, tari and pachwai.-A dealer who carries on business in outstill liquor, tari and pachwai and who is liable to pay tax under the provisions of the Act shall pay in lieu of the tax assessable on his taxable turnover, under the provisions of the Act, a sum equal to six per cent of one and one half times of the consideration money payable to Government in the Excise Department for obtaining the exclusive privilege to vend such commodities.

Rule 90-B is a convenient mode of determining the turnover of sale of outstill liquor. It had nothing to do with exigibility to tax of outstill liquor or mohua flower. Inasmuch as there is no uniform sale price of the privilege and it would be cumbersome and expensive to monitor and scrutinise the sale turnover of outstill liquor, Rule 90-B was introduced as a mode of computing the turnover of sale. The appellate authorities, therefore, went wholly wrong in relying upon and utilising Rule 90-B for the purpose of excluding mohua flower from the tax net. If outstill liquor was the same as mohua flower but under different name, the arguments and reasonings urged by the counsel for the opponent and the Appellate Tribunal would be valid. I am, therefore, of the opinion that the dealer in outstill liquor is liable to pay purchase tax on the turnover of purchase of mohua flower notwithstanding the fact that the turnover of sale of out-still liquor in the manufacture of which mohua flower is one of the ingredients is exigible to tax.

4. The reference, therefore, is answered in the negative. There would be no order as to costs.

H.L. Agrawal, C.J.

I agree.