State Vs. Sheoprasad Satyanarayan

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Court : Orissa

Decided On : Apr-10-1973

Reported in : [1973]32STC160(Orissa)

Judge : R.N. Misra and ;B.K. Ray, JJ.

Appeal No. : S.J.C. Nos. 17 to 19 of 1971

Appellant : State

Respondent : Sheoprasad Satyanarayan

Advocate for Def. : None

Advocate for Pet/Ap. : Standing Counsel (S.T.)

Judgement :

R.N. Misra, J.

1. These are references made under Section 24(1) of the Orissa Sales Tax Act (hereinafter referred to as the Act) by the Member, Sales Tax Tribunal, of the following questions:

(1) Whether on the facts and in the circumstances of the case, the Tribunal has been misdirected in disposing of the appeals following the earlier order of the Tribunal which is neither evidence on record nor has any value as a precedent ?

(2) Whether in the facts and circumstances of the case, the Tribunal is right in holding that mill-made woollen blankets come under serial No. 33 of the schedule of tax-free goods ?

2. The facts relevant for the purpose of answering these questions as appearing from the statement of the case are these : The assessee is a registered dealer carrying on business in cloth, grocery, etc., including blankets. The dealer was assessed for the years 1963-64 and 1964-65 to sales tax, but the assessing officer was satisfied that the turnover of the dealer relating to sale of woollen blankets (kambals) during the relevant period had escaped assessment. Therefore, action under Section 12(8) of the Act was taken for that period and proceedings under Section 12(4) of the Act were also taken for the year 1965-66. The assessee contended that woollen blankets were covered by entry No. 33 of the tax-free schedule while according to the department, it was covered by entry No. 46 of the schedule of taxable commodities. The assessing officer and the first appellate authority took the view that the article in question was a taxable commodity, but in second appeals at the instance of the assessee the Tribunal held :

The sole contention is whether blankets which the appellant deals should be taxed or not. I have held in similar cases that the type of blankets this assessee deals comes under the tax-free goods as mentioned under entry No. 33 of tax-free schedule and there is no reason why there should be deviation in this case. Appeals allowed and assessment reduced to returned figure.

Against this appellate order the references have been made at the instance of the State of Orissa.

3. The first question referred to us is not a point of law arising out of the order of the Tribunal. In regard to that matter there was no Us between the taxing authority and the assessee. The question is in relation to the procedure adopted by the Tribunal in disposing of the second appeals. We decline to answer such a question, but we must say that the objection of the Commissioner seems to be quite a valid one. When these references came up before us we were not in a position to know what the views of the Tribunal on the point were. The Tribunal while disposing of the second appeals even did not indicate where the reasons

had been given and did not append the reasons of the other case as reasons applicable to these appeals. Admittedly, the Tribunal is not a court of record and, therefore, its decisions have no precedent value. Apart from those aspects, even from the point of expediency and convenience, we think it appropriate that the Tribunal should indicate in brief the reasons while disposing of each case and where lengthy references are necessary, clear reference would be given to its previous Judgment.

4. Now, we shall proceed to deal with the remaining question. In exercise of the powers vested under the proviso to Section 5(1) of the Act the State Government published a notification bearing No. 33927-F dated 30th December, 1957, prescribing the rates of tax. Entry No. 46 thereof which we shall extract below is relevant. On the same day in exercise of the powers under Section 6 of the Act the State Government notified by Notification No. 33925-F, a list of goods exempted from tax. Entry No. 33 thereof is relevant. These two entries are to the following effect:

Entry No. Description of goods Rate of tax

46 All woollen goods including 7%

woollen yarn and thread but excluding

woollen fabrics and hand-made kambals

and hand-loom and powerloom woven woolen

cloth.

33 All mill-made fabrics made (nil)

wholly or partly of cotton, staple

fibre, rayon, artificial silk or wool

including processed fabrics made in the

processing mills and mill-made pure silk fabrics.

It is the stand of the department that woollen blankets are covered by entry 46 of the taxable list, while it has been the contention of the assessee that it is a tax-free goods covered by entry 33 of the other schedule.

5. Ordinarily, sale of blankets would be liable to tax. Since it is the assessee's contention that the sale of such commodity is not exigible to tax, the burden is on the assessee to show how it is exempted. On an analysis of the two entries (46 and 33), it would appear that all woollen goods except woollen fabrics, hand-made kambals and handloorn and powerloom woven woollen cloths are liable to tax at the rate of 7 per cent. All mill-made fabrics made wholly or partly of wool (so far as relevant for our purpose) are exempt from taxation. The question for consideration, therefore, is as to whether woollen blankets are mill-made fabrics wholly or partly made of wool or are they woollen goods and not being hand-made kambals liable to tax. 'Fabric' has no definition and has, therefore, to be given the meaning the word has in common parlance (in support of the principle see Ramavatar Budhaiprasad v. Assistant Sales Tax Officer [1961] 12 S.T.C. 286 (S.C.). According to the Shorter Oxford Dictionary, it means a manufactured or woven material and, currently, it has the meaning of textile material. The learned standing counsel contends that entry 46 in the schedule of taxable commodities has been so worded that there is no scope for any doubt in the matter of exigibility of woollen kambals to sales tax. In entry 46, all woollen goods are liable to tax except the three items named therein, namely, woollen fabrics, hand-made kambals and handloom and powerloom woven woollen cloth. The learned counsel for the revenue stresses that the exception having been confined to hand-made kambals, all kambals which are not handmade are exigible to tax. Entry 46 of the taxable list and entry 33 of the tax-free list have got to be read together because if any goods is included in one, it cannot be included in the other keeping in view the nature of the two lists.

The learned standing counsel relied on a Bench decision of this Court in State of Orissa v. Modi Stores [1969] 24 S.T.C. 255. That was a case where entry 33 of the tax-free list and entry 40 of the other list (liable to tax) were considered. Entry 40 is to the effect:

Carpets, pile carpets including kalins Seven per cent.and galichas.

Dealing with the assessee's contention that sataranjis are not carpets and as such did not, come within entry 40, this court said:

In the absence of a definition the word must not be construed in any technical sense, but must be taken as understood in common parlance. Sataranji is a word of everyday use and must be construed in its popular sense, i, e., that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. That was the pronouncement of the Supreme Court in Ramavatar Budhaiprasad v. Assistant Sales Tax Officer [1961] 12 S.T.C. 286 (S.C.). Carpet is a generic word. In Orissa carpets are understood to include sataranjis, It appears from Vrajlal Bhukhandas v. State of Gujarat [1964] 15 S.T.C. 437 that sataranjis are understood as carpets even in Gujarat.

Relying on the principle indicated therein the learned standing counsel contends that we must hold that woollen kambals other than hand-made kambals come under entry 46 and are liable to tax. We find no scope for taking a different view. The Tribunal took a wrong view in holding that woollen kambals come within entry 33 of the tax-free list. Our answer to the second question referred to us, therefore, shall be:

In the facts and in the circumstances of the case, the Tribunal was not right in holding that the mill-made woollen blankets come under serial No. 33 of the schedule of tax-free goods.

We make no order as to costs as the assessee was not represented before us in spite of the notice.

B.K. Ray, J.

I agree.