

State of Orissa Vs. Haji Ebrahim Haji Jamal Noor Mohammed and Co.

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Court : Orissa

Decided On : Jul-26-1974

Reported in : [1975]35STC275(Orissa)

Judge : G.K. Misra, C.J. and ;B.K. Ray, J.

Appeal No. : S.J.C. Nos. 194 and 195 of 1972

Appellant : State of Orissa

Respondent : Haji Ebrahim Haji Jamal Noor Mohammed and Co.

Advocate for Def. : P.V. Ramdas, Adv. and ; B. Agarwalla, Amicus Curiae

Advocate for Pet/Ap. : The Standing Counsel (Sales Tax)

Judgement :

G.K. Misra, C.J.

1. The dealer (opposite party) is registered under the Orissa Sales Tax Act, 1947 (hereinafter to be referred to as the Act), and his certificate of registration is No. GA. I 502. In the assessment years of 1964-65 and 1966-67 he purchased green gram and black gram from another registered dealer without payment of tax on the strength of his registration certificate by furnishing a declaration that the goods were being purchased for resale in Orissa. He converted green gram and black gram into dal and sold them. The assessing officer and the Assistant

Commissioner of Sales Tax held that dal is a commodity different from green gram and black gram out of which it was produced and that the proviso to Section 5(2)(A)(a)(ii) (hereinafter to be referred to as the proviso) is applicable. In second appeal the Tribunal held that to convert green gram and black gram into dal, all that was necessary is to remove the outer cover. By conversion they do not become two different commodities. The Commissioner of Sales Tax, Orissa (petitioner), filed an application for reference under Section 24(1), which was rejected on 27th March, 1972. The petitioner approached the High Court under Section 24(2). A statement of fact was called for and the following question has been referred for decision of this court :

Whether, in the facts and circumstances of the case, the application of the proviso to Section 5(2) (A) (a) (ii) of the Orissa Sales Tax Act is not attracted ?

2. The only question for consideration is whether after conversion of black gram and green gram into dal they become two different commodities and whether the proviso is applicable.

3. Mr. Ramdas placed reliance on *Tilok Chand Prasan Kumar v. Sales Tax Officer* [1970] 25 S.T.C. 118 (All.) and *Ram Chandra Badrinarayan v. State of Orissa* I.L.R 1972 Cut. 1322 (Orissa), which support his contention that they are not two different commodities.

In the first case their Lordships held that arhar and arhar dal were not different commodities.

In the second case mung dal and birhi dal were held the same as mung and birhi.

4. The correctness of these two decisions is assailed by the petitioner on the strength of *Ganesh Trading Co., Karnal v. State of Haryana* [1973] 32 S.T.C. 623. (S.C.). In that case their Lordships of the Supreme Court held that although rice is produced out of paddy it is not true to say that paddy continues to be paddy even after dehusking. Rice and paddy are two different things in ordinary parlance and when paddy is dehusked and rice produced, there has been a change in the identity of goods. The facts of that case are that on the purchase of paddy the

appellants paid purchase tax as provided in the Punjab General Sales Tax Act, 1948. In computing the total turnover of the appellants for levying sales tax, the appellants claimed exclusion of the turnover relating to paddy over which purchase tax had been paid. It was held that the appellants were not entitled to reduction as there had been a change in the identity of the goods. The Supreme Court decision applies with full force to the case of conversion of black gram and green gram into dal. It is the common experience that if a customer asks for dal in the bazar the seller would not offer black gram or green gram out of which dal is made. Dal is required for purposes which would not be served by green gram or black gram. The purchaser would straight ask for green gram and black gram if he desires to convert them into dal. In common parlance and in commercial sense both are treated as two different commodities. A later Division Bench cannot declare an earlier Division Bench decision as laying down bad law and the normal course in case of difference is to refer the matter to a larger Bench. As, however, the matter is concluded by a Supreme Court decision it is unnecessary to refer the matter to a larger Bench, which itself would be bound by the Supreme Court decision. *Ram Chandra Badrinarayan v. State of Orissa* I.L.R. 1972 Cut. 1322 does not lay down good law on this point. It is to be noted that the judgment in *Ram Chandra Badrinarayan v. State of Orissa* I.L.R. 1972 Cut. 1322 was delivered on 22nd August, 1972, while the Supreme Court decision was rendered on 25th April, 1973. Their Lordships of the Division Bench in *Ram Chandra Badrinarayan v. State of Orissa* I.L.R. 1972 Cut. 1322 could not have noticed the Supreme Court decision. On the same reasoning, with respect, we say that the Allahabad decision does not lay down the correct law.

5. The next question for examination is whether the proviso is applicable. Section 5(2)(A)(a)(ii) proviso may be extracted :

5. Rate of tax.-...2)(A) In this Act, the expression 'taxable turnover' means that part of a dealer's gross turnover during any period which remains after deducting therefrom-

(a) his turnover during that period on...

(ii) sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for resale by him in Orissa and on sales to a registered dealer of containers and other materials for the packing of such goods :

Provided that when such goods are used by the registered dealer for purposes other than those specified in his certificate of registration, the price of goods so utilised shall be included in his taxable turnover.

The object behind the aforesaid provision may be noticed to appreciate the scope of the proviso. A single point taxation system has been prescribed in the Act. The point of taxability is fixed under Section 8. Ordinarily the point is postponed until in a series of sales the goods ultimately pass to a consumer or to an unregistered dealer. If no declaration is furnished as required in Rule 27(2) in form No. XXXIV, the selling dealer would realise the sales tax from the purchasing dealer. If the declaration is however furnished, no tax is realised. Thus, the object of the aforesaid provision is merely to postpone the collection of tax.

6. Black gram and green gram purchased by the dealer during the relevant years would be ordinarily a part of his gross turnover. Those goods had been specified in the dealer's certificate of registration as being intended for resale in Orissa. By virtue of Section 5(2)(A)(a)(ii) the aforesaid purchases were deducted from his gross turnover during the period. At the time of purchase the dealer filed a declaration in form No. XXXIV under Rule 27(2). The matter would have rested there but for the proviso.

7. The proviso, however, lays down that if the purchasing dealer uses the goods for purposes other than those specified in his certificate of registration, the price of goods so utilised shall be included in his taxable turnover. In other words, the sales which were initially deducted from the gross turnover under the main part of Section 5(2)(A)(a)(ii) would be included by virtue of the proviso if the goods are in fact either not resold in Orissa as was stated in the declaration or the goods are not sold in the same shape even though they were resold in Orissa.

8. In this case sales of black gram and green gram to the dealer were not originally included in his taxable turnover because of the declaration. Black gram and green gram were converted into dal which was sold inside Orissa. But the goods purchased were not sold in the same form and the declaration was infringed inasmuch as such goods as purchased were not sold inside Orissa as undertaken.

9. To get out of this difficulty Mr. Agarwalla, who also argued the case as *amicus curiae*, contended that the certificate of registration of the dealer specified a class of goods, which included products of pulses and, as such, there was no violation of the declaration. The certificate of registration of the dealer specifies 'all grams and their products and pulses and their products' amongst other goods to be purchased free of tax.

Reliance is placed on Sections 5(1), first proviso, 9(3), 18(c), 25(c) and entry 1J of the list of taxable goods in support of this contention. The argument requires close examination.

10. Sections 9(3), 18(c) and 25(c) may be read together as they deal with the question of registration of a dealer and the consequences of infringement. Those provisions may be extracted for convenience :

9. Registration of dealers.-...(3) On receipt of an application, the prescribed authority shall, if he is satisfied that the application is in order, register the applicant and grant him a certificate of registration in the prescribed form, which shall specify the class or classes of goods in which at the time of the grant of the said certificate the dealer carries on business and such other particulars as may be prescribed. The certificate granted shall remain in force unless cancelled under Sub-section (6).

18. Information to be furnished regarding changes of business.-If any dealer to whom the provisions of Sub-section (1) of Section 11 apply...

(c) changes the name or nature of his business or effects any change in the classes of goods in which he carries on business...

he shall, within the prescribed time, inform the prescribed authority accordingly ; and if any such dealer dies, his legal representative shall, in the like manner, inform the said authority.

25. Offence and penalties.-(1) Whoever...

(c) being a registered dealer, falsely represents when purchasing any class of goods, that goods of such class are covered by his certificate of registration;...

shall be punishable with imprisonment of either description which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence.

These three sections read together require the dealer to carry on the business in the class or classes of goods specified in the certificate of registration and to amend the certificate from time to time if any change takes place in the class of goods he deals with. He may also be penalised if he falsely represents while purchasing goods that such class of goods have been specified in his certificate of registration. What Mr. Agarwalla contends is that if particular goods specified in the certificate of registration are purchased on filing the declaration in form No. XXXIV and different goods from out of the class or classes referred to in the certificate of registration are sold, there is no infringement of the declaration. The argument though ingenious is untenable. A simple illustration would demonstrate the fallacy of this line of reasoning.

11. We may look into entry 1J in the list of taxable goods as given in Notification No. 33927-F, dated 30th December, 1957. The entry runs thus :

-----			Sl. No.	Description of
goods	Rate	of	tax(1)	(2)
(3)-----			1J.	Cereals and
pulses including all forms of horsegrams, black Twogram, peas, tnung, arhar, masur, ragi (mandia), khesari, per cent.millet, bajra and jowar, wheat, oats, barley, maize, powdered or broken pulses, sago, besan and sattu.				

It would be noted that though a class of goods has been described under a common head to indicate one rate of tax the goods specified are different in character. For instance, bajra, jowar, wheat, oats and barley are items of staple food and are different in character from pulses. They have been brought under one class in entry 1J not because they are same or similar goods but to include all goods under one head which are exigible to one rate of tax. Fixation of the same rate of tax for different goods under one head does not make those goods identical or similar. A dealer cannot purchase wheat free of tax as being specified in his certificate of registration and sell pulses by contending that all these goods come under one class for the rate of taxation and have been specified in the certificate of registration. Just as wheat is different from pulses, pulse products are different from pulses.

12. Mr. Agarwalla also referred to Section 5(1), first proviso, which runs thus:

5. Rate of tax.-(1) The tax payable by a dealer under this Act shall be levied at the rate of 2 per cent on his taxable turnover :

Provided that the State Government may, from time to time, by notification and subject to such conditions as they may impose, fix a higher rate of tax not exceeding 7 per cent or any lower rate of tax payable under this Act on account of the sale or purchase of any goods or class of goods specified in such notification.

By entry 1J rate of tax has been fixed under Section 5(1). The emphasis on any goods or class of goods in Section 5(1), entry 1J and Section 9(3) has no bearing on the question of violation of the undertaking given in form No. XXXIV under Rule 27(2). The infringement attracts the operation of the proviso. There is no substance in this contention.

13. On the aforesaid analysis, we sum up our conclusions thus :

(i) Black gram and green gram are different from dal produced out of them. Both cannot be treated as same goods.

(ii) Though the dal after conversion was sold inside Orissa it was not sold in the same form in which the goods were originally purchased on the basis of the declaration. The proviso is clearly attracted.

14. We would answer the question referred in the affirmative by saying that the proviso to Section 5(2)(A)(a)(ii) of the Orissa Sales Tax Act, 1947, is attracted.

15. In the result, the reference is accepted. In the circumstances, there will be no order as to costs.

B.K. Ray, J.

16. I agree.

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