

Bavchand and Co. Vs. State of Orissa

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Court : Orissa

Decided On : Dec-16-1975

Reported in : [1976]38STC42(Orissa)

Judge : R.N. Misra and ;N.K. Das, JJ.

Appeal No. : Special Jurisdiction Case No. 194 of 1973

Appellant : Bavchand and Co.

Respondent : State of Orissa

Advocate for Def. : Standing Counsel (S.T.)

Advocate for Pet/Ap. : N.N. Bhattacharya, Adv.

Judgement :

R.N. Misra, J.

1. On an application of the assessee under section 24(1) of the Orissa Sales Tax Act of 1947 (hereinafter to be referred to as the Act), the Member, Sales Tax Tribunal, has stated this case and referred the following question for opinion of the court:

Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal, is right in holding that gold and silver ornaments are taxable at the rate of 7 per cent under serial No. 27 of the list of taxable goods, as per Finance Department Notification No. 33927-F. dated 30th December, 1957, and not at the general rate of 5 per cent according to Section 5(1) of the Orissa Sales Tax Act ?

2. The assessee, a registered dealer under the Act, carried on business in bullion, gold and silver ornaments and silver articles. For the period 1970-71, the Sales Tax Officer rejected the accounts of the assessee, enhanced the turnover and overruled the contention of the assessee that the turnover was liable to tax at the rate of 5 per cent and adopted the rate of 7 per cent. The assessee's first appeal was dismissed by the Assistant Commissioner. The Tribunal in second appeal also affirmed the order of assessment. The question arising in the case was highlighted by the Tribunal by saying :

There is no dispute about the correctness of the turnover returned by the appellant. The extra tax demand arose because with effect from 15th May, 1970, the appellant had paid tax on the sale of gold and silver ornaments at the rate of 5 per cent, which has been assessed at the rate of 7 per cent. The department's view is that sales of gold and silver ornaments are taxable at 7 per cent as per serial No. 27 of Finance Department's Notification No. 33927-F. dated 30th December, 1957, mentioning the list of taxable goods. The appellant's contention is that bullion and specie ornaments till 15th May, 1970, were taxable at 2 per cent as per serial No. 1 of the said notification, which, with effect from the said date was omitted. Thus, there being no specific entry given, the rate of tax on sale of ornaments would be liable to tax at the general rate of 5 per

cent as per Section 5(1) of the O.S.T. Act.

2. On an examination of the different serials in the notification made by the State Government in exercise of powers conferred by the proviso to Section 5(1) of the Act, the Tribunal overruled the assessee's stand.

3. It is appropriate that the relevant statutory provisions and the notifications be first referred to. Section 5(1) of the Act provides as follows :

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.

In exercise of the powers conferred under the proviso, the State Government made a notification bearing No. 33927-F. dated 30th December, 1957, with effect from 1st January, 1958. Relevant portion thereof is extracted below :

In exercise of the powers conferred by the first proviso to Sub-section (1) of Section 5 of the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947), as amended by the Orissa Sales Tax (Amendment) Act (20 of 1957), and in supersession of all previous notifications on the subject, the State Government do hereby fix, with effect from the 1st January, 1958, the rate of tax payable by a dealer under the said Act on account of the sale of the goods specified in column (2) of the schedule appended hereto at the rates specified against them in column (3) thereof.

SCHEDULE-----SI.No. Description of goods Rate of tax(1) (2) (3) -----
----- 1. Bullion and specie. One per cent.27. All articles and wares made of gold and silver or Seven per cent.of species.28. Jewellery including precious stones, unset Seven per cent.precious stones and pearls, real or cultured.29. Imitation of gold ornaments, silver ornaments, Seven per cent.ornaments made of species, jewellery, precious stones and pearls....

4. With effect from 15th November, 1958, an entry under serial No. 3-F was added, which ran to the following effect :

Ornaments of personal wear made of gold or silver or with mixture of gold and silver without any addition of precious stones, namely, diamonds, emeralds, rubies, real pearls and sapphires.

For this entry, the rate of tax was two per cent. In column (2) of serial No. 27, the words 'other than those falling under serial No. 3-F' were added. By Notification No. 6839-C.T.A. 47/65-F. dated 4th March, 1966, the rate of tax for bullion and specie, ornaments and other articles made thereof was raised to 2 per cent with effect from 1st April, 1966, and serial No. 3-F was deleted. For the period between 1st April, 1966, and 14th May, 1970, serial Nos. 1, 27 and 29 stood in the following state :

1. Bullion and specie, ornaments and other articles Two per cent,made thereof.27. All articles and wares made of gold and silver Seven per cent or of species (other than those falling under serial No. 3-F).28. Deleted by Notification No. 6839-F. dated 4th March, 1966, with effect from 1st April, 1966, and inserted in luxury goods,29 Imitation of gold or silver ornaments. Seven per cent.

By notification dated 27th April, 1970, with effect from 15th May, 1970, the entry under serial No. 1 was omitted, Simultaneously the words 'other than those falling under serial No. 3-F' appearing in column (2) against serial No. 27 was also deleted. According to the taxing department, with the omission of the first serial which had hitherto prescribed a rate of two per cent in respect of bullion and species, ornaments and other articles made thereof and omission of reference to the already deleted serial No. 3-F from serial No. 27, ornaments which had hitherto been covered either under serial No. 1 or under serial No. 3-F came within the

ambit of serial No. 27 and became liable to tax at the rate prescribed under serial No. 27. The net effect of this argument is that ornaments ceased to be taxable at the concessional rate of two per cent either under serial No. 1 or under serial No. 3-F and became taxable at seven per cent with effect from 15th May, 1970.

4. The assessee's counsel, on the other hand, contends that under Section 5(1) of the Act, the general rate of tax has been indicated and power has been conferred upon the Government to prescribe a lower or higher rate by notification. During the period between 1st April, 1966, and 14th May, 1970, serial Nos. 1 and 27 co-existed. In serial No. 27, the exclusion was confined to what was hitherto covered by the deleted serial No. 3-F and no reference was made to serial No. 1. Therefore, the ambit of serial No. 27 did not take within it what was covered by serial No. 1. When with effect from 15th May, 1970, serial No. 1 was omitted, the concessional rate of two per cent hitherto provided was withdrawn and the goods described under the deleted serial No. 1 reverted to the general category for which the rate of tax is provided under Section 5(1) of the Act. In order to make the goods covered by the deleted serial No. 1 liable to a higher rate of tax, a further notification was necessary and, in the absence of such a notification to be made in exercise of the powers under the proviso to Sub-section (1) of Section 5, demand of tax at the higher rate of seven per cent on the basis of serial No. 27 is not justified. For the period between 15th November, 1958, and 31st March, 1966, serial Nos. 1 and 3-F existed together in the notification. The rate of tax for the goods under serial No. 1 was one per cent and ornaments of personal wear covered by serial No. 3-F was two per cent. As already noticed, in serial No. 27, the words 'other than those falling under serial No. 3-F' had been inserted with effect from 15th November, 1958. It is, therefore, clear that when serial Nos. 3-F and 27 co-existed, with a view to providing a lower rate of tax for the items of goods covered by serial No. 3-F exclusion was provided from the ambit of serial No. 27. Serial No. 3-F itself was deleted with effect from 1st April, 1966, yet the exclusion with reference to serial No. 3-F continued in serial No. 27 until 15th May, 1970. With the deletion of serial No. 3-F from serial No. 27, the restriction imposed for serial No. 27 stood withdrawn and all articles and wares made of gold, silver and species became taxable at seven per cent. No fault can be found with the process of this reasoning.

As already stated serial Nos. 1 and 3-F remained together between 15th November, 1958, and 31st March, 1966, while serial Nos. 1 and 27 co-existed from 1st January, 1958, till 15th May, 1970, when serial No. 1 was deleted. Serial No. 27 is expressed in terms wide and general and all articles made of gold, silver and species would be covered by the entry. The proviso under Section 5(1) authorises the State Government to notify rates in respect of specific goods or class of goods. Serial No. 27 refers to a class of goods, namely, all articles and wares made of gold and silver or of species. What was hitherto covered under serial No. 1 would certainly come and always come within the ambit of serial No. 27 though two separate serials had co-existed. Undoubtedly, what came under serial No. 3-F was a well-defined class of goods, while serial No. 1 referred to goods which would have come under serial No. 27. The learned standing counsel contends that this mistake has been noticed and, therefore, from 15th May, 1970, serial No. 1 has been deleted. Now serial No. 27 is the only entry in the field with effect from 15th May, 1970. The goods in question have been found to come within the ambit of serial No. 27. Admittedly, the goods which have been taxed are articles of gold, silver or of species. Serial No. 27 covers these articles. We do not think, in these circumstances, there is force in the assessee's contention that with the deletion of serial No. 1, for the goods covered by that serial the general rate would apply and the taxing department is not entitled to fall upon serial No. 27 to tax the goods at a higher rate, in the absence of a fresh notification providing for a higher rate of tax.

5. Mr. Bhattacharya for the assessee had relied upon the meaning of the words 'ware', 'article' and 'specie'. The Oxford English Dictionary gives the meaning of 'ware' as articles of merchandise or manufacture ; the things which a merchant, tradesman, or pedlar has to sell; goods, commo dities. 'Article' means, according to Webster's Dictionary, a piece of goods or commodity. 'Species', according to Webster's Dictionary, is money in coin and, according to Chambers's Twentieth Century Dictionary, coined money. The meaning of these words in common parlance is not in dispute. Articles being pieces of goods as indicated by Mr. Bhattacharya, the view taken by us, with reference to serial No. 27, namely, that all articles made out of the three items, i.e., gold, silver and species would be covered is not open to dispute.

6. Mr. Bhattacharya for the assessee does not dispute the authority of the State Government to make a notification enhancing the rate of tax for the disputed items of goods to seven per cent; all that he has contended is that in the absence of a further notification and merely by deleting serial No. 1, the rate of tax could not be seven per cent by applying serial No. 27. Though the argument initially appeared to be attractive, by analysis we find there is no force in it. When assessment was undertaken, the assessing officer found that there was a valid notification in existence applicable to the situation and, therefore, he computed tax by adopting the rate prescribed under serial No. 27 and imposed tax.

7. A number of authorities were cited by Mr. Bhattacharya, but we have not found it necessary to refer to them as, in our view, the dispute could be disposed of by a plain analysis of the matter without reference to precedent.

8. Our answer to the question referred, therefore, is :

On the facts and in the circumstances of the case, the Member, Sales Tax Tribunal, is right in holding that gold and silver ornaments are taxable at the rate of 7 per cent under serial No. 27 of the list of taxable goods, with effect from 15th May, 1970.

9. This case was heard along with several connected matters. We were surprised to find that on the same materials, the same Tribunal has come to contradictory conclusions in many of these cases.

We make no direction for costs of this reference.

N.K. Das, J.

10. I agree.

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