IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV Nos. 54 and 36 of 2006

M/s. Raja Gudakhu Karyalaya .... ***Petitioner***
Mrs. Kajal Sahoo, Advocate

-versus-

State of Orissa represented by Commissioner of Sales Tax, Cuttack-1 .... ***Opposite Party***
Mr. S.S.Padhy,Addl.Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
11.05.2022

Order No.

Dr. S. Muralidhar, CJ.

05. 1. In these two revision petitions, the following questions of law have been framed for consideration by this Court:

> (a) Whether in the facts and circumstances of the case, the Orissa Sales Tax Tribunal (Tribunal) was justified and holding sale of Gudakhu to be taxable under the Orissa Sales Tax Act, 1947 (OST Act)?
>
> (b) Whether in the facts and circumstances of the case, Gudakhu being tobacco covered under Additional Duties of excise (Goods of Special importance) Act (ADE Act) is exempted from sales tax under Entry 38 of the exempted list?

2. While STREV No. 54 of 2006 pertains to the period 1999-2000, STREV No. 36 of 2006 pertains to the period 1997-98.

3.The Petitioner carries on business in manufacturing and sale of Gudakhu at Jharsuguda by virtue of a certificate of registration granted under the OST Act. It is stated that in terms of Entry 38 of the exemption list under the OST Act, tobacco as described in Column 3 of the First Schedule to the ADE Act is exempted from sales tax. Entry 38 of the of the Exemption list (List A) (under the OST Act) reads as under:

'Tobacco as described in column 3 of the first schedule to the ADE Act.'

4. Initially the Petitioner had filed O.J.C. No. 11976 of 1999 praying that in view of the amendment of the ADE Act with effect from 23rd July 1996, whereby Gudakhu is included as item for levy of additional duties of excise, the Sales Tax Authorities should be barred from levy sales tax on the sale of Gudakhu which is otherwise exempted. On 1st August, 2000 this Court disposed of the aforementioned writ petition permitting the Petitioner to raise the question of jurisdiction before the assessing authority.

5. On 31st March, 2001 the assessing authority disposed of the assessment proceedings imposing 4% sales tax on the sale of Gudakhu under Extry-51 of List-C of the OST Act (rate chart). The Assessing Authority was of the view that the expression 'other manufactures of Tobacco' occurring the ADE Act might include Gudakhu but would not be held as being covered by Entry-38 of the Exemption List of the OST Act.

6. The above order of the Assessing Authority was upheld by the Assistant Commissioner of Sales Tax (ACST) (Sambalpur Range), by the order dated 14th July, 2014 dismissing the Petitioner's appeal. The Petitioner then approach the Tribunal which disposed of the appeal by an impugned order dated 31st January, 2006 holding that

although Gudakhu is used in toothpaste and is thus a "manufactured Tobacco", since it is not specifically mentioned in first schedule to the ADE Act, the claim of exemption under the OST Act was not allowable in law.

7. This Court has heard the submission of the Mrs. Kajal Sahoo, learned counsel for the Petitioner and Mr. S.S. Padhy, learned Additional Standing Counsel for the State.

8. Entry-38 of the Exempted List A of the OST Act clearly includes Tobacco as described in column 3 of the first schedule to the ADE Act. If one turns to the ADE Act in the first schedule under Chapter Heading 2404.99 the Entry is "Tobacco used for smoking through hookah or chillum commonly known as hookah tobacco or Gudakhu'. It is therefore, plain that for the purpose of ADE Act Gudakhu is also recognized as a tobacco product.

9. It may be noted here that even in subsequent amendments to the OST Act, there is an express recognition of Gudakhu being a tobacco product. Likewise, even in the ADE Act by an amendment in 2005 Gudakhu is treated as other manufactured tobacco.

10. The Supreme Court in ***State of Orissa v. Radheshyam Gudakhu Factory (1988) 68 STC 92 (SC)*** held that Gudakhu is a product of tobacco in a common parlance and falls within the exemption covered by Sl. No. 35 of the Schedule to the OST Act. In the context of Gutkha, the Supreme Court in ***Kothari Products Ltd. Vs. Govt. of Andhra Pradesh (2000) 119 STC 553*** held gutkha to be falling within the expression 'other manufactured tobacco'.

11. The general principle that goods amenable to additional duty of excise under the ADE Act being exempt from sales tax has been recognized also in ***Fenoplast v. Govt. of A.P. (1998) 114 STC 559 (SC)***.

12. In view of the clear explosion of the law and the factual position that Gudakhu is also another form of manufactured tobacco, this Court answers the two questions framed for consideration in favour of the Assessee against the Department. In other words, it is held that the Tribunal was not justified in holding that the sale of Gudakhu by the Petitioner was amenable to sales tax under the OST Act. The conclusion is that Gudakhu is 'tobacco' covered by the ADE Act and is exempt from sales tax under Entry 38 of the exemption list i.e. List-A of the OST Act. The impugned orders of the Tribunal and the corresponding orders of the ACST and the Assessing Officer are accordingly set aside.

13. The revision petitions are disposed of in the above terms.

14. An urgent certified copy be issued as per Rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge

Kabita/