IN THE HIGH COURT OF ORISSA AT CUTTACK

STREVNo.85 of 2008

AFR

M/s. B. K. Food Products Pvt. Ltd., Kalahandi	....	***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate assisted by
Ms. K. Sahoo, Advocate

-versus-

State of Orissa represented by Commissioner of Sales Tax, Cuttack	....	***Opposite Party***

Mr. Sunil Mishra, ASC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
04.04.2022

Order No.

Dr. S. Muralidhar, CJ.

05. 1. Although the present revision was admitted on 17th July, 2008, no question of law was framed at that stage.

2. The following questions of law are urged for consideration by the Assessee in the present petition:

> "i. Whether in the facts and circumstances of the case purchase tax is leviable on equivalent paddy out of which rice obtained and sold to Project Director, World Food Programme which is exempted as per Entry-30HH of List-a of the Schedule of rates under the OST Act?
>
> ii. Whether in the facts and circumstances of the case rice which is a notified first post goods being exempted by notification under Section 6 of the OST Act under Entry-30HH of List-a whether paddy used as input is subject to levy of purchase tax?

> iii. Whether in the facts and circumstances of the case levy of interest under Section 12(4-a) of the OST Act is lawful and valid?”

3. As far as questions (i) and (ii) are concerned, the contention urged by Mr. Jagabandhu Sahoo, learned Senior Counsel for the Petitioner is that paddy is a declared goods in terms of Section 14(1) (i) of the Central Sales Tax Act, 1956 read with Article 286 (3) of the Constitution of India and Section 3-B of the Orissa Sales Tax Act, 1947 (OST Act) and therefore no purchase tax as such is leviable on the purchase of paddy. He points out that paddy is converted to rice by the Petitioner and for the purposes of the present case the sale of rice by the Petitioner to the World Food Programme (WFP) is under consideration. Under Entry 30HH of the Tax Free List appended to the OST Act, such sales are fully exempted from sales tax against the certificate to be furnished by an officer duly authorised by the Forest Department. The short question that he seeks to raise therefore is if the rice, which is made from paddy, is itself exempted from sales tax, correspondingly the tax on purchase of the paddy should also be exempted.

4. Section 3-B of the OST Act reads as under:

> "3-B. Goods liable to purchase tax. —
>
> The State Government may, from time to time by notification, declare any goods or class of goods to be liable to tax on turnover of purchases:
>
> Provided that no tax shall be payable on the sales of such goods or class of goods declared under this section."

5. The State Government has admittedly issued a Notification under Section 3-B subjecting paddy to 4% purchase tax. Entry 149 of the rate list appended to the OST Act specifies 4% tax on the

sales of the rice permitting set off of the purchase tax paid on paddy against such sale. However, in the present case, the sale to the World Food Programme (WFP) Project falls under Entry 30HH of the Tax Free List, and therefore no such exemption would be sought for and made available to the Petitioner.

6. The argument that no purchase tax can be levied on paddy does not impress the Court. There is no complete ban on the imposition of purchase tax. In fact Section 3-B expressly permits levy of purchase tax on certain classes of goods. The proviso only states that no tax shall be payable on the "sales of such goods.... declared under this Section."

7. Mr. Sahoo drew the attention of the Court to the following observations in ***Dhirendranath Das v. State of Orissa, (1970) 26 STC 522:***

> "6. What Mr. Bhattacharya wants to contend is that if the sale of the fish by the assessee in the aforesaid case in Calcutta could not be taxed, then the purchase of the fish inside Orissa for exporting them to Calcutta for sale cannot be taxed by virtue of Section 3-B of the Act. For reasons analysed by me, this contention has no force. The language of Section 3-B is clear and unless there is any ban either by the Constitution or the Central Sales Tax Act, tax is leviable inside Orissa on the purchases of fish made by the assessee. All the assessing authorities held that the petitioner was a buyer of fish from the fishermen and was not a commission agent as claimed by him. On such a finding, purchase tax is leviable and Section 3-B does not stand in the way."

8. The above passage in fact reinforces the view that Section 3-B of the OST Act permits the levy of purchase tax on paddy

notwithstanding that the rice prepared from such paddy is itself exempt from sales tax.

9. The view taken by the Tribunal in the present case, which is in favour of the Department and against the Assessee, does not appear to suffer from any illegality. Consequently, the questions (i) and (ii) are answered in favour of the Department and against the Assessee by holding that the purchase tax is indeed leviable on the equivalent paddy out of which rice was sold to WFP, which sales may be exempt under Entry 30HH of List-a of the Schedule of rates under the OST Act. Also, even though rice may be a notified first point goods being exempted by a notification under Section 6 of the OST Act, the equivalent paddy would still be exigible to purchase tax at 4%.

10. As far as question (iii) is concerned, the amount involved being insubstantial, the Court leaves the question open for consideration in some other appropriate case.

11. The revision petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda