

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.29 of 2012

*M/s. Patel Brothers & Co.,
Sambalpur*

.... *Petitioner*

Mr. S. Lal, Advocate

-versus-

State of Odisha

.... *Opp. Party*

Mr. S. Mishra, Sr. Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK**

ORDER

05.07.2022

Order No.

Dr. S. Muralidhar, CJ.

04.

1. While admitting the present petition by the Assessee against the order dated 30th April, 2012 passed by the Orissa Sales Tax Tribunal (Tribunal) in S.A. No.80(ET) of 2010-2011, the following questions of law were framed by this Court for consideration:

“2. Whether in the facts and circumstances of the case the Tribunal was justified in not considering that the legislature had consciously not included Bidi as a manufactured finished product in the schedule of the Orissa Entry Tax Act and whether the same constitutes *casus omissus* on the part of the legislature and for this reason the impugned second appeal order is liable to be set aside?

2A. Whether the Tribunal can read in to schedule of Orissa Entry Tax Act an entry i.e. Bidi by resorting to the common parlance theory and hold that it was a Tobacco Product?

3. Whether the impugned order of the Tribunal is perverse by not applying the judicial mind to the express language of Entry 16 in Part 1 of Orissa Entry Tax Act which dealt with Tobacco and Tobacco products which were genus and species of tobacco and not different manufactured commodity

like Bidi, Gudakhu, Cigarette, Pan Masala Zarda etc.?

4. Whether the Tribunal was justified in upholding the levy of entry tax on sale of Bidi, a manufactured finished product under Section 26 of the OET Act when such finished product i.e. Bidi is not a scheduled goods and Tobacco was only one of the ingredients for manufacture of such finished product?

5. Whether the Tribunal was justified to uphold the levy of penalty @ twice the amount of tax assessed when levy of entry tax on sale of Bidi was not a schedule goods and whether or not it was a schedule goods was a contentious issue?

2. Admittedly, the Petitioner Assessee is a manufacturer of Bidis. The short question is whether it is included within the entry “Tobacco and Tobacco products” in item 16 of the Schedule under the OET Act.

3. While discussing this issue, the Tribunal has in paragraph-6 of the impugned order held as under:

“6. Heard the learned counsel for the dealer as well as the learned S.R. of the Revenue and also gone through the impugned orders of both the lower forums. Law is well settled that entry in the Schedule is to be dealt according to the common commercial parlance and its trade use. The said bidi is prepared from Kendu leaves and tobacco is inserted and it is called as poor mans cigarette. It is a handmade country cigarette composite of tobacco component in a rolled Kendu leaves and the said bidis are manufactured tobacco. No doubt there is no direct entry of bid in the Schedule of the O.E.T. Act but as per common commercial parlance it is a tobacco product used in the rural India. So, bidi is a Scheduled goods under the O.E.T. Act and it is exigible to 1% of entry tax which has already been decided by both the lower forums which needs no interference by this Tribunal.

With regard to the imposition of penalty u/s.9-C(5) of the O.E.T. Act, this Section is mandatory to impose penalty for an amount equal to twice the amount of tax assessed. So, the imposition of penalty cannot be deleted as the dealer has not paid the tax on the sale of bidi.”

4. Learned counsel for the Petitioner seeks to contend that since the entry does not specifically mention ‘bidi’ it would not fall within the scope of the above entry. Mr. Mishra, learned Sr. Standing Counsel on the other hand points out that the expression ‘tobacco products’ is wide enough to include ‘bidi’ which is nothing but tobacco inserted in Kendu leaves and smoked in the rural countryside. Although learned counsel for the Petitioner sought to contend that under Entry 31 ‘cigarette and lighter’ is a separate item and therefore unless there is a separate entry for ‘bidi’ it would not be amenable to entry tax in terms of the OET Act, the Court is unable to agree with the above contention. The expression ‘tobacco and tobacco products’ is wide enough to include ‘bidi’ and therefore, the Tribunal has not committed any legal error in coming to the conclusion as aforementioned.

5. The questions framed are accordingly answered in favour of the Department and against the Assessee.

6. The revision petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge