

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.476 of 2017

M/s Raj Kumar Sao Kishori Lal Sao, At Koat Bazar, P.S. Sitamarhi, Town and Dist. Sitamarhi through one of its Partner, namely, Anil Kumar, Son of Late Harishankar Prasad, Resident of Old Exchange Road, Vidhayak gali, P.S. Sitamarhi, District Sitamarhi.

... .. Appellant/s

Versus

1. The State Of Bihar through the Secretary-cum-Commissioner of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna.
2. The Commercial Taxes Tribunal, Bihar, Patna through its Secretary
3. The Commissioner of Commercial Taxes, Government of Bihar, Vikash Bhawan, Patna.
4. The Deputy Commissioner of Commercial of Taxes, Sitamarhi Circle, Sitamarhi

... .. Respondent/s

with

Miscellaneous Appeal No. 477 of 2017

M/s Raj Kumar Sao Kishori Lal Sao, At Koat Bazar, P.S. Sitamarhi, Town and Dist. Sitamarhi through one of its Partner, namely, Anil Kumar, son of Late Hari Shankar Prasad, Resident of Old Exchange Road, Vidhayak Gali, P.S. Sitamarhi, District Sitamarhi.

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4. THE Deputy Commissioner of Commercial of Taxes, Sitamarhi Circle, Sitamarhi.

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 476 of 2017)

For the Appellant/s : Mrs. Priya Gupta, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC- 11



(In Miscellaneous Appeal No. 477 of 2017)

For the Appellant/s : Mrs. Priya Gupta, Advocate

For the Respondent/s : Mr. Ajeet Kumar, G.A.-9
Mr. Nalin Vilochan Tiwary, A.C. to G.A.-9

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY**

**CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date :09-01-2024

The two appeals deal with two assessment years 1991-92 and 1992-93 and the issues are one and the same; with respect to the purchase tax leviable on the goods purchased by the assessee from the unregistered dealers and the tax levied on the sale of 'Korai', which is used as a cattle feed, exempted from tax.

2. The appellant in the appeal claims to be a partnership engaged in the purchase, processing and sale of food-grains, pulses and its by-products used as cattle feed. Purchase tax was levied on the assessee for the goods purchased by him from the market from unregistered dealers without the liability to pay sales tax; which goods were stock transferred by the assessee. The contention of the assessee is that the decision of the Hon'ble Supreme Court in *Hotel Balaji v. State of A.P.; 1993 Supp (4) SCC*



536 came later to the assessment year and hence, cannot be applied for the relevant assessment year.

3. The next question raised is as to the tax levied on '*Korai*' sold by the appellant, which is asserted to be cattle feed.

4. Learned counsel for the appellant argued that the goods dealt with by him, that is '*Korai*' is exempted as cattle feed and hence, there can be no levy of tax on the exempted goods. Further, it is contended that the first Appellate Authority erred in applying the tax of '*Korai*' at the rate of 4% equating the goods dealt with by the assessee to Wheat Bran. It is also argued that the dictum in *Hotel Balaji (supra)* does not apply to the earlier year.

5. Learned Government Advocate, however, pointed out that *Hotel Balaji (supra)* upheld the legislative competence insofar as purchase tax is concerned and the same applies across the board from the date of inception of the levy. As far as the tax levied on '*Korai*' is concerned, it is a by-product obtained from the processing of pulses and is an unspecified goods taxable at 8%. The equation to Wheat Bran was done by the first Appellate Authority, by



which a lesser tax levy of 4% was imposed. It is pointed out that there is nothing on facts to indicate that the goods sold by the assessee was cattle feed.

6. The levy of purchase tax and its legislative competence is no more *res integra* going by ***Hotel Balaji (supra)***. The appellant cannot also raise a contention that ***Hotel Balaji (supra)*** was a subsequent judgment, especially since the legislative competence upheld, enables such levy from the date on which the enactment was in force. It is also to be noticed that the Hon'ble Supreme Court has not made the declaration in ***Hotel Balaji (supra)*** prospective in nature.

7. As far as the purchase tax is concerned, the appellant purchased the goods from the market without any liability to pay sales tax from unregistered dealers. This is the specific context in which Section 4 of the Act comes into play, when purchase of goods are made in circumstances in which no sales tax is payable and the same is disposed of or consumed, otherwise than by a manner in which taxes are not paid. There is hence no subsequent sale, exigible to tax within the State or a levy in the course of



inter-State trade or commerce, which gives rise to the liability to pay purchase tax on the purchase price of such goods. The appellant's transaction which has been taxed under Section 4 of the Act falls squarely within the ambit of the provision since no tax was paid on purchase and the inter-State transaction, admitted by the assessee to be stock-transfer, was also without payment of tax. We find no reason to interdict the levy of purchase tax, especially when the purchase of goods from unregistered dealers was without tax payment and the further stock-transfer was also not levied tax in the State.

8. There is nothing to show that '*Korai*' was sold as a cattle feed. As to '*Korai*' being not equivalent to Wheat Bran, since it is a processed item which is obtained as a by-product it is taxable as an unspecified residuary item at the rate of 8%. The Appellate Authority equated it with Wheat Bran and taxed it at 4%, against which no appeal is filed by the State. We find absolutely no reason to interfere with the levy of tax on the sale of '*Korai*', which was not shown to be sold as cattle feed. In the context of the appellate authority's order modifying the rate of tax to 4% having not



been challenged by the State, there is no reason to upset the said modification.

9. We answer both the questions of law against the assessee and in favour of the revenue. The appeals are rejected.

(K. Vinod Chandran, CJ)

Rajiv Roy, J

(Rajiv Roy, J)

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