

Commissioner Of Sales Tax vs Oil Mills Maithan, Agra on 6 May, 1970

Equivalent citations: (1972)3SCC861, [1972]27STC121(SC), AIR ONLINE 1970 SC 25, 1972 (3) SCC 861

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Bench: A.N. Grover, J.C. Shah, K.S. Hegde

JUDGMENT

J.C. Shah, J.

1. The High Court has passed an order in substance remanding the case referred for opinion under Section 11(1) of the U. P. Sales Tax Act, 1948, to the Additional Judge (Revisions). The High Court observed :

In our opinion the approach adopted by the Additional Judge (Revisions) is erroneous. He should have further found whether the goods had actually been exported from India to Nepal. The assessee is entitled to claim the benefit of Article 286(1)(b) in respect of the turnover in question, if he can further establish that the goods were taken from India across the frontier to Nepal. We answer the question accordingly. In our opinion, the very basis upon which the Additional Judge (Revisions) disposed of the revision application was erroneous ; it will now be open to consider, while disposing of the case in conformity with the judgment of this Court, under Section 11(6) whether the turnover in question comprised goods which had actually been taken across the frontier from India into Nepal.

2. It is true that the High Court has observed that they were answering the "question accordingly", but the answer is not related to the facts and circumstances.

3. The order passed by the High Court is challenged on the ground of procedural irregularity. The matter came before the High Court by way of a reference on the following question :

Whether in the facts and circumstances of the case as set out in the statement of the case (annexure A), the assessee is entitled to claim benefit of Article 286(1)(b) of the Indian Constitution for sale in the course of export outside India even though the actual delivery of the goods was taken by the Nepal purchasers at Indo-Nepal boundary within the territory of India before the goods crossed the customs frontier ?

4. In a case referred to the High Court, the High Court has no power to remand the case to the Tribunal. The High Court has to answer the question referred. If the High Court was not satisfied with the statement of the case, the High Court could call for a supplementary statement of the case. On the question referred the correctness of the "approach" of the Judge (Revisions) was apparently not in issue; the court had merely to find whether on the facts and circumstances the assessee was entitled to claim exemption from tax liability.

5. We, therefore, set aside the order of the High Court and direct that the case be disposed of according to law. It will be open to the High Court to call for a supplement of case if so advised. There will be no order as to costs.