

(1997) 01 KAR CK 0083

In the Karnataka High Court

Case No : Writ Appeal No's. 4057 to 4079 of 1995 connected with W.A. No's. 2350 and 3399 to 3404 of 1995

Assistant Commissioner of Commercial Taxes, V Circle,
Bangalore and others

APPELLANT

Vs

J.P. Kumar and Co. and others

RESPONDENT

Date of Decision : 29-01-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 14 (i) (iii)
Karnataka Sales Tax Act, 1957 — Section 5 (1), 8

Citation : (1997) ILR (Kar) 914

Hon'ble Judges : R.P. Sethi, C.J.;G. Patri Basavana Goud, J

Bench : Division Bench

Advocate : H.G. Ramesh, for the Appellant; R.V. Prasad and K. Hemakumar, for the Respondent

Judgement

R.P. Sethi, C.J.—Relying upon a judgment of the Supreme Court in Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, and distinguishing the facts of the case from another judgment of the Supreme Court in Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others, , the learned single Judge allowed the writ petitions vide the order impugned in these appeals and thereby setting aside the impugned assessment orders. The circular issued by the Commissioner of Commercial Taxes dated March 16, 1990 was also set aside after holding the same to be against law. It is contended that the order of the learned single Judge being contrary to law is liable to be quashed.

2. Relevant facts which are almost admitted and necessary for proper adjudication of the appeals are that, the respondents herein who are traders in various agricultural produces including cereals such as ragi and its product ragi flour were assessed for payment of tax on the ragi flour under the provisions of the Karnataka Sales Tax Act, 1957 (hereinafter called "the Act"). It was contended that u/s 8 of the Act read with Fifth Schedule, entry 40-A, the

respondents were exempt from payment of tax subject to the conditions mentioned therein. It was submitted that as ragi included ragi flour, the writ petitioners were not liable to pay sales tax. It was submitted on behalf of the appellants that ragi and ragi flour were two distinct goods and that ragi flour had not been exempted from payment of tax. Relying upon *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, the learned single Judge held :

"In the case on hand, ragi is mentioned in entry 40A of the Fifth Schedule to the Act along with certain other cereals. It is an item on which tax is not payable under the Act. There is no other entry in the Act which refers to ragi or ragi flour. In exactly identical situation in *Alladi Venkateswarlu's* case [1978] 41 STC 394 AP wherein rice alone had been mentioned as subject to single point levy of tax and parched rice or puffed rice are not mentioned in any of the Schedule of the Andhra Pradesh General Sales Tax Act it was held after noticing that under the Schedule of that Act goods not falling in any of the Schedule to the Act were treated as general goods and subject to multi-point tax u/s 5(1) of that Act that when there were no separate entries referring to puffed rice or parched rice and parched rice or puffed rice emerged only on account of heating or parching they did not constitute a different commodity, but it was another form of rice. In the same manner it must be held that merely because ragi is subjected to grinding all that it would result is another form of ragi making it more useful and less cumbersome for consumption."

3. The learned single Judge also appears to have been persuaded to come to this conclusion on the basis of some observation made in *Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others*, and the fact that State of Karnataka had issued notification on March 30, 1994 by which exemption was granted on the ragi flour to the dealers u/s 5 of the Act. Principle of contemporaneous expositio was pressed into service to hold that ragi flour gets the same kind of exemption as under entry 40A mentioned in the Fifth Schedule to the Act.

4. The learned counsel appearing for the parties have referred to a host of authorities of the apex Court and various High Courts in support of their rival contentions. We are of the opinion that the writ petitions filed by the respondents were squarely covered by the judgment of the Supreme Court in *Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others*, . In that case the Supreme Court considered as to whether the expression "wheat" in section 14(i)(iii) of the Central Sales Tax Act, 1956 included flour, maida and suji. Different High Courts had taken different views which necessitated the settlement of the controversy by the Supreme Court. This Court and Patna High Court had held that wheat included flour, maida and suji whereas Andhra Pradesh and Rajasthan High Courts had taken a contrary view. After referring to the conflicting judgments of various High Courts and the judgments delivered by the apex Court itself the court held :

"It must also be remembered that wheat flour - and similarly maida and suji -

are different commodities from wheat. Three decisions of the Court *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, *Babu Ram Jagdish Kumar and Others Vs. State of Punjab and Others*, and *State of Karnataka Vs. B. Raghurama Shetty and Others*, .] have held that rice (it is also derived from paddy just as flour is derived from wheat by the process of milling) is different from paddy. We shall refer to these decisions at some detail a little while later. Indeed, in one of the decisions, this Court has, by way of illustration, explained that wheat is different from wheat flour. The principle of all these three decisions is that where certain goods are consumed to bring into existence different goods - different in commercial and common parlance - both of them must be treated as different goods. The meaning and content of the expression "consuming" has also been explained in these decisions. If so, there appears to be no warrant for reading flour, maida and suji into the expression "wheat" in section 14(i)(iii). If the dealers' contention is correct then it should mean that rice is included in paddy - in which case it was not necessary for Parliament to mention rice separately under sub-clause (ii) of clause (i) of section 14. [The counsel for the State may probably be right when they suggest that flour, maida and suji were not separately mentioned in clause (i) of section 14 for the reason that in the year 1976 when the said clause was introduced, the volume of trade in flour, maida and suji and more particularly inter-State trade therein was at an insignificant level whereas the trade in both paddy and rice was substantial, for which reason rice was mentioned as a separate declared goods but not flour, maida or suji]. It is in this context that clause (d) of section 15 becomes relevant. Clause (via) of section 14 was introduced simultaneously with clause (i) by the 1976 Amendment Act. But while introducing clause (d) to explain the scope and content of clause (via) no such explanation or qualification was provided in the case of wheat nor were flour, maida and suji mentioned as separate commodities in section 14. Further the fact that, while re-specifying cereals and pulses as declared goods in 1976, Parliament departed from the language employed in item 1 in the Schedule to the 1952 Act is not without relevance.

The learned counsel for the States also appear to be justified in emphasising the meaning and significance of the phrase "that is to say" occurring in clause (i) of section 14. The clause reads : "(i) cereals, that is to say, - (i) paddy, (ii) rice, (iii) wheat -". The meaning and purport of the words "that is to say" is explained by a four Judge-Bench of this Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, . Beg, J., speaking for the Bench first quoted the meaning of the words "that is to say" assigned in Stroud's Judicial Dictionary (Fourth Edition), Volume 5 at page 2753 to the following effect :

"That is to say - (1) "That is to say" is the commencement of an ancillary clause which explains the meaning of the principal clause. It has the following properties : (1) it must not be contrary to the principal clause : (2) it must neither increase nor diminish it : (3) but where the principal clause is general in terms it may restrict it : see this explained with many examples, *Stukeley v.*

Butler, Hob. 171."

The learned Judge then proceeded to observe :

"The quotation, given above, from Stroud's Judicial Dictionary shows that, ordinarily, the expression "that is to say" is employed to make clear and fix the meaning of what is to be explained or defined. Such words are not used, as a rule, to amplify a meaning while removing a possible doubt for which purpose the word "includes" is generally employed..... but, in the context of single point sales tax, subject to special conditions when imposed on separate categories of specified goods, the expression was apparently meant to exhaustively enumerate the kinds of goods on a given list. The purpose of an enumeration in a statute dealing with sales tax at a single point in a series of sales would, very naturally, be to indicate the types of goods each of which would constitute a separate class for a series of sales. Otherwise, the listing itself loses all meaning and would be without any purpose behind it."

In this connection, it would be equally relevant to bear in mind the following statement of law from the very same decision :

"..... Sales tax law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type."

The court thereafter held that the restrictions upon the legislative power of the States provided under the statute are required to be construed strictly. Commodities other than the specified to be exempted cannot be introduced into the relevant provisions on the ground that they are derived from the primary commodities. The court relied upon its earlier judgment in Ganesh Trading Co., Karnal Vs. State of Haryana and Another, , wherein it had been held that paddy and rice were two different things. The court observed :

"..... the question for our decision is whether it could be said that when paddy was dehusked and rice produced, its identity remained. It was true that rice was produced out of paddy but it is not true to say that paddy continued as to be paddy even after dehusking. It had changed its identity. Rice is not known as paddy. It is a misnomer to call rice as paddy. They are two different things in ordinary parlance. Hence, quite clearly when paddy is dehusked and rice produced, there has been a change in the identity of the goods."

5. Reliance was also placed on State of Karnataka Vs. B. Raghurama Shetty and Others, wherein dealing with the question as to whether paddy included rice, it

was held :

"There is no merit in the submission made on behalf of the assesses that they had not consumed paddy when they produced rice from it be merely carrying out the process of dehusking at their mills. Consumption in the true economic sense does not mean only use of goods in the production of consumers' goods or final utilisation of consumers' goods by consumers involving activities like eating of food, drinking of beverages, wearing of clothes or using of an automobile by its owner for domestic purposes. A manufacturer also consumes commodities which are ordinarily called raw materials when he produces semi-finished goods which have to undergo further processes of production before they can be transformed into consumers' goods. At every such intermediate stage of production, some utility or value is added to goods which are used as raw materials and at every such stage the raw materials are consumed. Take the case of bread. It passes through the first stage of production when wheat is grown by the farmer, the second stage of production when wheat is converted into flour by the miller and the third stage of production when flour is utilised by the baker to manufacture bread out of it. The miller and the baker have consumed wheat and flour respectively in the course of their business. We have to understand the word "consumes" in section 6(i) of the Act in this economic sense..... At every stage of production, it is obvious there is consumption of goods even though at the end of it there may not be final consumption of goods but only production of goods with higher utility which may be used in further productive processes..... Applying the above test, it has to be held that the assesses had consumed the paddy purchased by them when they converted it into rice which is commercially a different commodity."

6. In Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others, it was concluded :

"..... it must be held that when wheat is consumed for producing flour or maida or suji, the commodities so obtained are different commodities from wheat. The wheat loses its identity. It gets consumed and in its place new goods/commodities emerge. The new goods so emerging have a higher utility than the commodity consumed. They are different goods commercially speaking."

7. Referring to Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, the apex Court held that the reliance of the High Courts on the aforesaid case was misplaced and that paddy and rice were two distinct items. It was found that in that case the court had considered the question as to whether the parched rice (atukulu) and puffed rice (musumalu) were "rice" within the meaning of entry 66(b) of the First Schedule to the Andhra Pradesh General Sales Tax Act or not. The court in that case held that the term "rice" was wide enough to include rice in its various forms whether edible or inedible. Rice in the form of grain was not edible and parched and puffed rice are edible. The entry "rice" was found to cover both forms of rice. The court also referred to its earlier judgment in Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer,

Kurnool, and found that the law laid down in that case was not applicable to the facts of the Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others, . The court then concluded :

"For the above reasons, we hold that flour, maida and suji derived from wheat are not "wheat" within the meaning of section 14(i)(iii) of the Central Sales Tax Act. Flour, maida and suji are different and distinct goods from wheat. In other words, flour, maida and suji are not declared goods."

The judgments of this Court and Patna High Court were set aside holding that their reliance upon Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, was misplaced and that wheat and flour were two distinct products.

8. The facts of the instant case cannot be held to be different than those considered by the apex Court in Rajasthan Roller Flour Mills case [1993] 91 STC 408 RAJ. Even if it was found that there was some ambiguity or doubt regarding the interpretation for the grant of exemption to the writ petitioners with respect to ragi and ragi flour, the interpretation favourable to the Revenue should have been made the basis for deciding the writ petitions. The apex Court in Novopan India Ltd. v. Collector of Central Excise and Customs AIR 1993 SCW 3976 held :

"The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others, and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others, that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

9. The learned single Judge was also not justified to press into service the principle of contemporaneous expositio for the purposes of finding out the intention of the Legislature regarding grant of exemption in case of ragi flour on the basis of the Notification No. FD 43 CSL 94(III) dated March 30, 1994. The principle of contemporaneous expositio in its application is restricted to ancient legislation and not the fresh orders passed subsequent to the impugned statute

or rule as was held by the Supreme Court in *Oswal Agro Mills Ltd. v. Collector of Central Excise* AIR 1993 SCW 1782, the Court held :

"..... the doctrine of contemporanea expositio is also being invoked to cull out the intendment by removing ambiguity in its understanding of the statute by the executive. This Court (sic) in a latest case 1991 (34) ECR 360 para 15, cited all the decisions up-to-date and applied the doctrine to the understanding by the revenue of the provisions in Income Tax Act. In *Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd.*, , this Court held that this principle can be invoked, though the same will not always be decisive on the question of construction. But the contemporaneous construction placed by administrative or executive officers charged with executing the statute, although not controlling, is nevertheless entitled to considerable weight as highly persuasive. We may also add that if the interpretation is erroneous, court would without hesitation refuse to follow such construction. This Court also equally expressed the view that its application was in restricted sense to ancient legislation in *J.K. Cotton Spinning and Weaving Mills Ltd. and Anr Vs. Union of India (UOI) and Ors*, and in *Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors*, . In *State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others*, , this Court doubted the application of the doctrine of contemporanea expositio as given to the construction or its applicability to a recent statute that too in the first few years of its enforcement."

10. In view of what we have noticed hereinabove it is evident that the learned single judge was not right in relying upon the judgment in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, and ignoring the verdict in *Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others*, . The facts of the present case were identical as were noticed in *Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others*, . We are satisfied that the law laid down in *Rajasthan Roller Flour Mills case* [1993] 91 SC 408 was fully applicable in the case. As the judgment of learned single Judge is based on wrong assumptions of the provisions of law, the same is liable to be set aside.

11. Accordingly the appeals are allowed by setting aside the judgment of learned single judge. The writ petitions filed by the respondents shall stand dismissed with costs.