**(1995) 06 GAU CK 0017**

**In the Gauhati High Court**

**Case No :** Civil Rule No. 352 of 1988

Chiranjilal Agarwalla APPELLANT

Vs

State of Assam RESPONDENT

**Date of Decision :** 16-06-1995

**Acts Referred:**

**Citation :** (1995) 2 GLJ 416 : (1995) 3 GLT 277

**Hon'ble Judges :** J.N.Sarma, J

**Bench :** Single Bench

**Advocate :** N.Dutta, Kamal Agarwal , J.P.Bhattacharjee, D.N.Choudhary, Advocates appearing for Parties

## Judgement

1. This application has been filed to quash the order dated 20.6.86 passed by the Assistant Commissioner of Taxes, Nagaon Zone and the consequent assessment orders dated 24.7.86, for the periods endings 1.3.84,30.9.84,31.3.85 and30.9.85 passed by the Superintendent of Taxes with a further prayer to direct the respondents from giving effect to the orders dated 20.6.86 and the impugned demand notice dated 25.7.86. The order dated 20.6.86 is Annexure H to the writ application and the same is quoted below :

?Govt of Assam

Office of the Assistant Commissioner of Taxes, Nagaon Zone.

ORDER Dated Nagaon the 20th June, 1986.

On scrutiny of the case records of M/s National Industries, Jagiroad by the Superintendent of Taxes, Morigaon in course of my inspection I observed that there was prima facie evidence to show that the dealer was under assessed for six monthly period ending 30.9.84 under the Assam Finance (Sales Tax) Act, 1956. Hence I proceed to revise assessments completed by the Superintendent of Taxes under section 20 (1) of the Assam Finance (Sales Tax) Act, 1956.

The dealer was served with a notice to give him a reasonable opportunity to show cause as to why his assessment should not be revised. Shri Chiranjilal Agarwalla, a partner accordingly complied and along with his submission he produced his books of accounts for examination.

I examined the whole case. The dealer is an owner of a saw mill wherein he used to saw logs purchased from different sources locally and the resultant sawn timbers were sold by him for which he was liable to pay tax. He could not claim or be allowed exemption from payment of tax for sale of sawn timber simply because he paid taxes at the time purchase of logs since log and sawn timber are two different and separate items. So the exemption of sale of locally purchased goods did not arise in the present case. Had logs been sold as logs or sawn timbers sold as sawn timbers, then the question of exemption would have come. But there was no such case as revealed by the books of accounts of the dealer. So the entire turnover of timber would come under the purview of tax.

The dealer also used to sell AC Sheets which were purchased locally (from Guwahati). So the turnover of AC Sheets was exempted from tax.

The final working of (taxable) turnover would be as follows :

Total Sales Rs.4,02,733/

Less sale of locally purchased goods Rs. 2,03,734/

Less under section 2 (9) (ii) Rs. 13,019/

Turnover Rs. 1,85,980/

The Superintendent of Taxes is directed to draw up fresh assessment order on the above basis and issue fresh demand notice to the dealer. He is also directed to recast GTO under the Assam Sales Tax Act, 1947 accordingly.?

2. Annexure G is for the period ending 31.3.84, Annexure H is for the period ending 30.9.84, Annexure I is for the period ending 31.3.85 and Annexure J is for the period ending 30.9.85. The amounts are different but the contents are almost same. Annexure M is the notice of demand under section 31 of the Assam Finance (Sales Tax) Act, 1956 (hereinafter called the Act) and that is quoted below :

?To,

M/s National Industries, Jagiroad.

Sir,

1. You are hereby informed that for the return period ending on 31.3.85 the sum of Rs. 13,242.60 as specified overleaf, has been determined as payable by you on account of tax interest and penalty.

2. You required to pay the amount on or before the 20.8.86.

SubTreasury Officer

 

State Bank of India, UBI, Motigaon.

Reserve Bank of India.

3. If you do not pay the amount of tax on or before the date specified above, you shall be liable to pay further interest with effect from the date commencing after the expiry of the date aforesaid in accordance with the provisions of section 22 (A) (i) read with Rules 32A and 32B.

4. You are further informed that unless the total amount due including the penalty and the interest is paid by the above date further penalty will be imposed on you and a certificate will be forwarded to the Collector for recovery of the whole amount as arrear land revenue.

5. The above demand may be paid by Bank Draft or Cheques with the Superintendent of Taxes as payee.?

3. Annexure N is the assessment order of the same date. The petitioner is a registered dealer under the Act. The business of the firm consists of manufacturing/ processing timber, wooden furniture and AC Sheets. The petitioner firm has a saw mill at Jagiroad. Under the Schedule to the Act taxable goods included ''Timber other then the firewood''. Under the Item No.55 of the said Schedule, the tax was payable @ 7 paise in the rupee. At the relevant time all firms of timber including logs were taxable only once @ 7 paise per rupee. The petitioner firm purchases logs sold by the Forest Department and pay tax @ 7% as levied under the Act and the payment is made by challans as will be evident from Annexure B to the writ application. Under the Rules, Assam Finance (Sales Tax) Rules, 1956 (hereinafter called the Rules), the petitioner had to furnish the returns of turnover of taxable goods for different periods of the year under the Rule A (8), Rule 16 and Rule 17. Accordingly, on such return, the petitioner firm paid the taxes by Annexure C, D, E and F to the writ application. Thereafter, the petitioner firm received notices under section 20 (1) of the principal Act by which the Assistant Collector of Taxes, Nagaon Zone, expressed his intention to suo motu revise the aforesaid assessment for the periods ending 31.3.84,30.9.84,31.3.85 and 30.9.85. It was stated in the said notice that the earlier order of assessment appeared to be prejudicial to the interest of the Govt Revenue. By order dated 20.6.86 (identical order for all the periods as quoted above) in purported exercise of power under section 20 directed the Superintendent of Taxes to draw up fresh assessment ordersand to issue fresh demand notice on the petitioners firm. The reason for which this order was passed that the petitioner''s firm could not claim or be allowed exemption for payment of taxes for sale of sawn timber simply because the firm paid taxes at the time of purchase of logs. The respondent No. 3 came to the findings that the logs and sawn timber are two different/separate items and that the tax was payable on logs/sawn timber separately. On the basis of the aforesaid orders, the demand notices were issued by making fresh assessment by the Superintendent of Taxes, Marigaon. It is this order and demand notice which is challenged in this

 

writ application.

4. I have heared Shri DN Chowdhury learned Advocate for the petitioner and Dr. BP Todi, learned Advocate for the respondents. Shri Chowdhury submits as follows:

(i) The impugned orders of demand notice are most illegal, arbitrary, unfair, unreasonable, capricious and violative of the right of the petitioner.

(ii) Sawn timber is not a different article from logs as both are timber or wood only. Cutting of timbers into different sizes does not amount manufacture of a new item and the product continues to the timber covered by item No.55 of the Schedule to the unamended Act.

(iii) The impugned orders and the demand notices impose double taxation and ultra vires of the provisions of the principal Act which lays down under section 3 (2) that the tax under section 3(1) shall be payable at the stage of first sale of taxable goods in Assam.

(iv) The finding that log and sawn timber are two different and separate items is illegal perverse, arbitrary and capricious.

(v) This will be further clear that in 1987, the Act was amended and logs and sawn timbers were sought to be treated as two separate taxable goods.

(vi) In the case of other saw mills, they have not been subjected to this sort of tax but the petitioner firm has been treated differently and as such there is discrimination.

5. At the time of issuance of Rule, an order of stay was passed and accordingly, the petitioner has not paid the tax Mr. Chowdhury to substantiate that the conversion of logs into sawn timber is not a new product has relied on the following two decisions :

(i) AIR 1988 SC 1164 (Collector of Central Excise vs. M/s Kutty Flush Doors and Furniture Co. (P) Ltd).

6. The case before the Supreme Court in that case was that the timber logs were only sawn in different sizes and these did not tantamount to any manufacture. However, the Assistant Collector, Madras, held that the conversion of timber logs into sawn timber satisfies the conditions of manufacture in so far the conversion of timber logs into sawn timber involves transformation whereby a new and different article with the distinct name, character or use emerges which is different from timber logs. The firm filed an appeal before the Collector of Appeal who concurred with the Assistant Collector unholding the duty. There was an appeal before the CEGAT. The Tribunal relying on two judgments came to the conclusion that no new product emerges by sawing of timber into several sizes. In the premises the Tribunal allowed the appeal and it was this decision which was challenged before the Supreme Court. The Supreme Court in AIR 1988 SC 1164 (supra) in paragraph 5 of the judgment laid down the law as follows:

 

?It may be worth while to note that ''manufacture'' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more was necessary and there must be transformation; a new and different article must emerge having a distinct name, character or use. See Union of India vs. Delhi Cloth Mills, (supra) at 596 (of Suppl, SCR): (at 795 of AIR 1973 SC 791). Having regard to the facts found in this case by the Tribunal, which ultimately is the final fact finding authority, we are of the opinion that regard being had to the principles for determining the questions which were correctly applied in the decision of the Tribunal, in the facts of this case, the conclusion of the Tribunal is unassailable.?

7. The next case relied by Mr. Chowdhury is AIR 1985 SC 1293 (State of Orissa & others vs. Titaghur Paper Mills Company Limited & others). That was a case under the Orissa Sales Tax Act. In paragraphs 90,91,92 and 127, the Supreme Court laid down the law as follows :

?90. On turning to various dictionaries, we find that the dictionary meaning largely coincide with the statutory meaning of the word ''timber''. While discussing the question of the subject matter of the impugned provisions we have set out the definition of the word ''timber'' contained in the Webster Collegiate Dictionary occurring in the passage from the judgment of Vivian Bose, J. in Smti Shantabai vs. State of Bombay (AIR 1958 SC 532). The relevant meanings of the ''timber'' given in the Shorter Oxford Dictionary, Third Edition, are ?building material generally; wood used for the building of houses, ships, etc or for the use of the carpenter, joiner or other artixan.? This definition also states that the word is ?applied to the wood of growing trees capable of being used for structural purposes; hence collectively to the trees themselves.? Amongst the meaning given in the Concise Oxford Dictionary, Sixth Edition, are ?wood prepared for building, carpentry, etc; trees suitable for this; woods, forests, pieces of wood, beam?. One of the meaning of the word ''timber'' given in Webster''s Third New International Dictionary, is ?wood used for or suitable for building (as a house or boat) or for carpentry or joiner?. A ''log'' according to the Shorter Oxford English Dictionary means ?a bulky mass of wood; now usually an unhewn portion of a felled tree, or a length cut off for firewood? and according to the Concise Oxford Dictionary it means ?unhewn piece of felled tree, or similar rough mass of wood especially cut for firewood ? Thus, logs will be nothing more than wood cut up or sawn and would be timber.

91. A question which remains is whether beams, rafters and planks would also be logs or timber. The Shorter Oxford English Dictionary defines ''beam'' inter alia and ?a large piece of squared timber long in proposition to its breadth and thickness? an the Concise Oxford Dictionary defines it as a ?long piece of squared timber supported at both ends used in houses, ships etc? and according to Webster''s Third New International Dictionary, it means ?a long piece of heavy often squared timber suitable for use in house construction?. A beam is thus timber sawn in a particular way. ''Rafter'' as shown by the Shorter Oxford English

 

Dictionary is noting but ?one of the beams which gives shape and form to a roof, and bear the outer covering of slates, tiles, thatch, etc.? The Concise Oxford Dictionary and Webster''s New International Dictionary defines ''rafter'' in very much the same way; the first defines it as ?one of the sloping beams forming firework of a roof and the second as ?one of the often sloping beams that support a roof.? Rafter would also, therefore, be timber or log put to a particular use. A ''plank'' is defined in Shorter Oxford English Dictionary as ?a long flat piece of smoother timber, thicker than a board, specially a length of timber sawn to a thickness of from two to six inches a width of nine inches or more and eight feet upwards in length.? According to the Concise Oxford Dictionary it is a ?long wide piece of timber, a few inches thick? and according to Webster''s Third New International Dictionary, it is ?a heavy thick board that in technical specifications usually had a thickness of 2 to 4 inches and a width of at least 8 inches.? The exact thickness and width of a plank may be of importance in technical specifications but in ordinary parlance planks would be flattened and smoothed timber. Such flatness and smoothness can only be achieved by using a saw and other implements required for that purpose. The same would be the case when timber is wounded or shaped. The statutory definitions of timber extracted above read along with the meaning of the word ''timber'' given in different dictionaries would show that the conclusion reached by the Madhya Pradesh High Court in Mohanlal Vishram vs. Commissioner of Sales Tax, Madhya Pradesh, Indore (1969 (24) STC 101) and by the Andhra Pradesh High Court in G.Ramaswamy vs. State of Andhra Pradesh (1973 (32) STC 309) is more germane to our purpose than the two Orissa cases neither of which has referred to the statutory definition of the word ''timber'' in the relevant statutes. The observation of the Orissa High Court in the case of Krupasindhu Sahu & Sons vs. State of Orissa (1975 Tax LR1632) that timber in common parlance in Orissa takes within its ambit only log and big sizes logs of wood ordinarily used in house construction as beams and pillars but not when timber is converted into planks, rafters and other wood products like tables and chairs cannot, therefore, be said to be correct so far as planks and rafter are concerned. In our opinion, planks and rafter would also be timber.

92. The result is that sales of dressed or sized logs by the respondent firm having already been assessed to sales tax, the sales to the first respondent firm of timber by the State Government from which logs were made by the respondent firm cannot be made liable to sales tax as it would amount to levying tax at two points in the same series of sales by successive dealers assuming without deciding that the retrospectively substituted definition of ''dealer'' in clause (c) section 2 of Orissa Sales Tax Act, 1947 is valid.

Paragraph 127 (subpara 10 and 11)

10. ?Timber and sized or dressed logs are one and the same commercial commodity. Beams, rafter and planks would also be timber.?

11. ?As the sales of dressed or sized logs by the respondent firm have already

 

been assessed to sales tax, the sales to the first respondent firm of timber by the State Government from which logs were made by the respondent firm cannot be made liable to sales tax as it would amount to levying tax at two points in the same series of sales by successive dealers, assuming without deciding that the retrospectively definition of dealer'' in clause (c) of section 2 of the Orissa Sales Tax Act, 1947.?

8. This being the settled position of law, I hold that the timber, logs and sawn timbers are same commodity and the finding in the impugned order dated 20.6.86 that they (logs and sawn timber) are different and separate items cannot be the correct finding and accordingly, the same is quashed. If that is quashed, the demand notice issued in terms of this order shall also stand quashed.

9. Accordingly, this writ application is allowed and the Annexure G, H, I, J, K, L, M and N to the writ application shall stand quashed. I leave the parties to bear their own costs.

 