

(1973) 06 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 683 of 1969

Chiranjital Anand

APPELLANT

Vs

The State of Assam and Another

RESPONDENT

Date of Decision : 25-06-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1975) 35 STC 442

Hon'ble Judges : P.K. Goswami, C.J.; R.S. Bindra, J

Bench : Division Bench

Advocate : K.C. Bezbarua and R.P. Agarwalla, for the Appellant; J.C. Medhi, the Advocate-General and P.C. Kataki, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Chiranjit Lal Anand Vs. State of Assam and Another, AIR 1985 SC 1387 : (1985) 2 SCALE 113 : (1985) SCC 392 Supp : (1985) 2 SCR 385 Supp : (1985) 60 STC 89 : (1985) 17 UJ 956

P.K. Goswami, C.J.—This application under Article 226 of the Constitution of India is directed against an order of assessment of 20th March, 1969, of the Superintendent of Taxes, Jorhat, made under the Assam Sales Tax Act, 1947, briefly "the Act", for the period ending 30th September, 1965. There is also a prayer to quash the notice of demand of 23rd May, 1969, in pursuance of the assessment order.

2. The facts appearing from the petition are as follows : The petitioner has been carrying on supply business of various items of ration to the Central Reserve Police units within the State of Assam for a number of years. The petitioner in response to a tender notice issued by the Superintendent of Police, Jorhat, submitted a tender to supply various items of ration in Army Scale including "meat on hoof". "Meat on hoof" is described in the tender notice as follows :

5(d) Contractor shall be bound to supply different varieties of meat on hoof as

per following ratio of the monthly requirement :

Khasi 50 per cent He-goat 30 per cent Sheep (ram) 20 per cent

The khasi and ram to be supplied for the purpose of meat must not be over 5 years or below two years of age and he-goat must not be over one year or below 6 months of age.

The tender notice also indicated that all contracts will be on schedule rates per 100 kg.net. The tender of the petitioner was accepted and an agreement was made on 1st April, 1965, between the petitioner and the Superintendent of Police (annexure B). The petitioner avers in paragraph 10 of the petition "that meat on hoof is a peculiar abbreviation used mainly by the military which is nothing but a live goat. It is a device to satisfy certain religious sentiments of the people in the military that the aforesaid phraseology has been used". He further avers in paragraph 11 "that the sole purpose for which the meat on hoof is supplied is for meat and that is the consideration for which the price is fixed". The petitioner refers to a notification of 11th October, 1967, in the Assam Gazette (annexure C) with regard to the sale of meat for the Assam Rifles, which is for dressed meat, although in actual practice live animals are being supplied for the purpose of meat. The petitioner further avers that from the formula in the notification meat on hoof is nothing but meat. Although there was at first unwillingness on the part of the petitioner to apply for registration, he was compulsorily registered by the Superintendent under the Act and that is not in question before us. The petitioner in response to the notice of the Superintendent did not submit any return. That led to the present assessment order u/s 19 of the Act. Hence this writ application.

3. Mr. Bezbarua, the learned counsel for the petitioner, firstly submits that "meat" is exempted from sales tax as appearing in serial No. 11 of Schedule III to the Act and since "meat on hoof" is nothing but "meat", the assessment in this case is unauthorised and invalid. He further submits that since the parties understood the supply of "meat on hoof" to be for the purpose of "meat" and the contract was on schedule rate of 100 kg. net weight basis, the sale in this case was sale of "meat" which is exempted under Schedule III. Secondly, he submits that "goods" as defined in Section 2(4) of the Act does not include "meat on hoof", which is nothing but "live animals" and, therefore, the provisions of the said Act are not attracted to sale of animals. Thirdly and lastly, he submits that under entry No. 48 in List II of the Seventh Schedule to the Government of India Act, 1935, under which the Act was passed, the tax was on "sale of goods and on advertisements" and not on "animals". Hence, sales tax cannot be levied in the present case of sale of animals.

4. In order to dispose of the first submission, we may read serial No. 11 of Schedule III to the Act, which is being relied upon :

11. Fish, ghee (but not vegetable Except when sold in sealed ghee), dahi, butter, cream, casein, containers. meat and vegetables (but not onion, garlic,

spices and condiments).

It is clear that the above item 11 lists the particular goods exempted u/s 7 of the Act and the conditions and exceptions subject to which exemptions are allowed appear to be "except when sold in sealed containers". The exception specified in the item also clearly points to "meat" being "dressed meat" and not "meat on hoof", which is really the sale of the animal. It is also clear that the contract was for supply of "meat on hoof" which, as admitted by the petitioner, is in the shape of a live animal. "Meat" in serial No. 11 of Schedule III to the Act cannot be equated with "meat on hoof". It is not possible to interpret the exempted item in the schedule with reference to what the parties understood at the time of the contract. Apart from that, we are unable to construe the particular item in the tender and the agreement between the parties as capable of the meaning suggested by the learned counsel. We are also unable to see how the notification of October, 1967 (annexure C), referring to the sale of meat for the Assam Rifles is relevant in the present case governed by a completely separate agreement between the parties executed one year earlier. Besides, the item in the schedule has to be interpreted on its terms under the provisions of the Act and not with reference to private agreements of parties, Mr. Bezbarua drew our attention to a decision of the Supreme Court reported in Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, and relied upon the following passage to support his submission :

The result emerging from these decisions is that while construing the word "coal" in entry 1 of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute is being one levying a tax on goods must, in the absence of a technical term or term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance.

This decision would not assist the learned counsel as "meat" in common parlance will not be understood by people in general as "meat on hoof". Besides, the dictionary meaning of "meat" also is "flesh of animals" as distinguished from a live animal. The first submission of the learned counsel, therefore, is devoid of substance.

5. With regard to the second submission, which is really an alternative one, we may read the definition of "goods" in Section 2(4) of the Act.

"Goods" means all kinds of movable property other than newspapers, actionable claims, stocks, shares or securities, and includes all materials, articles and commodities, whether or not to be used for the purposes referred to in sub-clauses (a) and (b) of Clause (2).

It is very strenuously submitted that "goods" within the meaning of the above definition cannot include live animals. "Goods" can only refer, according to the learned counsel, to inanimate objects. It is clear from the above definition that

"goods" includes all kinds of movable property excepting certain things specified therein. "Movable property" is not defined in the Act. But, it is defined in the Assam General Clauses Act, briefly "the said Act", which will apply, unless there is anything repugnant in the subject or context. "Movable property" is defined u/s 4(40) of the said Act as follows :

"Movable property" shall mean property of every description except immovable property.

Immovable property" is also defined under the said Act :

"Immovable property" shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth." [section 4(30).]

It is, therefore, clear that "movable property" referred to in Section 2(4) is property of every description except immovable property. The learned counsel could not show anything repugnant in the subject or context in the Act to prevent calling in aid of the definition in the General Clauses Act. It is clear that an animal is also movable property and by no stretch of imagination can it be brought under "immovable property". That being the position, "goods", which means all kinds of movable property, will include animals. Sale of animals is therefore sale of goods under the Act. The second submission of the learned counsel also fails.

6. We have already held in disposing of the second submission that "goods" u/s 2(4) of the Act includes "animals". The third submission of the learned counsel is also, therefore, of no avail.

7. In the result, the application fails and is dismissed. We will, however, make no order as to costs. The rule is discharged. The stay order stands vacated.

R.S. Bindra, J.

8. I agree.