
(1971) 02 AHC CK 0034
In the Allahabad High Court
Case No : Sales Tax Reference No. 124 of 1970

Commissioner, Sales Tax

APPELLANT

Vs

B.M. Wood Works : No. 1

RESPONDENT

Date of Decision : 19-02-1971

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(3)

Citation : (1973) 32 STC 66

Hon'ble Judges : S.N. Dwivedi, J; Gur Sharan Lal, J

Bench : Division Bench

Advocate : S.N. Agarwal and S.K. Agarwal, for the Respondent

Final Decision : Disposed Of

Judgement

Gur Sharan Lal, J.—This is a reference u/s 11(3) of the U.P. Sales Tax Act made by the Additional Revising Authority, Sales Tax, Allahabad, on the application of the Sales Tax Commissioner, U.P. The opposite party, M/s B.M. Wood Works of Allahabad was assessed by the Sales Tax Officer to sales tax for the assessment year 1964-65 on a turnover of Rs. 1,11,600.65 fetched by the sale of chir (pine) packing boxes. The rate applied was 3 per cent. treating the packing boxes as products of timber. In the appeal filed by the said opposite party its contention was that the packing boxes could not be regarded as products of timber and should have been assessed at the rate of 2 per cent. only applicable to unclassified items. The contention was not accepted and the appeal was dismissed. On a revision being filed by the said opposite party, the revising authority aforesaid held that the packing boxes could not be regarded as products of timber and he, therefore, allowed the revision and reduced the tax by applying the rate of 2 per cent. The applicant, namely, the Commissioner, Sales Tax, U.P., thereupon applied for reference being made to this court. The question referred by the Additional Revising Authority is :

Whether boxes made of chir are timber products as contemplated by Notification No. ST-3393/X-1012-1962 dated 1st July, 1962 as amended by Notification No.

ST-6879/X-1012-1962 dated 19th January, 1963?

2. It may be noted that by the notification of 1st July, 1962, referred to" in the question the item notified for levy of sales tax at 3 per cent. was timber, bamboo and their products". After the amendment by the notification of 19th January, 1963, referred to in the question, this item came to have the following form:

Timber (that is to say, the wood of sheesham, teak, sal, sakhu, haldu, tun, mango, jamun, nim, goolar, seeras, deodar, chir (pine) and mahua trees, whether growing or cut), bamboo and their products.

3. The amendment is, firstly, the effect of making it very clear that timber means wood, be it of a tree cut or a tree still standing and it cannot mean a growing tree as such. The definition of goods in Section 2, Clause (d), of the U.P. Sales Tax Act within the scope of which the definition of timber in the notification must come also makes this clear. Under the definition, goods include growing crops, grass, trees attached to or fastened to anything permanently attached to the earth, but which, under the contract of sale, are agreed to be severed. The sale of a tree without an agreement for its severing will not be a sale of "goods". The sale of wood of a tree agreed to be severed will be sale of "goods". So the product of timber contemplated in the notification must be the product of wood and not of a growing tree as such. Thus leaves, fruits and flowers of a tree will not come within the purview of products of timber though bark will be a product of timber. The second thing which the amendment has done is to confine timber to the wood of certain classes of trees including chir (pine), which means that packing boxes of chir will be covered by the notification provided they can be regarded as products of wood of chir or pine trees.

4. The material question for consideration, therefore, is whether packing boxes made by assembling planks of chir wood with the help of nails can be regarded as products of chir wood. In its revisional Order the Additional Revising Authority observed as follows, in holding that packing boxes cannot be regarded as products of timber :

The word "products" had not been defined in the law. According to the Chambers's Twentieth Century Dictionary, it means a thing produced; a result; a work; offspring; a quantity got by multiplying. These meanings suggest a direct connection between the thing and its product. The thing must be productive before it can have a product. In other words, something which naturally and directly grows out of another thing can alone be called a product of that other thing. Timber has been defined in the notification itself as the wood, growing or cut, of certain specified trees. Therefore, a product of timber must relate to the productivity of timber and must also be a thing growing naturally and directly out of the wood of those specified trees. The boxes in question did not grow directly or naturally out of timber. They were made of timber by application of artificial means.

5. The learned revising authority, it would appear, was guided principally by the

meaning of "offspring" and confined the import of the term "product" to only something growing naturally and directly out of timber, omitting to consider the other meanings, namely, "a result", "a work". In the Shorter Oxford Dictionary, the meanings given to "product", relevant to the case under consideration, are : "(1) a thing produced by nature or a natural process; (2) that which is produced by any action, operation or work; (3) a production; (4) the result; and (5) that which results from the operation of a cause". It will, therefore, appear that the meaning of "product" is not confined to something produced by nature or a natural process and unless there is something in the subject or context warranting a restriction of the meaning of "product" to something produced by nature or a natural process, there will be no justification for not regarding a thing produced out of wood by any action, operation or work (sic), In that case packing boxes which are nothing but planks of chir wood assembled together in a particular form with the help of nails will obviously be products of chir wood, that is, timber.

6. The learned counsel for the opposite party has contended that where two interpretations of a provision in the taxing statute are possible, the one favouring the assessee should be accepted. In this connection, he has relied upon *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha, and C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another*, . The position, however, here is not that of two alternative interpretations but whether the meaning of the word "product" should be cut down and confined to something produced by nature or a natural process. In this connection the decision in the *C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another*, really goes against the opposite party. While laying down that in interpreting a fiscal statute, the court cannot proceed to make good deficiencies, if there be any and the court must interpret the statute as it stands and in case of doubt in a manner favourable to the taxpayer, the Supreme Court proceeded to observe that where, however, by the use of words capable of comprehensive import, provision is made for imposing liability for penalty upon taxpayers guilty of fraud, gross negligence or contumacious conduct, an assumption that the words were used in a restricted sense so as to defeat the avowed object of the Legislature qua a certain class will not be lightly made. In the instant case, there is not only nothing in the notification or elsewhere to indicate that the words "products of timber" were intended to carry only the meaning of something produced from wood by nature or a natural process but, on the other hand, the restricted meaning would appear to virtually nullify the levy of sales tax on timber products at a higher rate as compared to that on unclassified goods. For it is difficult to imagine of any produce from wood by nature or a natural process other than bark. Learned counsel for the opposite party could only mention planks by way of illustration. But planks cannot be regarded as produce by nature or a natural process. They came into being by cutting and sawing to desired thickness and measurements. It will thus appear

that the word "products" was intended to be used in its full and comprehensive meaning and not in the narrow and restricted meaning of something produced by nature or a natural process.

7. In *Avadh Sugar Mills Ltd. v. Sales Tax Officer* [1968] 21 S.T.C. 295 decided by a Division Bench of this Court of which one of us was a member, it was laid down that ordinarily, the dictionary meaning of a word is not helpful in determining its meaning in a taxing provision, such as the Sales Tax Act and a word used in such a taxing provision should be assigned the meaning which it has received in the commercial circles. On that principle, groundnut was treated as an oil-seed for the purposes of taxation though the contention of the assessee was that groundnut was a species of beans and not a seed. In the *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, , the Supreme Court held that it is not the scientific or dictionary meaning which is to be taken into consideration and interpreting a word in a fiscal statute it held the word "coal" to include charcoal because in popular meaning charcoal is regarded as coal. It is difficult to say that if a packing box of chir wood is referred to as a product of chir wood that would be obnoxious to the popular meaning or notion of "product".

8. For the above reasons, I am of the opinion that boxes made of chir are products of timber and the question referred is, therefore, answered in the affirmative.

S.N. Dwivedi, J.

9. I have read the opinion of my brother. During arguments my mind had wavered, but the notification dated 31st July, 1967, which I have now discovered, clinches the matter against the assessee and dissolves my doubts. The July 31 notification is No. ST-4126/X-950(12)-1967. It amends the two notifications mentioned in the question referred to| this court. The amendment reads :

For the entry against serial number 3 of the aforesaid notification, the following shall be substituted:

3(a) Bamboo and its products other than furniture;

(b) Products of timber other than furniture.

10. This amendment unambiguously shows that the two notifications mentioned in the question referred to us were intended by the Rule-making authority to include even furniture in the word "products". The July 31 notification now excludes furniture from the ambit of the word "products". It will necessarily follow that other things made of timber would be included in the word "products". So I agree with my brother that the chir packing boxes are covered by the word "products".

By the Court

11. We answer the question referred to us in the affirmative. The Commissioner

shall get costs. We assess the counsel's fee at Rs. 100.