

(1972) 10 MAD CK 0029

In the Madras High Court

Case No : Tax Case No. 82 of 1968 (Revision No. 62 of 1968)

D. Damodara Rao

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 23-10-1972

Acts Referred:

Citation : (1973) 32 STC 255

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : C. Venkataraman, for the Appellant; K. Venkataswami, First Government Pleader (Tax), for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—The petitioner in this case was assessed under the Madras General Sales Tax Act on the sales of charcoal at 2 per cent for the assessment year 1964-65. The matter was taken in appeal to the Tribunal and before the Tribunal it was contended that all the sales of charcoal by the petitioner are second sales and that, therefore, they are not liable to be taxed at all. According to the petitioner "charcoal" will be included in the word "coal" referred to in item 1 of Schedule II to the Madras General Sales Tax Act. The petitioner relied on a decision of the Madhya Pradesh High Court in Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh [1966] 17 S.T.C. 527 as also a decision of the Supreme Court in Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh [1967] 19 S.T.C. 469 in support of his case that charcoal will be included in the term "coal". The Tribunal accepted the position that if charcoal comes within the word "coal" then the assessee's sales will be second sales and cannot be brought to charge under the Madras General Sales Tax Act. But, the Tribunal has taken the view that charcoal cannot be brought under the term "coal" having regard to certain special features in the Madras General Sales Tax Act. According to the Tribunal, the Madras Legislature has specifically referred to and excluded firewood and charcoal from item 26 of

Schedule I and such exclusion shows that those two Articles are to be brought within the multi-point system and it is on this basis the Tribunal has distinguished the decisions referred to above. According to the Tribunal in common parlance and in the commercial field, the word "charcoal" has an inferior value and is a totally different commodity from coal and that though coal and charcoal are used as fuel, the two commodities are entirely different.

2. We are, however, not inclined to accept the view taken by the Tribunal. In our opinion, the decision of the Supreme Court in *Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh* [1967] 19 S.T.C. 469 squarely covers the facts in this case. The Supreme Court pointed out in the above decision that the word "coal" occurring in a fiscal statute has to be understood in its popular and commercial sense and that the word "coal" has to be given a meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. We are not able to see any difference between the facts in the case before the Supreme Court and the facts in the present case before us.

3. It is also significant to note that item 26 of Schedule I, on the basis of which the Tribunal has distinguished the Supreme Court case, has been deleted by the Madras Act 7 of 1964 with effect from 1st April, 1964. It is, therefore, not possible to distinguish the decision of the Supreme Court on the ground that the Legislature's intention appears to be different so far as the Madras general sales tax is concerned.

4. This tax case, therefore, is allowed and the order of the Tribunal so far as this turnover is concerned is set aside. There will be no order as to costs.