(1978) 02 MAD CK 0039

In the Madras High Court

Case No : Tax Case No. 332 of 1975 (Revision No. 50 of 1975)

Deputy Commissioner (C.T.), Coimbatore Division — APPELLANT

Vs

Sree Shanmuga Estate — RESPONDENT

Date of Decision : 13-02-1978

Acts Referred:

Citation : (1979) 43 STC 226

Hon'ble Judges : P. Govindan Nair, C.J;V. Ramaswami, J

Bench : Division Bench

Advocate : K. Venkataswami, the Additional Government Pleader, for the Appellant; R. Gangadaran, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—The assessees purchased a reserve forest for the purpose of coffee plantation. They cleared a portion of the said land and sold the timber and firewood obtained by felling and cutting the trees which were natural growths. They have also converted some firewood into charcoal. The assessing authority considered that the assessees should be treated as dealers in timber, firewood and charcoal and assessed a turnover of Rs. 3,00,396.16. The Appellate Assistant Commissioner, Pollachi, held that the timber that was cut by the assessees was sized and sold as sleepers, that this cutting of the trees was during the process of plantation and that the assessees should be deemed to be dealers in respect of the timber that was sized and sold, but they were not dealers in respect of firewood. He held-that the sales of firewood were not liable to tax on the ground that the turnover on those sales were realised during the process of plantation by cutting and removing spontaneous growth. The assessees preferred an appeal to the Tribunal as against that portion of the order holding that the sale of sized timber is liable to tax. The department preferred a petition for enhancement in respect of the turnover of Rs. 86,829.24 relating to the sale of firewood which was deleted from the taxable turnover by the Appellate Assistant Commissioner The Tribunal held that the deletion of the turnover relating to firewood was correct and dismissed the application for enhancement. The Tribunal also held that the cutting of timber to size and selling the same will not amount to carrying on business as the assessees were clearing the forest for the purpose of plantation and that, therefore, the turnover relating to the sale of timber was also not liable to tax. It is against this order, the department has filed this revision petition. In this revision petition, the department had not questioned the deletion of the turnover relating to firewood, but they have questioned only the finding of the Tribunal relating to the sized timber.

2. The learned Government Pleader contended that the timber got from the forest was not merely sized but was sold as sleepers and that, therefore, the assessees should be deemed to be dealers. In this connection, he referred to the order of the Appellate Assistant Commissioner wherein it is stated that the appellants after cutting the trees selected the timber suitable for sizing them for sale as sleepers, employed workmen and sized them and sold as timber sizes. The question for consideration is whether by the mere fact of sizing the timber cut from the trees in order to facilitate stacking and transport of the said timber would it be a commercial article different from the logs of trees that were cut in order to make the assessees dealers in such articles. An identical question came up for consideration in the Kerala High Court in the decision reported in Kuttirayin and Co. v. State of Kerala [1976] 38 S.T.C. 282, to which one of us was a party. In that case, after considering the decisions of other High Courts, it was held that if timber logs are cut into sizes to facilitate transport, stacking, etc., it cannot be said that commercial articles different from timber logs emerge and that only if the logs sized were then converted into sleepers, different commercial articles would emerge. In this case we have no evidence to show that the timber cut from trees after sizing was again cut into sleepers of different sizes and sold as such commercial articles. In the absence of such evidence, merely from the fact of sizing of the timber cut from the trees in order to facilitate easy transport would not make it a commercial article so as to make the assessee a dealer in that commercial article. We respectfully follow the decision of the Kerala High Court in the case referred above and hold that the timber sized would not be liable to sales tax under the Tamil Nadu General Sales Tax Act and we accordingly dismiss this tax revision case with costs. Counsel''s fee Rs. 250.