

(1991) 02 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No's. 1232 to 1248 and 5096 to 5099 of 1988

Farida Prime Tannery and others

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 11-02-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 14 (iii), 15, 3, 4

Citation : (1992) 84 STC 133

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; H.L. Dattu, Government Advocate, for the Respondent

Judgement

K. Shivashankar Bhat, J.—In these writ petitions, the main question is whether dressed hides and skins and raw hides and skins are different commodities, for the purposes of item (iii) of section 14 of the Central Sales Tax Act, 1956 (for short, "the Central Act"), and other provisions of the said Act.

2. The goods specified u/s 14 are declared as of special importance in inter-State trade or commerce, under various items.

3. Item (iii) reads :

"Hides and skins, whether in a raw or dressed state."

4. Under the Karnataka Sales Tax Act, 1957 ("the State Act", for short), section 5(4) read with its Fourth Schedule governs the declared goods. Item 3 of the Fourth Schedule is in identical phraseology as that of item (iii) of section 14 of the Central Act. u/s 15 of the Central Act, every State law in so far as it imposes a tax on the sale or purchase of declared goods, are subjected to certain restrictions; (a) tax payable in respect of the sale or purchase of such goods inside the State shall not exceed 4 per cent; (b) if such goods are again sold in the course of inter-State trade or commerce and tax is paid under the Central Act on the said transactions, the tax paid under the State law shall be reimbursed to

the person who sold the goods in the course of inter-State sale or purchase.

5. The Central Act is occasioned by the provisions of article 286 of the Constitution. Article 286, inter alia, governs the levy of a tax on sale or purchase of goods, in the course of import of the goods into or export of the goods out of the territory of India, as well as, the levy of a tax on an inter-State sale or purchase transaction.

6. Section 3 of the Central Act states as to when a sale or purchase of goods is said to take place in the course of inter-State trade or commerce.

7. Section 4 of the same Act states as to when a sale or purchase of goods is said to take place outside a State. Section 5 of this Act, declares as to when a sale or purchase of goods is said to take place in the course of import or export. It reads :

"5. When is a sale or purchase of goods said to take place in the course of import or export. - (1) A sale or purchase of goods shall be deemed to take place in the course of export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with the agreement or order for or in relation to such export."

8. By virtue of section 5(3), the benefit of article 286 and the Central Act are extended to two sales - (i) the sale or purchase which actually occasions the movement for export, etc., and (ii) a sale preceding the aforesaid sale, in case such prior sale or purchase took place after, and for the purpose of complying with the agreement or order for or in relation to such export.

9. Petitioners rely on section 5(3) as applicable to their purchase of raw hides and skins, which are then processed for preservation and become dressed hides and skins; according to them their purchase of raw hides and skins are after and for the purpose of complying with the agreement or order for or in relation to the export of dressed hides and skins. Petitioners contend that since the goods exported by them are the same as purchased by them (though the purchased goods were in a "raw" state), benefit of section 5(3) is applicable to them.

10. Since these goods are declared goods they are entitled to the benefit of

section 15 of the Central Act.

11. The State contends that "raw hides and skins" and "dressed hides and skins" are commercially different goods; they cannot be considered as the same; under item (iii), two sets of goods - one set called as "raw hides and skins" and another as "dressed hides and skins" are referred, just like item (iv) of section 14 which enumerates different goods made of "iron and steel" under the same entry.

12. While the petitioners rely on the decision of the Supreme Court in *State of Tamil Nadu Vs. Mahi Traders and Others*, (for convenience sake, referred to as *Mahi Traders'* case), the learned Government Advocate strongly relied on an earlier decision of the Supreme Court in *A. Hajee Abdul Shakoor and Company Vs. State of Madras*, (for short, referred to hereinafter as *Hajee's* case). Mr. Dattu, the learned Government Advocate, pointed out that the decision in *A. Hajee Abdul Shakoor and Company Vs. State of Madras*, , is by a larger Bench and presciently binding, in preference to the decision in *State of Tamil Nadu Vs. Mahi Traders and Others*, , by a Bench of two learned Judges.

13. To appreciate the ratio of *A. Hajee Abdul Shakoor and Company Vs. State of Madras*, , its peculiar facts are to be noted. The petitioners challenged the constitutional validity of section 2 of the Madras General Sales Tax (Special Provisions) Act, 1963, as violative of article 14 of the Constitution. The impugned provision was struck down by accepting the petitioner's contention based on the fact situation. The court also had to consider the validity of rule 16(1), since, earlier rule 16(2) had been struck down in the year 1963. The petitioner's contention was :

"Rule 16(1) became invalid when this Court held rule 16(2) invalid. Rule 16(1) has not been revived by the new Act. It follows that no tax on sale of raw hides and skins during the period 1955-57, is valid and that, therefore, the imposition of a tax under sub-section (1) of section 2 of the impugned Act (sic) imposes a tax on the imported hides and skins when sold in the State in the tanned condition while no tax is to be levied on the sale of the hides and skins purchased in the State in the raw condition, then tanned and sold."

14. This was considered thus :

"The next question is whether sub-rule (1) of rule 16 became invalid when this Court declared sub-rule (2) invalid in *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, . The contention for the petitioner is that it became invalid because hides and skins, whether tanned or untanned, constituted one commodity and that therefore tax cannot be levied on the sale of hides and skins in the raw condition when no tax is levied on the sale of hides and skins in the tanned condition. It is contended for the State that they are different commodities, and constitute two separate categories for purposes of taxation. We are inclined to the view that they form different categories."

15. It is in this context, the Supreme Court observed that hides and skins in the

untanned condition are different as articles of merchandise than tanned hides and skins and the State had competence to treat them differently. The court held at page 729 of STC; (1734 of AIR) :

"We therefore hold that raw hides and skins and dressed hides and skins constitute different commodities or merchandise and they could therefore be treated as different goods for the purposes of the Act."

16. The observation of the Supreme Court that raw hides and skins and tanned hides and skins are different commercial goods was in the context of State's competence to treat them differently. The Supreme Court was not concerned with the meaning attributable to the phraseology found in section 14(iii) of the Central Act.

17. In *State of Tamil Nadu Vs. Mahi Traders and Others*, , the Supreme Court had to consider entry (iii) of section 14 of the Central Act. Two types of articles were involved therein; (i) "splits" and (ii) coloured leather. Petitioners contended that they were all hides and skins; while the State contended that "splits" are scraps, i.e., cut pieces. Regarding coloured leather, the contention of the State was that it is a totally new and sophisticated product known as leather and can no longer be described as hides and skins. State's contentions were negated by the Madras High Court and the Supreme Court affirmed the decision of the High Court. While considering the case of coloured leather, the Supreme Court referred to the processes undergone by raw hides and skins before becoming dressed hides and skins, which are ready for use. While raw hides and skins cannot be preserved for long, the "dressed or finished" material could be preserved almost indefinitely. At page 234 of STC; (1171 of AIR) it is stated :

"The statutory expression refers to "hides and skins in a dressed state". The guidelines issued for identification of "finished" leather for exports by the Indian Standards Institution (ISI) refer to as many as 19 operations or processes undergone during manufacture of "finished leather" but "dressing" is not one of them."

18. At page 235 of STC (para 11 of AIR) it is stated that, -

"Dressing is a stage much later than tanning. Indeed, from the definitions quoted above, it will be seen that it is practically the same as giving finishing touches to the leather and making it suitable for the manufacture of particular types of goods."

19. The order of the Tribunal was quoted, in which following sentences are relevant here, found at pages 235 and 236 of STC; (1172 of AIR) :

"Leather from the stage of raw skins to the stage of dressed hides and skins may undergo various stages of changes. Under the classification for the purposes of section 14 of the Central Sales Tax Act, the various stages are irrelevant. For the purposes of the Tamil Nadu General Sales Tax Act, 1959, only two stages that are relevant are the skins at the raw stage and the skins in the form of dressed

hides and skins (or tanned hides and skins). The appellant purchases semi finished leather and undertakes further process of finishing with a view to colour the hides and skins for certain uses of skins. He says that he purchased the same tanned hides and skins and sold the tanned hides and skins. According to him the products purchased and sold are not different even under the classification by way of the dichotomy between raw and dressed hides and skins under the Tamil Nadu General Sales Tax Act. Under the Central Sales Tax Act the appellant is in a much better position, because all the hides and skins are brought together in one entry. Whether raw or dressed, the product falls under the same entry."

20. This view expressed in this extract was approved by the Supreme Court, immediately thereafter. Again in the subsequent para, the Court held :

"The entry in the CST Act, however, includes within its scope hides and skins until they are "dressed". This, as we have seen, represents the stage when they undergo the process of finishing and assume a form in which they can be readily utilised for manufacture of various commercial articles. In this view, it is hardly material that coloured leather may be a form of leather or may even be said to represent a different commercial commodity. The statutory entry is comprehensive enough to include the products emerging from hides and skins until the process of dressing or finishing is done."

21. From the above it is clear that the Supreme Court considered the various processes culminating in the dressing up of the hides and skins, did not change its essential quality as hides and skins. The processes applied are only to preserve the commodity called hides and skins, even if any one process results in a different commercial commodity. Dressing results in the article being ready for utilisation further. The concluding part of Tribunal's order extracted above, which was approved by the Supreme Court, is also indicative of the same result.

22. The decision of the Madras High Court (from which above appeal arose in Supreme Court) is reported in Mahi Traders Vs. State of Tamil Nadu, the High Court observed :

"For the purpose of the application of section 14(iii), it is not necessary to find out whether the resultant product is commercially different or not, and the only thing necessary to find out is whether it comes within the expression "hides and skins, whether in a raw or dressed state" or not. The expression used in section 14(iii) namely, "hides and skins, whether in a raw or dressed state", is of wide connotation and the latter part of the expression is not restrictive in anyway of the goods mentioned earlier, namely, hides and skins, but, on the other hand, is intended to cover all hides and skins in all states, whether dressed or raw. Simply because a dressed skin is split or the split skin is coloured, it does not cease to be "hides and skins", though in a dressed state and does not become a totally different commodity. Consequently, we are clearly of the opinion that leather splits and coloured skins will come within the scope of the expression "hides and skins, whether in a raw or dressed state" u/s 14(iii) of the Central

Sales Tax Act and would, therefore, be liable only to single point levy as provided for in section 15 of that Act and not to multi-point levy."

23. Nowhere this clear statement of the Madras High Court was overruled by the Supreme Court. In this view of the matter, we are of the view that entry (iii) in section 14 of the Central Act refers to a commodity called "hides and skins" and the subsequent words are only descriptive of the condition in which they may be found; the entry does not refer to two different kinds of goods at all; the "state" in which hides and skins may be found, according to the entry, does not matter, to call them as "hides and skins".

24. The learned Government Advocate cited a few more decisions to interpret the word "or" as indicative of different goods, and sought to apply the meaning of the phrase "that is to say", after a main heading in an entry, as enumerating different goods. It is unnecessary to refer to them, in view of the direct decision of the Supreme Court as to the interpretation of the very entry (iii) in section 14.

25. The earlier decision in A. Hajee Abdul Shakoor and Company Vs. State of Madras, was with reference to a State legislation. The subsequent decision has not referred to it, obviously because of the inapplicability of the earlier decision to section 14 of the Central Act. The sentence in State of Tamil Nadu Vs. Mahi Traders and Others, "in this view, it is hardly material that coloured leather may be a form of leather or may even be said to represent a different commercial commodity" brings out the distinction involved in the facts of the two cases.

26. Hence we declare that for the purposes of the Central Act raw hides and skins and dressed hides and skins are same goods, even though the latter is the result of the processes undergone by the former to enable their preservation and utilisation.

27. The provisions of the State Act should yield to the Central Act on the questions involved herein; on this there can be no two opinion. Therefore, it is unnecessary to go into the validity of the provisions of the State Act impugned in these petitions.

28. To what extent the petitioners are entitled to relief is a matter for the assessing authority to consider, in the light of this decision. The assessing authorities are to proceed with afresh and pass appropriate orders in the light of this decision.

29. In the result, for the reasons stated above these petitions are allowed and the penalty orders impugned herein are also set aside. Rule made absolute.

30. No order as to costs.

31. Writ petitions allowed.