
(1992) 09 AP CK 0008
In the Andhra Pradesh High Court
Case No : T.R.C. No. 370 of 1985

G. Venkatakrishnaiah and Brothers and Another	APPELLANT
Vs	
State of Andhra Pradesh	RESPONDENT

Date of Decision : 30-09-1992

Acts Referred:

Citation : (1993) 44 ECC 23

Hon'ble Judges : Syed Shah Mohammed Quadri, J;P. Venkatarama Reddi, J

Bench : Division Bench

Judgement

Syed Shah Mohammed Quadri, J.—This T.R.C. is directed against the order of the Sales Tax Appellate Tribunal dated July 24, 1985, in Tribunal Appeal No. 246/1980 dismissing the appeal of the petitioner. The petitioner is the assessee. For the assessment year 1974-75, in the assessment proceedings, the petitioner claimed exemption of turnover relating to tamarind seed dhal in a sum of Rs. 1,66,268. The petitioner contended that the tamarind had already suffered tax at the purchase point. He also contended that the tamarind seed dhal is obtained by roasting the same. This is for the purpose of preserving from decay and making it marketable. The Commercial Tax Officer took the view that tamarind seed and tamarind seed dhal are two different commodities and accordingly levied tax on the said turnover at the rate of 4 per cent u/s 5(1) of the A.P. General Sales Tax Act, 1957. The petitioner carried the matter before the Assistant Commissioner (CT), Kurnool. Relying upon the order of the Sales Tax Appellate Tribunal in a similar case, the Assistant commissioner held that they are not two different commodities and set aside the levy of tax. In exercise of the power u/s 20 of the A.P. General Sales Tax Act, the Deputy Commissioner revised the order of the Assistant Commissioner and restored the order of the Commercial Tax Officer levying the tax. The petitioner appealed against the said order to the Sales Tax Appellate Tribunal. The Tribunal, following its earlier decision dated July 18, 1985, in T.A. No. 384/81, dismissed the appeal.

2. Mr. Rajiv Reddy, the learned Counsel for the petitioner, contends that tamarind

seeds and tamarind seed dhal or kernal are one and the same commodities. For converting tamarind seeds into tamarind dhal, no manufacturing process is involved. It is only roasted and dehusked and that therefore it is the same commodity. He further submits that tamarind and tamarind seeds have already suffered tax, therefore the tamarind seed dhal cannot again be subjected to tax.

3. The learned Government Pleader, on the other hand, contends that the tamarind seed and tamarind dhal are entirely different commodities, therefore the fact that tamarind seeds have already suffered tax cannot be a ground to contend that tamarind seed dhal cannot be subjected to tax.

4. The short question that arises for consideration in this T.R.C. is, whether tamarind seed and tamarind seed dhal are the same commodities?

5. Here it would be useful to refer to certain judgments of the courts dealing with similar questions.

6. In *State of Madras v. R. Saravana Pillai* 1956 7 STC 541, the Madras High Court was considering the scope of proviso to Section 2(i) of the Madras General Sales Tax Act which excludes from tax liability under the Act, sale of agricultural and horticultural produce. The question before the court was whether arecanuts after they were peeled and the kernels thereafter sliced, boiled and dried change their character so as to cease to be agricultural or horticultural produce. The Madras High Court held that the arecanuts were only subject to the minimum processing absolutely necessary for their sale and therefore retained their character as horticultural produce within the meaning of the proviso to Section 2(i). The principle laid down by the Madras High Court is that where any agricultural or horticultural produce is subjected to the minimum processing before that produce can be marketed, it would still retain its character as agricultural or horticultural produce. In our case, however, the question is different and the judgment cannot be of much assistance to the petitioner.

7. In *Motilal Hari Prasad and Bros. and Others Vs. The State of Andhra*, the question was whether the groundnut includes kernel and liable to be taxed at the purchase point. Our High Court was considering the meaning of the word "groundnut" in Rule 4(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. It was held that the word "groundnut" is of wide amplitude so as to embrace within the compass the kernel also and therefore groundnut kernel is liable to be taxed at the purchase point.

8. In *Tungabhadra Industries Ltd. v. Commercial Tax Officer* 1960 11 STC 827, the question before the Supreme Court was with regard to allowability of deduction of the cost of groundnut from the turnover of the hydrogenated groundnut oil known as vanaspati. The relevant rule of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, permitted such deduction from the groundnut oil. The question therefore was whether the groundnut oil and vanaspati are one and the same commodity. The Tribunal and the High Court recorded a finding that except for its keeping quality without rancidity and ease

of packing and transport without leakage, hydrogenated oil serves the same purpose as a cooking medium and has identical food value as refined groundnut oil. It was further pointed out that there was no use to which the groundnut oil could be put for which the hydrogenated oil could not be used nor was there any to which the hydrogenated oil could be put for which the raw oil could not be used. The Supreme Court has observed that hydrogenated oil still continues to be "groundnut oil" notwithstanding the processing which is merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desire to consume groundnut oil. In that view of the matter it held that the assessee was entitled to the benefit of deduction of the purchase price of the kernel or groundnut under the relevant rules. In the instant case there is no material to show that the tamarind seeds and the tamarind seed dhal are put to one and the same use and they serve the same purpose.

9. In *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer* 1961 12 STC 286, the Supreme Court had to consider whether the word "vegetables" in item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947, include "betel leaves". It was held that the word being in use every day, must be construed in its popular sense, that is, the sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. It should not be construed in any technical sense nor from the botanical point of view. It was held that thus construed betel leaves were not "vegetables" within the meaning of the said term.

10. In *Commissioner of Commercial Taxes in Mysore v. Samant Brothers* 1962 13 STC 485, the question before the Mysore High Court was whether butter purchased from unregistered dealer and sold after converting it into ghee, was liable to tax u/s 10 of the Bombay Sales Tax Act, 1953. It was held that butter and ghee are two different commodities.

11. In *Alladi Venkateswarlu v. Government of Andhra Pradesh* 1978 41 STC 394, the question before the Supreme Court was whether "atukulu" (parched rice) and "muramuralu" (puffed rice), are "rice" within the meaning of entry 66(b) of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957. The rice in the form of grain is not edible, whereas parched rice and puffed rice are edible. It was held that rice in husk is paddy. When it is removed from husk, the husk and rice become separately taxable under the Act. But, there are no separate entries for rice and rice reduced into an edible form by heating or parching without any addition of ingredients or appreciable changes in chemical composition and that the term "rice" is wide enough to include rice in its various forms whether edible or inedible.

12. In *Singh Trading Co. v. Commercial Tax Officer* [1979] 44 STC 1, the question before a Division Bench of our High Court was whether cashewnut and kernel are not two different commercial commodities and are not separately taxable. Under the Andhra Pradesh general Tax Act, cashew kernel will not be liable to tax at the point of first purchase in the State when the cashewnut from which the cashew kernel had been taken out had already been subjected to tax under item 12 of

the Second Schedule to the Act. It was held that though cashew kernel was taken out by drying of cashewnut and breaking open the shell of the nut and that involved a certain process, still it could not be said that cashewnut and kernel were two different commercial commodities. Cashewnut was subjected to that kind of process only to make the kernel usable. It is observed that in a taxing statute the meaning given to a commodity in common parlance and commercial field should be accepted. It is also observed that when a purchaser goes in a market and asks for cashewnut, he means its kernel and the vendor, in fact, also gives him kernel. Thus the test prescribed is one of use in the popular or commercial parlance.

13. In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, the question was whether pineapple fruit and processed pineapple slices for the purpose of being sold in sealed cans are the same commodities. The question arose u/s 5A(1)(a) of the Kerala General Sales Tax Act. It was accepted that some degree processing was involved in preparing pineapple slices from the original fruit, but the commodity continued to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it and adding sugar to preserve it. It was laid down that where there was no essential difference in identity between the original commodity and the processed article it was not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity. The test laid down in this case is that even after processing the commodity must retain its original identity.

14. In Udata Narasimha Rao and Co. v. State of Andhra Pradesh 1982 51 STC 126 the question before a Division Bench of our High Court was whether cereals and pulses, ravva obtained from rice or wheat and fried gram dhal, were declared goods under entries 144, 147 of Schedule I of the A.P. General Sales Tax Act. The Division Bench held that the meaning of the expression must be ascertained with reference to the object and scheme of that enactment and that ravva obtained from rice or wheat is not the same commodity as rice and wheat. It was held that the meaning of the entries could not be extended to include those items which were not expressly stated.

15. In The State of Andhra Pradesh Vs. Mohd. Basheer and Company, raw hides and skins were purchased and were exported after processing. The question was whether for purposes of Section 5(3) of the Central Sales Tax Act, both are one and the same commodity. The Division Bench held that commercial parlance test must be observed. It was observed that simply because the goods had undergone manufacturing process, different goods need not necessarily emerge and that for purpose of the Andhra Pradesh General Sales Tax Act and having regard to the scheme of entry 9 of the Third Schedule, they were one and the same commodity.

16. From the above discussion it follows that while considering the entries in

taxing statute, if a question arises as to whether two commodities are one and the same, primarily the test should be as to whether those commodities are understood as one and the same in commercial parlance. If one commodity emerges from the other commodity they would be considered as one and the same if the original commodity retains its primary attributes, notwithstanding the minimum manufacturing process or other processing. Keeping these tests in mind, we shall now consider, whether the tamarind dhal and tamarind seed dhal are one and the same commodity. As observed above, the use to which these commodities are put, is not recorded by the Tribunal as no evidence was placed by the parties before it. The commodity, tamarind seed is understood in commercial circles as different and distinct commodity from tamarind seed kernel. With regard to the characteristics, the Tribunal observed that when once the seed was converted into kernel it lost its essential characteristic and value. Therefore, it follows that tamarind seed and tamarind seed dhal are different commodities and both the commodities cannot be treated as one and the same.

17. In this view of the matter, we confirm the order under revision. The revision is accordingly dismissed, but in the circumstances without costs.