
(1978) 12 KL CK 0012
In the High Court Of Kerala
Case No : T.R.C. No. 56 of 1978

George P. Mathew

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 21-12-1978

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 2(viii), 2(xxvii)

Citation : (1980) 1 ILR (Ker) 189 : (1979) 43 STC 438

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.; T. Chandrasekhara Menon, J

Bench : Division Bench

Advocate : K.P. Radhakrishna Menon, K.K. Ravindranath and K. Karthikeya Panicker, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, C.J.—Along with the application for revision, the assessee, in accordance with the form prescribed, has formulated the following questions of law arising in this case, viz.:

(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the sale of the rubber trees pursuant to exhibit PI is a "sale of goods" and accordingly chargeable to tax under the Kerala General Sales Tax Act ?

(2) Whether the Appellate Tribunal is right in holding that the petitioner is a "dealer" within the meaning of the Kerala General Sales Tax Act, 1963 ?

The assessment year with which we are concerned is the year 1974-75. The turnover on which he was assessed to sales tax included a sum of Rs. 1,15,000 representing the amount realised by the sale of slaughter tapping rubber trees. This amount was the subject-matter of an agreement or karar, a copy of which is exhibit PI, between the assessee and one A. Mohammed, partner of Messrs. A. Mohammed & Sons. It was in respect of 45 acres in the Bedford Estate in Aryankavu Village, Edapalayam Muriyil, belonging to the assessee. The

agreement was that Messrs. Mohammed & Sons were to enjoy the rubber trees in the estate and to cut and remove the said trees before 30th March, 1976, in accordance with the stipulations in the document. The total consideration of Rs. 1,60,000 was fixed as the price of the right for enjoying the trees and for cutting and removing the rubber trees. Rs. 45,000 out of this consideration represented the price for enjoyment of the rubber trees and Rs. 1,15,000 represented the price for the sale of the rubber trees. There is a provision that the trees had to be cut and removed before 30th March, 1976, and, on default, the estate may be taking back the right of the assessee. It was in respect of this sum of Rs. 1,15,000 that the assessee was assessed to sales tax by exhibit P3 order of the Sales Tax Officer, which was confirmed in appeal by exhibit P4 order by the Appellate Assistant Commissioner, and further by exhibit P5 order of the Sales Tax Appellate Tribunal.

2. Counsel for the assessee raised two principal contentions before us. First is, that what was sold under exhibit PI agreement was not goods or any movable property but right to immovable property ; and second, that, in any event, the assessee cannot be regarded as a "dealer" liable to be assessed for "turnover" on the "sale" of "goods" within the meaning of these expressions as defined in the General Sales Tax Act. On the first of these questions, the counsel referred us to the passage in Benjamin's Sale of Goods, 1974 Edition, at page 81, which is as follows:

It was generally agreed that if some thing attached to land was to be severed by the seller and then sold, the contract was one for the sale of "goods, wares and merchandizes" within Section 17; but if the contract was to give the buyer a right or licence to enter upon the land and take or sever and remove such things from the land, it fell outside that section. In most cases, the contract was then one for the sale of an "interest in or concerning lands" within Section 4, but this did not always follow, especially in the case of the class of crops known as fructus industriales.

Our attention was also called to the decision of the Supreme Court in Ananda Behera and Another Vs. The State of Orissa and Another, and Mahadeo Vs. The State of Bombay, . Attention was also called to the decision in A.K.T.K.M. Vishnudatta Andharjanam represented by D.V. Nambudripad Desamangalam Vs. The Commissioner of Agricultural Income Tax, Trivandrum, . In the first of these cases, the real nature of a transaction which conferred the right to catch and carry away fish from a specific portion of a lake, came up for consideration. On the terms of the contract it was held that it was a profit a prendre in English law and sale of immovable property u/s 3 of the Transfer of Property Act in Indian law. The decision essentially turned on the terms and the nature of the transaction. In the second of the cases, namely, Mahadeo Vs. The State of Bombay, , again it was held that the agreement conveyed much more than mere right to cut the tendu leaves. They conveyed also other forest produces like timber, bamboos, etc., the right to prune, coppice and burn tendu trees and the

right to build on and occupy land for the purpose of their business. These rights were being enjoyed for many years. In the circumstances, it was held that the contract in question cannot be regarded as a contract for sale of goods.

3. In the third of the decisions, namely, A.K.T.K.M. Vishnudatta Andharjanam represented by D.V. Nambudripad Desamangalam Vs. The Commissioner of Agricultural Income Tax, Trivandrum, , the assessee had received proceeds of the sale of teak trees which had been planted sometime during 1946-47. The assessment years were 1963-64 and 1964-65. The trees were cut and completely removed from the land together with their roots for the purpose of planting the areas with rubber. It was held that the sale of trees affected the capital structure and the sale could not therefore give rise to a revenue receipt. The receipt from the sale of the teak trees was capital in nature. The principle of the decision does not have direct application to the case on hand, as we are not concerned with the question whether the proceeds of the sale is a capital receipt or revenue receipt.

4. We are really concerned with the terms of exhibit PI and the nature of the transaction evidenced thereby. On the terms of the agreement, which we have referred to earlier, we think the conveyance gave the right of enjoyment of the rubber trees and also the right to cut and sell the trees standing on the land. The trees are to be sold only after cutting; and we have no doubt that the amount realised by the sale of the trees so cut from the land represented the sale price of goods and not the sale price of immovable property. The documents fixed the consideration separately for sale of the trees and the right of enjoyment of the trees. We are therefore of the opinion that on the construction of the terms of exhibit PI the sale price of the trees represents the sale price of goods or movable property and not in respect of any immovable property.

5. We have been asked to consider the question whether it satisfies the definitions of the terms "dealer", "sale" and "turnover" under the Act. These have been defined under the Act. Section 2(viii) of the Act reads as follows :

2. (viii) "Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes-

(a) a local authority, a company, a Hindu undivided family, a Marumakkathayam tarwad, a family governed by the Kerala Nambudiri Act, 1958, an Aliyasanthana family, a firm, a society, a club or an association which carries on such business ;

(b) a casual trader;

(c) a commission agent, a broker or a del credere agent, or an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;

(d) a non-resident dealer or an agent of a non-resident dealer, or a local branch

of a firm or company or association situated outside the State;

(e) a person who sells goods produced by him by manufacture, agriculture, horticulture or otherwise.

Section 2(xxi) of the Act defines "sale", which reads :

2. (xxi) "Sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge.

Explanation (1).-A transfer of the property in the following goods, namely, tea, coffee, rubber, cardamom or timber, whether in the course of trade or business or otherwise, for cash or for deferred payment or other valuable consideration, by a person who produces the same, shall be deemed to be a sale for the purposes of this Act.

Section 2(xxvii) of the Act defines "turnover", which is as follows:

2. (xxvii) "Turnover" means the aggregate amount for which goods are either bought or sold, or supplied or distributed, by a dealer either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

What is emphasised by the assessee is that the expression "dealer" requires the carrying on of business of buying or selling of the particular goods in question. But the inclusive part of the definition brought in with effect from 1st April, 1974 (which will have application to the case on hand), takes in by Clause (b) the casual trader also. By Clause (e), it includes even a person who sells goods produced by him by manufacture, agriculture, horticulture or otherwise. But the assessee would turn to the definition of the terms "sale" and "turnover" to which we have adverted above. Under the definition of the term "sale", explanation (1) provides that a transfer of the property in the specified commodities, namely, tea, coffee, rubber, cardamom or timber by one who produces the same shall be deemed to be a sale for the purposes of the Act.

We may now go to the definition of the term "turnover" in Section 2(xxvii). The main part of the definition says that it means the aggregate amount for which goods are either bought or sold. When this part of the definition is satisfied it is unnecessary to look for the other inclusive parts of the definition or the exemption part of it. But still for the purpose of completeness we may discuss that aspect of the question as well. What is relied upon by the counsel for the revision petitioner is the concluding part of the definition in Section 2(xxvii) by which proceeds of sale of agricultural or horticultural produce shall be excluded under certain conditions. The conditions do not stand satisfied. We are clear that

in this case there is a sale of goods and not a sale of immovable property and, therefore, the definition of the relevant terms in the Act are satisfied and attracted. Even going by the terms of explanation (1) to Section 2(xxi), what was argued by the counsel for the petitioner was that rubber trees cannot be taken as "timber" in the well-understood sense of the term, as explained, for instance, in Black's Dictionary, page 1653. Whatever be the meaning of this expression we are clear on the terms of exhibit PI the contract to cut and sell trees standing on the land was a sale of goods or of movable property and, therefore, that will attract the relevant definitions under the Sales Tax Act. In this case, the assessing authority was correct in its conclusion that the turnover was liable to be assessed. We see no ground to interfere. We dismiss the tax revision case with no order as to costs.