
(2002) 10 MAD CK 0122

In the Madras High Court

Case No : Writ Petitions No"s. 137, 155, 298, 453, 462, 464, 567, 568, 2803, 2910, 3311, 3312, 3738 and 6110 of 1994

Hemraj Lalji and Co., Deepak Enterprises, S.R.M.V. Srinivasa Nadar and Sons, V.R. Traders, Sornam Traders, V.N.M.S. Ayyasamy Nadar and Bros., Kirorimal Kashiram, Raja Traders, Rajaram Sales Corporation and West Asia Exports and Imports (P) Ltd. **APPELLANT**

Vs

The State of Tamil Nadu and The Union of India (UOI) **RESPONDENT**

Date of Decision : 09-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu General Sales Tax Act, 1959 — Section 14, 4

Citation : (2003) 130 STC 147

Hon'ble Judges : R. Jayasimha Babu, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : V. Ramachandran for P. Radhakrishnan, in WP. Nos. 137, 155, 298, 453, 462, 464, 567, 568, 2803, 2910 and 3738 of 1994, V. Ramachandran for K. Jayachandran, in WP. Nos. 3311 and 3312 of 1994 and S.A. Saravanakumar, for Inbarajan in WP. No. 6110 of 1994, for the Appellant; T. Ayyasamy, Special Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—Petitioners are dealers in "peas" and "peas dhal". They are assesseees under the Tamil Nadu General Sales Tax Act. They have sought for a declaration that "peas" and "peas dhal" are declared goods falling under item 6-A (iv) of the Second Schedule to that Act and to restrain the respondents from levying surcharge, additional surcharge and additional sales-tax over and above 4%. That prayer had been rejected by this Court by the decision of a Division Bench in the case of Prema Traders vs. State of Tamil Nadu, 1995 (7) MTCR 70.

2. On appeal to the apex Court, the matter was remanded to the High Court after setting aside that judgment. That order of remand directed this Court to direct

the Sales-tax Appellate Tribunal to analyse the provisions of clause (vi-a) of Section 14 of the Central Sales Tax Act with the help of botanical and/or technical evidence and in the light of the meanings that the descriptions in the entries carry in common parlance. This Court also was directed to decide as to whether "lentil" in the fourth entry in Section 14(vi-a) of the Central Sales-tax Act is compendious description covering "peas" or it referred only to "masur".

3. Though the petitioners referred to the entry in States Sales Tax Act, that entry in the State Act is merely a reproduction of the Clause (vi-a) of Section 14 of the Central Act. Section 14 of the Central Sales Tax Act lists out the goods which are of special importance in inter-state trade of commerce. Entry (vi-a) of that Section reads thus:

"(vi-a) pulses, that is to say, --

- (i) gram or gulab gram (*Cicer arietinum* L);
- (ii) tur or arhar (*Cajanus cajan*);
- (iii) moong or green gram (*Phaseolus aureus*);
- (iv) masur or lentil (*Lens esculenta* Moench,
Lens culinaris Medic);
- (v) urad or black gram (*Phaseolus mungo*);
- (vi) moth (*Phaseolus aconitifolius* Jacq);
- (vii) lakh or Khesari (*Lathyrus sativus*).

4. This Court, as directed by the apex Court, directed the Full Bench of the Tribunal to analyse clause (vi-a) in the manner directed by the Supreme Court.

5. The Tribunal after giving opportunity to the parties and recording evidence of the witnesses produced and examined by the parties and after examining the documentary evidence placed before it, has submitted a report.

6. The witness examined by the assessee before the Tribunal was the Executive Member of the "Peas and Peas dhal Committee of the Tamil Nadu, Food Grains Merchants Association. The witness examined for the State was the Assistant Director of Agriculture Income Tax (Pulses). Both of them stated that "lentil" is not grown in the State and that there is no Tamil name for "lentil". The witness for the assessee stated that he did not know what is meant by "lentil". He stated that the pulse "masur" is cultivated in parts of Bihar and Orissa from where the merchants in this State make their purchases in small quantities and "peas" and "peas dhal" are purchased from Madhya Pradesh and Uttar Pradesh.

7. The witness examined for the State deposed that "peas" and "peas dhal" are not covered by "lentil"; that "peas" and "lentil" are two different items. The parties also placed before the Tribunal extracts of the text book of Economic

Botany, which was marked as Ex.A.1 and a note giving the distinguishing features of "peas" and "lentil" marked as Ex.A.2. Two other exhibits, one being a letter from the Head of the Department of Agronomy, RBS College, Agra was marked as Ex.P.1 and the other a certificate issued by the Professor and Chief Scientist, Department of Agronomy, Indira Gandhi Agricultural University in Madhya Pradesh was marked as Ex.P.2

8. The Full Bench of the Tribunal examined the materials placed before it in great detail and held that though "peas" and "lentil" belong to the same botanical family "Fabaceae", they are two different pulses. It noticed that "lentil" is eaten as dhal, that the young pod is also eaten as a vegetable and dried leaves and stalks are greatly prized as fodder. It found that "peas" and "lentil" are differently grouped, and that "peas" bear long pods having 6-10 seeds per pod, while lentil pods contain only two seeds in one pod. "Peas", it was found, by the Tribunal to be a leguminous vegetation which has been in use from ancient times. The Tribunal noticed the Hindi and Tamil names for the pulses enumerated in clause (vi-a) and also noticed the fact that there is no Tamil name for "lentil". It has found that "peas" has never been regarded in common parlance as species of "lentil" or as "lentil". The Tribunal concluded that "...we are of the considered view that "peas" are not covered by "masur" or "lentil" and "lentil" is not a compendious description covering "peas", though "masur" is nothing but de-husked "lentil"."

9. Copy of the Tribunal's report was made available to the assessee and the assessee's counsel has been heard further in the matter. Counsel has not been able to point out any error in the methodology adopted or in the conclusion reached by the Tribunal. We have no reason to disagree with that report of the Tribunal. The clear finding is that "peas" is not covered by the Entry (iv) in Section 14(vi-a) and that "peas" is not "lentil". Admittedly, "peas" and "peas dhal" are not covered by any other entry in Section 14(vi-a) of the Central Act.

10. Faced with this finding, counsel fell back on an argument which had been advanced earlier and which had not found favour with this Court and which argument is also plainly contrary to the law laid down by the apex Court in more than one decision.

11. It was submitted by counsel that the words "that is to say" in 14(vi-a) should be understood to being only illustrative and should not be regarded as exhaustive enumeration of the goods which are to be regarded as "pulses" for the purpose of that entry.

12. Further submission was that "peas" are clearly pulses, a position which is accepted by the State also and therefore, notwithstanding the absence of any reference to "peas" in sub-clause (iv) and also notwithstanding the fact that "peas" are not covered by any of the entries in Section 14(vi-a), "peas" should be regarded as a pulse for the purpose of clause (vi-a). Counsel also referred to and relied upon the case of State of Tamil Nadu vs. Pyare Lal Malhotra, (1976)

37 STC 319.

13. In the case of Shaw Wallace & Co. Ltd. vs. State of Tamil Nadu, (1976) 37 STC 522, a two Judge Bench of the apex Court referred to the decision rendered by the four Judge Bench in the case of State of Tamil Nadu vs. Pyare Lal Malhotra, (1976) 37 STC 319 and set out the ratio of that decision. The Court observed at page 526,

"In State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, (Civil Appeals Nos. 58-59 of 1971 and 880-883 of 1971 decided on January 19, 1976) a Bench of four Judges of this Court, to which one of us, namely, my Lord the Hon'ble Chief Justice was a party, had occasion to consider the meaning of the expression "that is to say" and the tests to be applied in determining whether the sale of a certain class of goods is subject to the levy of single point sales tax. With regard to the expression "that is to say", our learned brother, Beg, J., who spoke for the court, observed :

"We think that the precise meaning of the words "that is to say" must vary with the context But, in the context of single point sales tax, subject to special conditions when imposed on separate categories of specified goods, the expression was apparently employed to specifically enumerate separate categories of goods on a given list. The purpose of such specification and enumeration in a statute dealing with sales tax at a single point in a series of sales would, very naturally, be to indicate the types of goods each of which would constitute a separate class for a series of sales. Otherwise, the listing itself loses all meaning and would be without any purpose behind it."

In regard to the test for determining the taxable events in relation to the sales tax, the same learned brother observed as follows :

"The mere fact that the substance or raw material out of which it is made has also been taxed in some other form, when it was sold as a separate commercial commodity, would make no difference for purposes of the law of sales tax. The object appears to us to be to tax sales of goods of each variety and not the sale of the substance out of which they are made As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax The law of sales tax is also concerned with "goods" of various descriptions. It, therefore, becomes necessary to determine when they cease to be goods of one taxable description and become those of a commercially different category and description."

14. That legal position was reaffirmed by the Court in the later judgments; in the case of Rajasthan Roller Flour Mills Association vs. State of Rajasthan, (1993) 91 STC 408, and later in the case of Gopuram Gram Mill Co. vs. State of Andhra Pradesh, (1994) 95 STC 358.

15. In the case of Rajasthan Roller Flour Mills, the Court held that, "the object of using the words "that is to say" in item (vi-a) of Section 14 is to make it clear

and fix the meaning of what is to be explained or defined." It was also held therein that those words are not used as a rule, to amplify the meaning and in the context of single point sales tax, the expression is meant to exhaustively enumerate the kind of goods in a given list. It was further held therein that the provisions of Sections 14 and 15 of the Central Sales Tax Act being restrictions upon the plenary powers of the State Legislature to levy tax on sale/purchase of goods, must be construed strictly. It is only those goods which are expressly mentioned in the enumeration in Section 14 that are to be regarded as "declared goods" and nothing must be read into those entries except what is clearly stated. That law was reaffirmed in the case of *Gopuram Gram Mill Co.*

16. Had Parliament intended that all pulses should be treated as declared goods, there would have been no need for sub-clauses (i) to (vii) in Section 14(vi-a) of the Central Sales-tax Act. The object of the enumeration is to fix the meaning of pulses for the purposes of that Section. Pulses of a kind other than those enumerated were intended to be left out and what has been left out cannot be brought within pulses by regarding the enumeration made as being only illustrative. "Peas" and "Peas dhal" not having been mentioned in the enumeration in the list of pulses mentioned in clause (vi-a) of Section 14 and more specifically not being covered by the entry "lentil" on which the assessees relied, clearly are not declared goods.

17. Learned senior counsel for the assessees submitted that even if the "peas" and "peas dhal" are not to be regarded as declared goods, nevertheless, having regard to the conduct of the State which had accepted the decision rendered by the Coimbatore Bench of the Sales Tax Appellate Tribunal in the year 1984 which had held that "peas" and "peas dhal" are declared goods, the assessments for the period prior to 1992 when another Bench took a different view, should not be allowed to be reopened.

18. It will be open to the petitioners to apply to the Government for appropriate relief for the period prior to 1992 during which years the State had accepted the Tribunal's view that "peas" and "peas dhal" are declared goods.

19. The petitions are dismissed.