

(1970) 01 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3374 of 1968

Jagdish Lal Narang

APPELLANT

Vs

The Assessing Authority and Another

RESPONDENT

Date of Decision : 21-01-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 2
Constitution of India, 1950 — Article 366(12)
Punjab General Sales Tax Act, 1948 — Section 2

Citation : (1971) 2 ILR (P&H) 733

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Bhacirath Dass and S.K. Hirajee, for the Appellant; J.S. Malik, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bal Raj Tuli, J.—This judgment will dispose of C.W. No. 3374 of 1968, Jagdish Lal Narang v. The Assessing Authority, Karnal and Anr., C.W. No. 118 of 1969-Daffadar Bhagat Singh and Sons v. The Joint Excise & Taxation Commissioner, Punjab, and Anr., and C.W. No. 166 of 1969, Messrs Tara Chand and Sons v. The Joint Excise & Taxation Commissioner, Punjab, and Anr., as common questions of law arise in all these writ petitions.

2. In C.W. No. 3374 of 1968, the Petitioner Jagdish Lal Narang started a poultry farm in village Kachhwa in the district of Kamal in 1958 and began to carry on the same business at Kamal in 1964. His business consists of selling eggs, slaughtered poultry (meat) and live poultry. The point for determination in the case is whether "live poultry" is included in the definition of "goods" as given in the Punjab General Sales Tax Act, 1948 (hereinafter called the Act).

3. The Petitioners in Civil Writ Nos. 118 and 166 of 1969 are contractors who supply meat and meat on hoofs to the Army authorities. "Meat on hoofs" really means live sheep and goats which are purchased by the Army authorities on the

basis of the meat content therein, that is, the sheep and the goats are weighed and the price is paid on the agreed rate per kilo of 50 per cent of the weight of the animal. The contention of the Petitioners is that no sales tax is payable on the sale of animals like sheep and goat and even if it is assumed for the sake of argument that these animals are included in the definition of "goods", what is sold, in fact, and according to the contract between the parties is meat, which is exempt from the payment of sales tax, and not live sheep and .goats.

4. The first point to be decided in all the three petitions is whether live birds and animals are "goods" within the definition of the word in Section 2(e) of the Act, which reads as under:

"goods" means all kinds of movable property other than news-papers actionable claims, stocks, shares or securities.

5. The submission of the learned Counsel for the Petitioners is that the State Legislative has the power to make a law imposing tax on the sale and purchase of goods under entry 54 in List II of the 7th Schedule to the Constitution, and the goods, the sale and purchase of which can be so subjected to tax, are such as are covered by the definition of the word "goods" in Article 366(12) of the Constitution. Article 366(12) of the Constitution does not give an exhaustive definition of the word "goods" but only an inclusive definition. According to this clause, "goods" includes all material, commodities and articles. From this definition the learned Counsel concludes that what is covered by the term "goods" is inanimate property and not animate beings. My attention has been invited to the definitions of the term "goods" in various Acts relating to the sales tax of other States. The definition of the term "goods " in the Bihar, Kerala and Mysore Acts expressly includes live-stock, whereas in other Acts no such mention is made. Although the definition of "goods" in the Rajasthan Act does not specifically mention live-stock as included in the definition, a notification has been issued by the Rajasthan Government levying sales tax on buffaloes, calves and bulls, etc. A learned Single Judge of the Kerala High Court held in *Abraham Vs. Asst. Sales Tax Officer, Alwaye*,

There can be no doubt that animals and birds in captivity (monkeys, minahs and parrots; in these cases) are movable property, and they are, therefore, "goods", as that word is defined in Section 2(d) of the Central Sales Tax Act, 1956. Hence the sale of such things is liable to taxation under that Act. The argument that animate things will not come within the definitfon of "goods" in Article 366(12) of the Constitution does not carry the Petitioners far even if it is well-founded. Assuming it to be well-founded, the sale of such things will not fall within entry 54 of List II of the Seventh Schedule or entry 92-A of List I. It would, therefore, fall within entry 97 of List I and to provide for the levy of a tax on such sales would he within the competence of Parliament.

6. That case related to Central Sales Tax Act, 1956. and not to any State Act. The matter was not examined in detail whether animate things fall within the

definition of "goods" in Article 366(12) of the Constitution. This judgment is, therefore, of not much help.

7. A Full Bench of the Kerala High Court in *Gosri Dairy, Vyttila v. The State of Kerala* (1961) 12 S.T.C. 683, accepted the view taken by the Sales Tax Authorities that the Petitioner's sale of dry cows was part of his business, constituting it a dealer within the meaning of the Sales Tax Act, and attracted liability to taxation in respect thereof. This judgment is also of not much use as the definition of "goods" in the Kerala Sales Tax Act includes live-stock, but one thing is clear that it was not argued before the learned Judges of the Full Bench that the definition of the "goods" in the Kerala Act went beyond the one given in Article 366(12) of the Constitution and, therefore, live-stock could not be included in the term "goods", and no legislation imposing a tax on the sale or purchase of livestock could be made by the State Legislature under entry 54 in List IT of Seventh Schedule to the Constitution.

8. As I have said above, the definition of the term "goods" in Article 366(12) of the Constitution is not exhaustive. It only states that "goods" includes all materials, commodities and articles. There is no suggestion that only such like things constitute "goods" so that applying the doctrine of *eiusdem generis* it could be held that only inanimate things are covered by the definition and not animate things. It does not admit of any doubt that animals and birds are movable property, can be purchased and sold and also can be the subjects of larceny or theft. The person owning them has complete control and can dispose them of in any manner he likes. The animals and birds constitute his movable property as much as any other article or tangible object in his possession. I, therefore, find no reason to confine the term "goods" only to inanimate things and hold that animals, live-stock and live poultry, come within the definition of the word "goods" given in Section 2(e) of the Act and sales tax is leviable on their sale. That apart, what was sold by the Petitioners in Civil Writs 118 and 166 of 1969, was "meat on hoofs". That is a kind of meat, preserved in its natural casing, the skin, and since meat is "goods", "meat on hoofs" must also be held to be "goods" on which sales tax is payable unless exempted under entry at No. 18 in Schedule "B" to the Act.

9. I also do not find any force in the second submission of the learned Counsel for the Petitioners in Civil Writ Nos. 118 and 166 of 1969 that they sold meat, which is exempt from the payment of sales tax by virtue of entry at No. 18 in Schedule "B" to the Act. Every kind of meat fish and eggs is exempt from the payment of sales tax except when sold in tins, bottles or cartons. It has been asserted on behalf of the Petitioners that the terms of the contract between the Petitioners and the Army authorities clearly indicate that meat could be in dressed form or could be on hoofs. In pursuance of that term of the contract, the Petitioners supplied goats or sheep to the Army authorities who transported the same to the desired destinations and the Petitioners were paid the price on the basis of the weight of meat in the sheeo or the goats: For the purposes of

payment of price it had been agreed that 50 per cent of the weight of the goat or the sheep would be taken as the measure for payment of the price in terms of meat, that is, the price was payable in respect of 50 per cent weight of the animal on the basis of the rate for meat per kilo. This assertion of the Petitioners has not been controverted by the Respondents. In fact, this assertion has been accepted. On the basis of this assertion, the learned Counsel for the Petitioners submits that only meat was being sold to the Army authorities and not sheep and goats as such. In support of his argument he cites a judgment of their Lordships of the Supreme Court in *The Government of Andhra Pradesh v. Guntur Tobaccos Limited* (1965) 16 S.T.C. 240 wherein the following observations occur:

It is true that in business transactions the works contracts are frequently not recorded in writing setting out all the covenants and conditions, thereof, and the terms and incidents of the contracts have to be gathered from the evidence and attendant circumstances. The question in each case is one about the true agreement between the parties and the terms of the agreement must be deduced from a review of all the attendant circumstances. But one fundamental fact has to be borne in mind that from the mere passing of title to goods either as integral part of or independent of goods it cannot be inferred that the goods were agreed to be sold, and the price was liable to sales tax.

10. On the basis of these observations, it is contended that the agreement was to sell meat, which is an exempt goods; and not sheep and goats. The names of these animals as sheep and goat were known to the parties but instead of using those names the phrase "meat on hoofs" was used in order to clearly indicate and emphasise that the subject of contract was meat and not live animals. The question that arises for decision is whether "meat on hoofs" as termed by the Petitioners is exempt from the payment of sales tax. Meat is made or comes into being after the animal is slaughtered and till then the meat of the animal is encased in its natural packing, the skin. and is preserved as such till the animal is slaughtered. Meat sold in tins, bottles or cartons is not exempt from the payment of sales tax under entry No. 18 in Schedule "B" to the Act which leads to the conclusion that meat in preserved form is not exempt. Meat OB hoofs is also preserved meat, the preservation being in the natural carton consisting of the skin of the animal. I, therefore, held that "meat on hoofs" is not exempt from the levy of sales tax urjdler entry No. 18 in Schedule "B" to the Act.

11. No other point has been argued before me.

12. For the reasons given above, all the three writ petitions art dismissed but without any order as to costs as the points of law canvassed were not free from difficulty.