

(1990) 09 MAD CK 0049

In the Madras High Court

Case No : Writ Petition No. 4484 of 1982 and T.C. No's. 69, 70, 626 and 627 of 1981 (Revision No's. 29, 30, 315 and 316 of 1981)

Jothi Andavar and Co.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 13-09-1990

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Constitution of India, 1950 — Article 14

Citation : (1990) 09 MAD CK 0049

Hon'ble Judges : Venkataswami, J;Kanakaraj, J

Bench : Division Bench

Advocate : R. Karuppan, Additional Government Pleader Taxes, for the Appellant;

Judgement

Venkataswami, J.—In all these cases, the point raised is one and the same, namely, whether ""groundnut kernel"" dealt with by the assessee

will fall under item 6(i) of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959 (hereinafter called ""the Act""). All the four tax

cases relate to the same assessee for assessment years 1976-77 and 1977-78 arising out of C.T.A. Nos. 314 and 315 of 1980, on the file of the

Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated November 27, 1980. For the abovesaid two assessment years, the assessee,

namely, Messrs. Andavar and Company, while submitting the returns, objected to the tax being levied on the purchase of groundnut kernel at

single point rate under item 6(i) of the Second Schedule to the Act. The Tribunal, by a common order in both the appeals, namely, C.T.A. Nos.

314 and 315 of 1980, held that the groundnut kernel will not fall under the abovesaid entry. However, it held that it would be liable to tax at multi-

point rate. Aggrieved by the decision of the Tribunal that it is multi-point rate, the assessee filed two revision petitions, namely, T.C. Nos. 69 and

70 of 1981. The Revenue filed T.C. Nos. 626 and 627 of 1981 challenging the view of the Tribunal that the groundnut kernel will not fall under

item 6(i) of the Second Schedule to the Act.

2. The writ petition is filed by one Messrs. Jothi Andavar and Company, challenging the assessment order for the year 1980-81, subjecting

groundnut kernel at the single point rate falling under item 6(i) of the Second Schedule to the Act. As the only question that was raised before us in

all these cases being common and common arguments were addressed, these cases are disposed of by this common order.

3. Mr. C. Venkataraman, learned counsel appearing for the assessee (petitioners), elaborately argued the matter contending that whatever may be

decisions of this Court and other High Courts regarding the understanding of the term ""groundnut"", the same cannot be construed to mean and

include ""groundnut kernel"" after the judgment of the Supreme Court in State of Tamil Nadu v. Pyare Lal Malhotra reported in [1976] 37 STC 319

According to the learned counsel, the Supreme Court, while interpreting a similar entry, has held that the enumerated goods must be construed as

the object of subject-matter and nothing else. In other words, according to the learned counsel ""groundnut"" and ""groundnut kernel"" being distinct

and different commercial commodities, the word ""groundnut"" cannot be construed to mean ""groundnut kernel"" which has been purchased by the

assessee. To substantiate his contention that ""groundnut"" and ""groundnut kernel"" are two distinct and different commercial commodities, he cited

number of authorities to which we will refer, if necessary, at the appropriate place. His further grievance in the tax cases is that the Tribunal having

agreed with his contention that ""groundnut kernel"" will not fall under item 6(i) of the Second Schedule to the Act, erred in further holding that

groundnut kernel"" is liable to tax at the multi-point rate. According to the learned counsel, the Tribunal ought not to have decided that issue which

was not within the scope of the appeal before it. He also submitted that properly speaking, ""groundnut kernel"" should have been included by the

Legislature in the place of ""groundnut"", in item 6(i) of the Second Schedule to the Act having regard to the main entry, namely, ""oilseeds"", and

failure to do so, violates article 14 of the Constitution of India.

4. Mr. R. Karuppan, learned Additional Government Pleader (Taxes), contending contra, submitted that the Tribunal erred in taking the view that

groundnut kernel"" will not fall under item 6(i) of the Second Schedule to the Act. Even before that entry was introduced, this Court has taken the

view that ""groundnut"" will include ""groundnut kernel"". Therefore, the assumption of the assessee that ""groundnut"" will mean only ""groundnut with

shell"" is baseless, especially having regard to the main item, namely, oil-seeds. Learned Additional Government Pleader further submitted that the

judgment of the Supreme Court reported in [1976] 37 STC 319 (State of Tamil Nadu v. Pyare Lal Malhotra), cannot be pressed into service to

the facts of this case. He distinguished the cases cited by the learned counsel for the petitioner. According to the learned Additional Government

Pleader, the commodity, namely, groundnut kernel, will fall under item 6(i) of the Second Schedule to the Act, and as such, liable to single point tax

at the relevant period at the purchase point.

5. Before considering the rival submissions, we may just give the views of the Tribunal on this issue. They are as follows :

.... If really the intention is to include the groundnut kernel under item 6(i) it could have been plainly stated "groundnut and groundnut kernel". Item

6(i) is to be properly considered in its plain and literal meaning. Under item 88 of the First Schedule not only cashewnut is mentioned but kernel is

also mentioned. The intention is obvious and plain. Both cashewnut and its kernel are subject to single point tax at the point of first purchase in the

State. This makes it plain that it is not so with the groundnut and its kernel. There can be no difference in intentions, one for one item and another

for yet another item. There is obvious and plain reason for mentioning cashewnut and kernel in item 88 of the First Schedule while kernel is omitted

to be mentioned in item 6(i) and groundnut alone is mentioned. Item 6(A) is a similar provision incorporated under the Second Schedule to the

Tamil Nadu General Sales Tax Act. It also begins in a similar manner "pulses, that is to say". In the notes, it is stated, each of the pulses referred to

in item 6(A) whether whole or separated, and whether with or without husk, shall be treated as a single commodity. This does not appear to be in

the case with the item 6(i).

After referring to several judgments of the Supreme Court, this High Court and other High Courts, the Tribunal has held as follows :

We therefore are inclined to hold that groundnut kernel does not fall under item 6(i) of the Second Schedule. Though it belongs to the genus

"groundnut" it is commercially different marketable commodity and it cannot be subjected to single point tax at the point of first purchase as

contemplated under item 6(i) of the Second Schedule. Therefore, the assessment on the turnover relating to the purchase of groundnut kernel and

the consequent levy of additional tax on the turnover are not maintainable. But, however, the sale of groundnut kernel is subject to multi-point tax.

6. To appreciate the rival contentions and also to find out whether the Tribunal was right in its conclusion, it is necessary to set out item 6(i) of the

Second Schedule to the Act as it stood at the relevant time. It reads as follows :

It may be mentioned here that the above extracted item is nothing but a reproduction of section 14(vi)(i) of the Central Sales Tax Act, 1956. It is

true that the Supreme Court in [1976] 37 STC 319 (State of Tamil Nadu v. Pyare Lal Malhotra), had occasion to consider an entry in the Second

Schedule to the Act and particularly the expression ""that is to say"". Learned counsel for the petitioner placed reliance on the following passage in

the judgment of the Supreme Court :

..... We think that the precise meaning of the words "that is to say" must vary with the context. Where, as in Megh Raj's case AIR 1947 PC 72,

the amplitude of legislative power to enact provisions with regard to "land" and rights over it was meant to be indicated, the expression was given a

wide scope because it came after the word "land" and then followed "rights over land" as an explanation of "land". Both were wide classes. The

object of using them for subject-matter of legislation, was obviously to lay down a wide power to legislate. 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 meant to exhaustively

enumerate the kinds of goods on a given list. The purpose of an 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.

Placing reliance on the last portion of the above extract, Mr. C. Venkataraman, learned counsel for the assessee, contended that "groundnut" and "groundnut kernel" being distinct and different commercial commodities, "groundnut" as enumerated in the entry cannot be construed as "groundnut kernel". He cited number of authorities to substantiate his point that "groundnut" and "groundnut kernel" are different. We will assume for the sake of argument that both are different and distinct commercial commodities. But the point to be considered here is, whether the "groundnut" in the sub-entry alone is to be taken into account or it must be read along with the principal entry, namely, "oil-seeds". In our view, the sub-entry must be read along with the principal entry to understand the sub-entry. If so read, there can be no room for any doubt that "groundnut" enumerated as sub-item will only mean "groundnut kernel".

7. In this context, a Division Bench judgment of this Court in Radhakrishna Groundnut Oil Mill v. State of Madras reported in [1954] 5 STC 357 can be advantageously referred to. The Division Bench in that judgment has taken the view that the expression "groundnut" would include "groundnut kernel", while construing the scope and extent of rule 4(2) of Madras General Sales Tax (Turnover and Assessment) Rules, 1939.

Similarly, a Division Bench of the Andhra Pradesh High Court in Motilal Hariprasad and Brothers v. State of Andhra reported in [1955] 6 STC

654 while construing the scope and extent of rule 4(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, has taken the

view that the expression "groundnut" will include "groundnut kernel". Another Division Bench of the Andhra Pradesh High Court, in Motilal Hari

Prasad and Bros. v. State of Andhra reported in [1959] 10 STC 20 while construing the scope and extent of rule 4(2) of the Madras General

Sales Tax (Turnover and Assessment) Rules, 1939, held as follows :

..... to confine the meaning of the word "groundnut" to the unshelled nuts is to deprive the expression of its full content. We feel that there is no

warrant for putting a restricted interpretation on that word. In our opinion, this word is of wide amplitude so as to embrace within its compass the

kernel also. The mere fact that the nut is shelled and is converted into kernel cannot take it out of the purview of the definition of groundnut. The

groundnut is purchased only for its content, namely, the kernel. We are unable to

discover any intelligent differential between the groundnut and the kernel for the purpose of rule 4(2).

The reasoning of the learned Judges in this case will apply with much force to the facts of our case if we bear in mind that the principal entry is "oil-seeds". We have, therefore, no hesitation in coming to the conclusion that "groundnut" in item 6(i) of the Second Schedule to the Act will include groundnut kernel.

8. While interpreting the entry 6(i) of the Second Schedule "groundnut or peanut", we have to give meaning to the word "peanut" also. We may refer, with advantage, to the meaning given in Universal Dictionary 1988 Edition. Peanut=Arachis hypogaea=The edible nutlike oily seed of the vine, used for food and as source of oil. Thus, it is clear that the Legislature had only the oil-seed in mind when they referred to "groundnut or peanut

9. The reliance placed on the judgment of the Supreme Court reported in [1976] 37 STC 319 (State of Tamil Nadu v. Pyare Lal Malhotra), in our opinion, is not apposite. For, in that judgment, the principal entry is "iron and steel" and all the sub-entries are only products of iron and steel. In our case, under the principal item "oil-seeds", each sub-item is a different kind of oil-seed. Therefore, the judgment of the Supreme Court cannot be pressed into service to the facts of this case. Further, the Supreme Court itself, in that judgment, in the extracted passage, has stated : "We think that the precise meaning of the words "that is to say" must vary with the context

10. The Tribunal fell into an error in taking the view that "groundnut" in the entry in question will not include "groundnut kernel" as a result of its failure to bear in mind the principal entry, namely, oil-seeds. The comparison of item 88 of the First Schedule to the Act by the Tribunal to interpret the word "groundnut" is not apposite. In the view we have taken, we do not think it necessary to refer to all the decisions cited by the learned counsel for the assessee to make out a case that "groundnut" and "groundnut kernel" are two different and distinct commercial commodities.

11. The assumption that item 6(i) does not attract single point tax as declared goods on groundnut kernel having been held by us as wrong, as discussed supra, we reject the contention of the petitioner in W.P. No. 4484 of 1982 that item 6(i) of the Second Schedule to the Act violates

article 14 of the Constitution of India.

12. In the result, we dismiss the Tax Cases Nos. 69 and 70 of 1981 and also Writ Petition No. 4484 of 1982. No costs.

13. Tax Cases Nos. 626 and 627 of 1981 filed by the Revenue are allowed. No costs.

14. Assessee's petitions dismissed and State's petitions allowed.