
(1980) 10 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 76 of 1980

Kalloomal Samaldas

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 23-10-1980

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Item 16, 12

Citation : (1981) J LJ 699 : (1982) 27 MPLJ 20 : (1983) 54 STC 103

Hon'ble Judges : K.K. Dube, J; A.R. Navkar, J

Bench : Division Bench

Advocate : R.R. Gupta, for the Appellant; P.D. Agarwal, for the Respondent

Judgement

A.R. Navkar, J.

This order shall govern disposal of Misc. Civil Case No. 71 of 1980 and Misc. Civil Case No. 72 of 1980 Kalloomal Samaldas, Morena v. Commissioner of Sales Tax, Madhya Pradesh in both cases as well.

This is a reference made u/s 44(1) of the M.P. General Sales Tax Act, 1958 (hereinafter called the State Act), for referring the following questions of law arising out of the order of the Board of Revenue, Madhya Pradesh (hereinafter referred to as the Tribunal), passed on 25th January, 1973, in Appeals Nos. 324-PBR/71, 325-PBR/71 and 326-PBR/71, to this Court for decision at the instance of the assessee-applicant:

(1) Whether, in the facts and circumstances of the case, the "chunni" which is sold by the appellant is exempted under item No. 16 of Schedule I to M.P. General Sales Tax Act, 1958, or not?

(2) Whether, in the facts and circumstances of the case, the "chunni" sold by the appellant is exempted under Notification No. 1069-V-ST dated 22nd April, 1963, issued u/s 12 of the M.P. General Sales Tax Act or not ?

The questions in all the cases being common, they are being decided by this

common order.

The applicant is a grain dealer and also runs a dal mill. He has been assessed to sales tax for the Diwali year 1964-65 under the Central Sales Tax Act, 1956 (hereinafter referred to as the Central Act) and for the Diwali year 1966-67 under the State Act as well as the Central Act. Sale of "chunni" included in his turnover was assessed to tax. Along with the statement of the case of the references, annexures B-1, B-2 and B-3 are the copies of the assessment orders.

In first appeal against the assessment before the Deputy Commissioner of Sales Tax, the applicant-dealer contended that the sales tax was incorrectly levied on sale of "chunni". This contention was rejected by the Deputy Commissioner and he has, while deciding the point raised before him, observed (translated into English) that according to the appellant, he has sold "chunni" to the tune of Rs. 53,569.00 and he has asked for an exemption u/s 12 of the State Act on the basis of a notification issued by the Government on 22nd April, 1963. The notification is produced before the appellate authority and it was submitted while arguing the appeal that "chunni", in the common parlance is included in the word "husk" or "bran" and as such, the sale of "chunni" should be exempted from tax. But the appellate court has observed that the Board of Revenue has held in Mahavir Dal and Oil Mills, Guna v. Commissioner of Sales Tax, Madhya Pradesh that "chunni" is not included in "cattle feed" or "fodder". Therefore, the item is taxable. The appellate court further observed that the sale-price of "chunni" which the assessing officer has held to be taxable is correct and according to law. No ground was shown to the appellate authority for taking a different view from the view taken by the above judgment. Observing this the first appeal was dismissed. Against this order, a second appeal was preferred before the Board of Revenue and in second appeal, it was contended that "chunni" is fodder and used as a cattle feed and it is also exempted vide Notification No. 1069-V-ST dated 22nd April, 1963, as grain and thirdly is not the main product of appellant's business and hence it was not his business commodity. The Board of Revenue (i.e., the Tribunal), while rejecting the contentions raised by the applicant, has observed as under :

The appellant's first contention is that "chunni" is exempt from tax as it is fodder and has also been exempted u/s 12 of the M.P. General Sales Tax Act, 1958, vide Notification No. 1069-V-ST dated 22nd April, 1963, as gram (should be bran) and it is also not the main product of the appellant's business. This question has already been decided by this Tribunal in the case of Prabhat Dal Mills v. Commissioner of Sales Tax 1971 VKN (4) 120.

"Chunni" contains small particles of grain and therefore, cannot be said to be used exclusively as fodder and can also be used by human beings. The contention that "chunni" is bran which has been exempted is also not correct because bran is husk and "chunni" is different from husk and grain. It is also a regular by-product of the appellant's business and therefore, has to be assessed to tax.

Notification No. 1069-V-ST dated 22nd April, 1963, reads as follows:

"Notification No. 1069-V-ST dated the 22nd April, 1963.

In exercise of the powers conferred by Section 12 of the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959), the State Government hereby exempts in whole the goods or class of goods mentioned in column (1) of the schedule below from the payment of tax for the period specified in column (2) thereof:-

SCHEDULE

of	goods	Period	(1)	Description (2)
				1. Huskof
all grains,	From 1.4.1963 to 31.3.1964.	cereals, pulses and rice.	2. Bran.	1.
Period extended from time to time and 31.3.1967 sub-				stituted vide
Notification No.	861-457-V-ST			30.3.1966.

Taking into consideration this notification, the Board came to the conclusion that the orders passed by the assessing officer as well as by the first appellate authority do not require any interference and the interpretation put by the authorities below was correct and legal. Holding this the second appeal was rejected. After rejection of the second appeals, the applicant requested that as the questions of law as mentioned above arise from out of the second appellate order, the matter should be referred for the decision of this Court. The Tribunal has accepted this submission and made the references after framing the points of law. While referring the matter, the Tribunal has mentioned that the counsel for the applicant and the non-applicant have seen the draft statement of the case and have no comments to offer.

The question to be decided in this case is whether "chunni", sold by the applicant is exempted under item No. 16 of Schedule I to the M.P. General Sales Tax Act, 1958 (the State Act) and under Notification No. 1069-V-ST dated 22nd April, 1963, issued u/s 12 of the State Act. Entry No. 16 of Schedule I to the State Act mentions that "fodder except cotton-seed and oil-cakes". So for exclusion under this entry, we are to see whether the word "fodder" is wide enough to cover "chunni" as submitted by the learned counsel for the applicant-assessee. This entry by which exemption is granted refers to the period from 1st April, 1959, to 14th April, 1966. The notification mentions : "1. Husk of all grains, cereals, pulses and rice. 2. Bran." This entry covers the period from 1st April, 1963, to 31st March, 1964 and this period is extended from time to time up to 31st March, 1967. So the point is can "chunni" be considered as husk of grains, cereals, pulses and rice, or can it be called bran. The learned counsel for the applicant submitted that "chunni" can well be held to be a "fodder" and as such, "chunni" is exempted from tax under entry 16, Schedule I. Similarly, it will be exempted from tax as it is covered under item 1 or/and 2 of the notification dated 22nd April, 1963. Therefore, imposition of tax by the authorities

concerned, holding that "chunni" is not fodder, so also "chunni" is not bran is not correct. It should have been interpreted as fodder and/or bran and it should have been exempted from sales tax. The counsel urges that as "chunni" can be covered under entry No. 16, that is to say, as it is fodder, we should answer the points referred to us in favour of the applicant. Similarly, he submits that "chunni" will amount to bran and as such, the notification dated 22nd April, 1963, will be applicable to the case of the applicant and question No. (2) referred to this Court should be answered in favour of the applicant. The interpretation put by the Tribunal in second appeal and the assessing authority and the first appellate authority should be set aside. It was submitted before us as it was submitted before the first appellate authority that "chunni" is nothing but a cattle feed. It cannot be used for human consumption. It was submitted that even small particles of pulses which can be detected in "chunni" of moong and tunwar are only useful as "cattle feed" and not fit for human consumption and it is given along with fodder as cattle feed. There was no challenge before us for the discussion made by the appellate authority when it held that "chunni" is different from "bhusi". Similarly, the "chunni" is different from "bran". Even otherwise, we have considered the submission made by the learned counsel for the applicant to hold that the exemption claimed by the applicant under the Notification dated 22nd April, 1963, can be claimed by him or not. The submission of the learned counsel for the applicant is that "fodder" is a "cattle feed" and if "chunni" is a cattle feed, then it should be held by us that "chunni" is a cattle feed and therefore, it is "fodder" and as such, it is exempted under the above-mentioned entry and notification. But, this submission cannot be accepted. Cattle feed includes so many items. Cattle feed is divided into two types : (i) roughages and (ii) concentrates. Concentrates like, "chunni" or oil-cakes are added to roughages, i.e., fodder to make it rich in proteins. In Encyclopaedia Britannica, Vol. 9, under the heading "Feeds-animal", on page 144, what type of animal feed should be given to animals is discussed. On page 147, important concentrate feeds are mentioned and why they are needed to be given to the animals is also discussed as under :

IMPORTANT CONCENTRATE FEEDS.-First in importance among the concentrates are the cereal grains and the high-grade by-products of these grains that are secured in milling them for human food or in processing them for other purposes. All of the cereal grains, such as corn (maize), oats, barley, wheat and the grain sorghums, are rich in starch and high in digestibility, but they are low in protein and also in calcium, one of the important bone-building mineral nutrients. Moreover, their protein is of rather poor quality. The cereal grains are excellent livestock feeds when their deficiencies are made good by other feeds or by special supplements, such as amino acids, vitamins and minerals. They can to a considerable extent be used interchangeably. Certain cereal by-products are rich or fairly rich in protein, while others are low in this nutrient. In the first class are the by-products from milling wheat-wheat bran and wheat middlings ; corn gluten feed, the chief by-product from the manufacture of starch from corn; brewers"

grains and brewers' yeast from beer manufacture; and distillers' grains from the production of distilled liquors and alcohol. Low-protein cereal by-products include moniny feed, the corn by-product from the manufacture of hominy and brewers' grits and corn feed meal, the by-product from making corn meant for human food.

Important among the concentrates are also other seeds especially certain legume seeds, such as soyabeans, field peas, horse beans (broad beans) and peanuts. The legume seeds are all high in protein and soyabeans and peanuts are also so high in fat, or oil, that they are important sources of oil for human food and industrial purposes.

From the processing of soyabeans, peanuts and other oil-rich seeds for oil production, various oil meals are secured as by-products. In the older methods of processing these seeds, the fat, or oil, was removed by subjecting the crushed seeds to great pressure in hydraulic presses or in continuous screwlike expellers, but the oil meals thus produced still contained 5% or more of fat. In the newer solvent process, oils are extracted from the crushed seeds with a fat solvent and the oil meals may contain less than 1% fat. While solvent-process meals have very little fat, they are a little higher in protein than the hydraulic-or-expeller-process oil meals and are satisfactory feeds.

In the case of cotton-seeds and peanuts, which have woody hulls or husks, these are generally removed before the oil is separated in order to secure a more complete recovery of the oil and to produce a by-product with greater feeding value. Where the hulls are not removed, the by-product cannot legally be called oil meals in the United States, but are termed cotton-seed feed and peanut feed. In Great Britain these by-products are called undecorticated oil meals.

Cotton-seed oil meal, soyabean oil meal and peanut oil meal all generally contain at least 41% protein and rank high in digestibility and feeding value. Cotton-seed oil meal should not form more than about 9% of the rations for swine, to avoid injury from the effect of gossypol, a compound contained in varying amounts in this feed. However, cattle may safely be fed larger proportions of cotton-seed oil meal. Newer processes have been devised for removing the gossypol and such meal can be fed to pigs and poultry in larger amounts. Linseed oil meal, the by-product from flax seed, has somewhat less protein, usually containing 32% to 34%. Because of its palatability and its laxative and conditioning effect, it is one of the most popular livestock feeds. Coconut oil meal, or copra oil meal, has only about 20% protein but ranks high as a feed for dairy cows.

From the beet sugar and the cane sugar factories come beet molasses, beet pulp and cane molasses or blackstrap molasses. These are palatable feeds, low in protein and high in carbohydrates. Important animal by-products are meat scraps and tankage from the meat-packing plants, fish meal from fish-processing plants and poultry waste and feather meal from poultry-dressing plants. These usually have 50% or more of protein, which is of excellent quality and are,

therefore, valuable protein supplements for swine and poultry. Excellent protein is also supplied by the dairy by-products-skim milk, butter milk and whey, all available as dried products.

It also enumerates important roughages. They are as under:

IMPORTANT ROUGHAGES.-Among the roughages, first place should be given to the pasture plants for they generally furnish, during the growing season, most of the feed for beef cattle and sheep, much of that for dairy cows and even important amounts for swine and poultry. Because pasture usually supplies nutrients more cheaply than do harvested crops, it is important to fertilize and manage pastures so that an abundance of palatable forage is provided over as long a period as possible. For seeding pastures, a combination of grasses and legumes is used that is best adapted to the particular area. All green, actively growing pasture crops are fair to rich in protein and high in vitamins. When pasture plants become mature and weathered, their feeding value is greatly reduced.

Next in importance among roughages are the various kinds of hay, which is merely a grass or legume forage crop preserved by drying. Legume hay such as alfalfa or clover is much higher in protein, in calcium and usually in vitamin A value than is grass hay. Late cut hay, either legumes or grasses cut in the late bloom or seed stage of maturity, is worth much less than hay cut before the plants are in bloom or in the early bloom stage as it is less palatable, much higher in fibre and lower in protein and vitamins. Early cut and well-cured grass hay may even equal average legume hay in feeding value, except for the lower protein content. The use of special barn-drying procedures whereby air, sometimes heated, is blown through the partially dried hay to complete the drying process makes it possible to produce excellent quality hay even during rainy periods with little or no weather damage. Barn drying of hay often avoids the extensive loss of nutrients from leaching by rain and from prolonged exposure to the sun.

Green forage crops, such as corn, sorghum and the legumes and grasses, are preserved for winter feeding in the form of silage by placing the chopped forage in tower silos or in pits or trenches in the ground (see Ensilage). Silage is widely used, in addition to hay, as roughage for dairy cows, beef cattle, sheep and mature swine. Root crops, such as mangels or rutabagas (swedes), are raised extensively in some European countries for stock feed.

The straws from the cereal grains and corncobs are very high in fibre and low in digestible nutrients. They can be utilized best for cattle, sheep or horses that are being maintained and not being fed for production of work. Such fibrous feeds require special supplements of protein, minerals and vitamins to give satisfactory results.

Therefore, only because "chunni" is a cattle feed or it is given with fodder, it cannot be held that "chunni" will amount to fodder or the said entry No. 16 of

Schedule I to the State Act can be applied to "chunni" and it can be held that "chunni" is exempted from sales tax. It cannot be termed as "roughages" is also clear from the above discussion. Same is the case when we have to interpret the word "bran" in the notification dated 22nd April, 1963. "Chunni" cannot be held to be bran as submitted by the learned counsel for the applicant and as such no exemption can be claimed by the applicant as submitted by the learned counsel for the applicant. Somewhat similar point came for interpretation before this Court in *R.D. Parikh and Sons, Sadar Bazar, Raipur v. Commissioner of Sales Tax, Madhya Pradesh* (Misc. Civil Case No. 399 of 1971 decided on 8th December, 1975) and the Full Bench of this Court, held as under (while interpreting the entry):

3. When the reference came before a Division Bench of this Court, an attempt was to show that the Tribunal had come to a wrong conclusion that the product in question was a concentrate on misreading the pamphlet published by the complainant. The product in question could be directly fed to the cattle and the suggestion in the pamphlet that it may be given in a mixture with grass, etc., was to be followed only in the beginning till the cattle got accustomed to the feed. It was suggested that the Tribunal was in error in concluding that the product was a concentrate on the hypothesis that it could not be directly fed to the cattle and was required to be mixed with grass, etc. On this ground it was further claimed that the question should be reframed or that the Tribunal be asked to make a fresh reference. The Division Bench negatived the contentions on two grounds, namely, that the question as framed by the Tribunal was not objected to by the other party and this Court was bound to answer the question as framed. Secondly, it was held that it made no difference as to whether the cattle feed could be given to the cattle directly or it could only be given after being mixed with grass, etc., as it could not be doubted that it was a concentrate and not a roughage and the only question which arose for decision was as to whether even as a concentrate the product stood included in the entry "fodder except cotton seed and oil-cakes. In the Sales Tax Act, 1947, which was substituted by the M.P. General Sales Tax Act, the relevant entry was "oil-cakes and other cattle feeds". In the new Act, the expression "cattle feed" which is inclusive of every thing that is fed to the cattle including fodder, was substituted by the entry "fodder except cotton seed and oil-cakes". It is a matter of common knowledge that, apart from fodder, milched cattle is fed with some quantity of oil-cakes and cotton-seed so as to secure better fat content in the milk. In entry No. 16, "cotton-seed and oil-cakes" appear to have been excluded by way of abundant caution as these two items are generally used for cattle feed and there was a possibility of advancing an argument because of the general practice that these two items stood included in the expression "fodder". It may be noted that when an attempt was made to urge before the sales tax authorities that the concentrates were also included in the said entry, the same was amended with effect from 15th April, 1966, so as to exclude concentrates also. Entry No. 16 was further amended and now it reads as under:

Fodder, that is to say, grass, hay, straw or any other plant in green or dried form ordinarily used for feeding cattle except when purchased as raw-material for the manufacture of other goods.

From the present entry, it is quite clear that the expression "fodder" is only confined to the roughages and not anything else that may be fed to the cattle. In contrast to this, it may be noted that in certain Sales Tax Acts of other States exemption is granted to cattle feeds as such. Under that kind of entry every article that can be used as cattle feed, including concentrates, may stand included, the expression being of much wider amplitude than the expression "fodder". The expression "fodder" in common parlance applies to roughages only. It is a well-settled rule of interpretation that the words used in taxing entries should be interpreted in the manner they are commonly understood unless the context requires that they should be interpreted in a technical sense. In the opinion of the Division Bench, the expression "fodder" only applied to roughages and it did not include concentrates. The Division Bench was, however, faced with the difficulty inasmuch as another Division Bench of this Court in *Commissioner of Sales Tax, M.P. v. Bhagwandas Joharmal* 1970 M.P. Revenue Nirnaya 224, has come to the conclusion that "raskatlota", a waste material left out in the process of preparing jaggery, which is not consumed by human beings and which after being dried is used as cattle feed, comes within the entry "fodder except cottonseed and oil-cakes". That Division Bench accepted the proposition that the expression "fodder" in common parlance is applied to the roughages only, but it felt that when the legislature excluded the expression "cotton-seed and oil-cakes" which are not roughages, it was clear that every thing that is used as cattle feed, except cotton-seed and oil-cakes, stood included in the expression "fodder" by necessary implication. It was on this reasoning that "raskatlota" which is in common parlance not included in "fodder" was held to be exempt from sales tax. The Division Bench found it difficult to accept the abovesaid proposition, namely, that exclusion of cotton-seed and oil-cakes from "fodder" every thing and any thing that was fed to the cattle stood included in the expression "fodder". The Division Bench, therefore, referred to a larger Bench the question already referred to.

We have no hesitation in holding that the expression "fodder" only includes roughages, such as, green grass, hay, bhusa, kadbi, etc. and it does not include oil-cakes, cotton-seed, concentrates, etc., even if they are included in the cattle feed. We have already referred to the entry that occurred in the C.P. and Berar Sales Tax Act, 1947, which was to the effect "oil-cakes and cattle feeds", an entry of large amplitude. We have also referred to the common practice of the milched cattle being fed with some quantity of cotton-seed and oil-cakes to secure better percentage of fat content in the milk and we have also pointed out that in entry No. 16 of the M.P. General Sales Tax Act, cotton-seed and oil-cakes appear to have been excluded by way of abundant caution from the expression "fodder" because of the apprehension that attempt might be made to argue that these items were included in the expression "fodder" as they were commonly

used as "cattle feed". The further amendments referred to by us also indicate that the legislature desired to confine the entry only to roughages.

As to the function of "exception" and a "proviso", the Division Bench referring the question observed thus :

The function of an "exception" and a "proviso" is practically similar. It is now well-settled that the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. It is, therefore, held that when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso [see 5. *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, where the observation of Lush, J., in *Mullins v. Treasurer of Surrey* (1880) 5 QBD 170, is quoted with approval]. Again, in *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, it was held :

The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso, would fall within the main enactment.

Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.

It is, however, held that a proviso has no repercussion on the interpretation of the enacting portion of the section so as to exclude something by implication which is embraced by clear words in the enactment (see *M. and S. M. Railway Co., Ltd. v. Bezwada Municipality and The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, . Similarly, if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, one cannot derive these provisions by implication from a proviso (See AIR 1949 39 (Privy Council) . Again, though the natural presumption is that but for the proviso the enacting part of the section would have included the subject-matter of the proviso, often times provisos are inserted to allay fears or remove misapprehensions or by way of abundant caution. Lord Herschell in *West Derby Union v. Metropolitan Life Assurance Society* [1897] AC 647 (HL) observed :

...I am satisfied that many instances might be given where provisos could be found in legislation that are meaningless because they have been put in to allay fears when these fears were absolutely unfounded and when no proviso at all was necessary to protect the persons at whose instance they were inserted.

It was again observed by the Privy Council in *Meyappa Chetty v. Subramanian Chetty* (1916) 43 IA 113 (PC) that in such cases the proviso has no effect

whatsoever on the enactment and cannot be relied on as controlling the operative words. In *Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd.*, a passage from *Craies on Statute Law* to the same effect was quoted. From what we have held above it is clear that "cotton seed and oil-cakes" would not have been ordinarily included in the expression "fodder" as they are not roughages. Their exclusion from the entry is apparently by way of abundant caution and not with a view to take out from the entry "fodder" something which was, in fact, included in it. We have also noted that if the language of the main part of the section is clear, the scope of that part cannot be enlarged by implication by resorting to the proviso. What is true of a proviso is equally true of an exception. We, therefore, feel that the decision of the Division Bench in *Commissioner of Sales Tax, M.P. v. Bhagwandas Joharmal* 1970 M.P. Revenue Nirnaya 224 needs reconsideration. The fact that the entry was subsequently amended by the legislature excluding concentrates also supports our view."

We entirely agree with the reasoning of the Division Bench referring the question to us. We are of the opinion that the exclusion of "cotton-seed and oil-cakes" did not enlarge the meaning of "fodder" so as to include every thing that can be used as cattle feed. In our opinion, the decision in *Commissioner of Sales Tax, M.P. v. Bhagwandas Joharmal* 1970 M.P. Revenue Nirnaya 224 should be confined to the facts of that particular case and to the extent it lays down the wider proposition that the inclusion of "cotton seed and oil-cakes" enlarges the meaning of "fodder" so as to include every thing that can be used as cattle feed, cannot be accepted as laying down the correct law.

We have reproduced the above passages from the Full Bench judgment to show that before the Full Bench, similar argument was advanced which is advanced before us, but the Full Bench has rejected all the submissions made before it. We also cannot accept any.

The result, therefore, is that our answers to the law points referred are as under:

- (1) "Chunni" sold by the applicant is not exempted from imposition of sales tax under entry No. 16 of Schedule I to the M.P. General Sales Tax Act, 1958.
- (2) "Chunni" sold by the applicant is not exempted from imposition of sales tax under Notification No. 1069-V-ST dated 22nd April, 1963, issued u/s 12 of the M.P. General Sales Tax Act.

The answers are in favour of the revenue and against the applicant. The Commissioner of Sales Tax, Madhya Pradesh, will have costs of this reference. Hearing fee Rs. 250.