(1989) 01 KL CK 0002

In the High Court Of Kerala

Case No : T.R.C. No''s. 105 and 106 of 1988

Kanakapalam Estate — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 09-01-1989

Acts Referred:

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

Citation : (1989) 2 ILR (Ker) 159 : (1989) 73 STC 336

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : K.B. Menon, for the Appellant;

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—These two revisions are filed by the same assessee. The Revenue is the respondent in both these revisions. The matter relates to the assessment years 1980-81 and 1981-82. In effecting the assessments under the Kerala General Sales Tax Act, for the above two assessment years, the turnover representing the sale of rubber trees was included. The assessee put forward the plea that the rubber tree is only an agricultural produce and so, not liable for assessment. This plea was negatived by the assessing authority, the appellate authority and by the Sales Tax Appellate Tribunal. The Tribunal referred to its earlier decision in T.A. Nos. 971 and 972 of 1983 dated 7th April, 1987 and held that rubber trees are taxable under the Kerala General Sales Tax Act. Aggrieved by the said decision, in T.A. Nos. 416 and 417 of 1984 dated 5th November, 1987, the assessee has come up in revisions.

2. We heard counsel for the revision-petitioner/assessee. The main plea advanced before the Sales Tax Appellate Tribunal and before us is that rubber tree is an agricultural produce and it is not "timber" and according to counsel for the revision-petitioner, timber can mean only such trees as are fit to be used for buildings and repairing houses. It was argued that the Appellate Tribunal erred in importing the definition of the word "timber" in the Indian Forest Act and in its

conclusion that rubber trees are taxable.

3. u/s 2(xxvii) of the Kerala General Sales Tax Act, the proceeds of the sale by a person of agricultural produce grown by himself or grown on any land in which he has an interest, shall be excluded from his turnover. But explanation (1)(ii) to Section 2(xxvii) states that agricultural produce shall not include tea, coffee, rubber, cardamom or timber. Counsel for the revision-petitioner submitted that rubber trees cannot be said to be "timber" within the meaning of Section 2(xxvii), explanation (1), Clause (ii) so as to exclude it from the terms "agricultural produce".

4. In Concise Oxford Dictionary of Current English, Seventh Edition, 1981, at page 1120, the meaning of the word "timber" is given as follows:

Timber-wood prepared for building, carpentry, etc., trees suitable for this; woods, forest; piece of wood, beam, esp., any of the curved pieces forming ribs of vessel, tree about to fall.

In Chambers 20th Century Dictionary, New Edition, 1983, the meaning of the word "timber" is given at page 1352, as follows :

Timber-wood suitable for building or carpentry, whether growing or cut: standing trees of oak, ash, elm, or other kinds, forming part of an inheritance : material generally : a beam, or large piece of wood in a framework, as of a house, ship, etc.: familiarly, a wooden object or part...

In Law Lexicon, by Ramanatha Iyer, at page 1281, "timber" is described as follows :

Timber. Wood fitted for building, or other such like use; in a legal sense it extends to oak, ash and elm, etc. (Tomlins Law Dic.). By this word is meant (in England) great wood, that is to say, trees which serve for building or reparation of houses, such as oak, ash and elm of the age of twenty years and upwards. (1 Cruise''s Digest. 4th Ed, Vol. I.P. 116, S. 5; Ency. of the Laws of England.)

The word ''timber'' of commerce is squared sticks of wood used in building. The trees from which they were cut became known as ''timber trees''. The word ''timber'' may mean wood suitable for building houses or ships, or for use in carpentry, etc.; trees cut and squared, or capable of being squared and cut into beams, rafters, planks, boards, etc.; growing trees, yielding wood suitable for constructive uses; trees generally; woods.

The term ''timber'' as used in commerce refers generally only to large sticks of wood, squared or capable of being squared, for building houses or vessels; and certain trees only having been formerly used for such purposes, namely, the oak, the ash and elm, they alone were recognised as ''timber trees''; but the numerous uses to which wood has come to be applied and the general employment of all kinds of trees for some valuable purpose has wrought a change in the general acceptation of terms in connection therewith and, as defined by Webster, ''timber'' is that sort of wood which is proper for buildings, or for tools, utensils, furniture, carriages, fences, ships and the like.

By timber is meant trees fit to be used in building. Bamboos are timber inasmuch as they are used, by the custom of the country, in the building and repairing of the houses. AIR 1923 Pat 95 (Sir Rameswar Singh v. Basudeva Singh)]. ''Timber'' includes trees when they have fallen or have been felled and all wood whether cut up or fashioned or hollowed out for any purpose or not. [Act 16 of 1927 (Forest), Section 2, Clause (6)].

The words ''timber'' and ''forest produce'' in Section 41 are used in the widest sense as given in the definition to be found in Section 2 and not in the narrow and restricted sense. AIR 1928 Lal 80 (Lal Badshah v. Emperor).]

In Stroud''s Judicial Dictionary, at page 2637, timber is described as follows:

Timber. (1) By the term ''timber'' is meant properly such trees only as are fit to be used in building and repairing houses; thus oak, ash and elm trees are considered ''timber'' in all places and under whatsoever circumstances they are grown (Co. Litt. 53a). But only trees of not less 6 inches in diameter or 2 feet girth (allowing than for irregularities of shape) appear to be reckoned or considered as ''timber'' (Whitty v. Dillon 2 F & F 67) [Woodf. (24th ed.) 745]. And no wood ''is timber until of 20 years'' growth'' (Dunn v. Bryan Ir. Rep. 7 Eq. 143; Foster v. Leonard Cro. Eliz. 1; see further as to what are and what are not, timber trees. (Honywood v. Honywood L.R. 18 Eq. 306).

(2) Many descriptions of trees, which are not generally consider-ed as timber, are so in some places by the custom of the country, being there used for the purpose of building; thus it has been laid down that horse-chestnuts, Limes, birch, beech, asp. walnut trees and the like may under such circumstances be deemed timber and are therefore protected by the law as such, (Chandos v. Talbot 2 P. Wms. 606; Palmer''s case Co. Litt. 53a, Hargaraves note 349). It has been determined that, in the county of York, birch trees are timber, because they are used in that country for building sheep-houses, cottages and such mean buildings (Cumberland''s case, Moore, 812); and it would see that, in Hampshire, willows have been considered as ''timber'' by the custom of the country (Layfield v. Cowper 1 Wood. 330; Guffly v. Pindar Hob. 219) [Woodf. (24th ed.) 745, 746]. See further Gordon v. Woodford 29 L.J. Ch. 222. To the like effect is the passage in Dart already referred to, where it is laid down that ''timber'' includes, by local custom, beech and various other trees; even trees which are primarily fruit trees, as cherry, chestnut and walnut (Chandos v. Talbot sup.). So white-thorn may be timber (Palmer''s case sup.). But though Dart does not mention the condition emphasised in the passage extracted from Woodfall, viz., that to bring trees, not usually regarded as ''timber'', within that word they must by the custom be ''used for the purpose of building''. Yet it would seem that that at least is an important element in such a construction....

5. In the light of the extended meaning given to the word "timber", as could be

seen from Law Lexicon by Ramanatha Iyer and Stroud''s Judicial Dictionary, we are unable to hold that in Kerala, rubber trees will not come within the term "timber". A large majority of common people use arecanut trees, coconut trees, bamboos, etc., for building houses and "huts" for habitation. Rubber trees can also be used for the said purpose. In this view, we hold that rubber trees will also come within the expression "timber" and so excluded from "agricultural produce", within the meaning of explanation (1)(ii) of Section 2(xxvii) of the Kerala General Sales Tax Act. In George P. Mathew v. State of Kerala 1980 KLT 312, the question that arose for consideration was whether the proceeds realised by the sale of the slaughter-tapping trees is taxable ? A plea was advanced that the sale proceeds will not be taken in by the definition of the term "turnover" in Section 2(xxvii) of the Kerala General Sales Tax Act. Repelling the contention, Gopalan Nambiyar, C.J., observed as follows:

...Even going by the terms of explanation (1) to Section 2(xxvii), 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 P1 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....

6. In the light of the above, we are of the view that the sale of rubber trees was rightly brought to tax in the assessments of the assessee, for the years 1980-81 and 1981-82.

7. These tax revision cases are without merit. They are dismissed.

