(1998) 02 KAR CK 0045

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 5 of 1995

Karnataka Forest Development Corporation Limited — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 05-02-1998

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2(1)(C)

Citation : (1999) 47 KarLJ 82

Hon'ble Judges : S. R. Bannurmath, J;Y. Bhaskar Rao, J

Judgement

Y. Bhaskar Rao, J.-The Karnataka Forest Development Corporation Limited, a public sector undertaking owned by the Government of Karnataka, who is an assessee, has filed this revision petition assailing the order of the Karnataka Appellate Tribunal dismissing the appeal and confirming the orders of the Assessing Authority as well as the First Appellate Authority.

2. The facts of the case are, that the petitioner-assessee is a public sector undertaking owned by the Government of Karnataka. Petitioner is a dealer in raw rubber, latex, etc., and sells the same in the State and in other States also. For the assessment year 1988-89, the petitioner-assessee filed its return showing the turnover before the Assessing Authority. The assessee contended that, as the rubber being an agricultural produce, it is exempted from sales tax, under the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act"). Hence they are not liable to pay sales tax. It is contended that, in case their contention is not accepted the sales being inter-State sales, they are not taxable under the Karnataka Sales Tax Act. The Assessing Authority after considering the entire material on record, held that the rubber is not agricultural produce and the sale was held within the State of Karnataka. Against that an appeal was filed. The Appellate Authority also confirmed the same. Against that an appeal came to be filed before the Appellate Tribunal. The Appellate Tribunal confirmed the same. As against that, the present revision petition is filed.

3. Learned Counsel for the petitioner contended that the rubber is an agricultural

produce and the same is extracted from rubber trees planted by the corporation in the forest, and made into sheet forms and sold as it is as a raw rubber. Therefore, it is an agricultural produce. So, it is not taxable. On the other hand, learned Government Advocate contended that the latex is obtained in the rubber trees and after mixing some chemicals and acids, it will be made into sheet forms and sold. Therefore, raw latex which is processed by adding chemicals and other materials and made as a rubber sheet is different from the agricultural produce. Therefore, it cannot be said that it is an agricultural produce. So they are not exempted from payment of tax.

4. In view of the above, the question that arises for consideration is:

"Whether the raw rubber sheets which are sold by the petitioner is an agricultural produce or not?"

5. Section 5 of the Karnataka Sales Tax Act, 1957, provides for levying of tax on sale or purchase of goods, at the rate prescribed under the Act.

Section 2(1)(v) defines "turnover", which reads:

"''Turnover'' means the aggregate amount for which goods are bought or sold, or supplied or distributed or delivered or otherwise disposed of in any of the ways referred to in clause (t) by a dealer either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration".

Proviso to Section 2(1)(v) reads:

"Provided that the proceeds of the sale by a person of agricultural or horticultural produce grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, other than the proceeds of the sale by a company relating to pepper, cardamom or rubber grown within the State by such company, shall be excluded from his turnover".

Section 2(1)(a) defines "agriculture" which reads:

"''Agriculture'' with its grammatical variations includes horticulture, the raising of crops, grass or garden produce and grazing, but does not include dairy farming, poultry farming, stock breeding and mere cutting of wood";

Section 2(1)(c) defines "agricultural produce or horticultural produce" which reads:

"''agricultural produce or horticultural produce'' shall not be deemed to include tea and such produce except coffee as has been subject to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or drying".

6. By reading Section 2(1)(a) and 2(1)(c) together, it is manifestly evident that except tea and coffee, all other produce by the agriculture is an agricultural

produce. Even after cleaning, grading, sorting or drying, the produce retains the character of agricultural product. This apart, there is no dispute that the latex is an extract from rubber trees and thereafter, it will be made into sheets and sold. After obtaining the latex liquid, i.e., liquid rubber, some telefix are added to it and made into sheet forms. Some chemicals or acids are added to latex to dry it. Therefore, by making it into sheet forms, rubber will not change its original character. The very Corporation was before the Supreme Court to consider whether it is a forest produce or not. The Supreme Court in Karnataka Forest Development Corporation Limited v Cantreads Private Limited, AIR 1994 SC 2218, considered the question:

"Whether rubber sheets of various grades supplied by the State of Karnataka or the Karnataka Forest Plantation Corporation to the private limited companies, were forest produce within the meaning of the Karnataka Forest Act, 1963 (hereinafter referred to as "the Act") and hence liable to payment of forest development tax under Section 98-A thereof". This Court held that rubber sheets are forest produce as they remain natural rubber in spite of processing and in this connection, commercial parlance test is not to be applied. The Supreme Court reversed the said finding by considering whether the liquid rubber extract from the trees when made into sheets whether it retains the character of rubber or it is some other substance and held at para 5 as follows (at page 564 of STC):

"5. In the Rubber Grower''s Companion 1991 it is mentioned that the main crop for the rubber tree is latex, a milky white dispersion of rubber in water which is harvested by the process of tapping. The latex that flows out from the rubber trees on tapping is channelled into a container attached to them. The latex gets dried up on the tapping panel (tree lace) and the collection cups (shell scrap) form part of the crop and are collected by the tapper. The different kinds of crops harvested from rubber plantations are highly susceptible to bacterial action due to contamination on keeping. Therefore, it is essential to process them into forms that will allow safe storage and marketing. One of the marketable items is ribbed sheet rubber. It further discusses how the latex is converted into ribbed sheets. Latex is coagulated in suitable containers into thin slabs of a coagulum and sheet through a set of smooth rollers followed by a grooved set and dried to obtain ribbed sheet rubbers. Depending upon the drying method sheet rubbers are classified into two, ribbed smoked sheets and air dried sheets. It is further mentioned that the ribbed sheets after 2 or 3 hours are put in the smoke house where certain degree of temperature is maintained. The completely dried sheets are removed to the packing sheets where they are carefully inspected and classified according to standards published by the Rubber Manufacturers Association".

and further held in para 6 as follows: (at page 565 of STC)

"Since the processing does not result in bringing out a new commodity but it preserves the same and renders it fit for being marketed, it does not change its character. It was caoutchouc or latex when it was obtained from the trees, it continued to be caoutchouc or latex when it was treated by sulphuric acid and continued to be so even after it is dried with smoke to obtain the shape of sheets". Thus, the Supreme Court has categorically laid down that even after the latex rubber obtained from trees were made to sheets after putting the sulphuric acid treated with smoke to make it sheet, it continues to be rubber and therefore, the rubber obtained from the trees, merely by making sheets, will not change its character and will not lose its original form of rubber. The judgment of the Supreme Court has made it clear that, there is no change in the nature and character of the substance of the raw rubber. Applying the same principle for this case, the liquid rubber obtained from the trees, after converting it into sheets, by adding acid and smoke process will not change the character and it remains as it is and therefore, remains as agricultural produce.

7. Learned Government Advocate contended that, the Supreme Court in para 7 of the above judgment held that: (page 565 of STC)

"The test of commercial parlance while considering entries in Sales Tax Act was evolved as the tax under the sales tax enactments is normally either on sale or purchase or on manufacture or import, etc.".

The test of commercial parlance is different from the test which are laid down and considered by the Supreme Court in deciding the case whether it is a forest produce or not. There is no dispute about the other contentions raised by the learned Government Advocate. In the Act itself in Entry 10, page 169 of Second Schedule, the rubber is defined as (i) raw rubber, namely, latex in liquid or sheet form, the rate of tax is mentioned at 4 per cent and (ii) rubber plates, sheets and strips unhardened whether vulcanised or not and whether combined with any textile material or otherwise, the rate of tax is mentioned at 8 per cent. The Act itself made a distinction between raw rubber and rubber products. The latex in liquid form or sheet form is a raw rubber according to entry (ii). Thus the sheet form of rubber has also been treated as raw rubber by Legislature itself. Therefore, it cannot be said that, in common parlance, the sheet or rubber will be treated as some other thing than raw rubber. Therefore, we are not able to accept the contention of the learned Government Advocate.

8. Learned Government Advocate secondly contended that, the proviso to Section 2(1)(v) was inserted by Act No. 23 of 1983 on November 18, 1983 which exclude the agricultural produce except rubber, pepper and cardamom, etc. Once that is excluded it is no more an agricultural produce. It is to be noticed that the relevant assessment year in this case is 1988-89. The original proviso is added by Act No. 23 of 1983 which came into force on November 18, 1983 which reads:

"Provided that the proceeds of the sale by a person of agricultural or horticultural produce grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover".

Thereafter, vide Act No. 15 of 1991 which came into force on April 1, 1991, the following words are added:

"Other than the proceeds of the sale by a company relating to pepper, cardamom or rubber grown within the State by such company, shall be excluded from his turnover".

Thereafter, explanation to proviso was omitted vide Act No. 7 of 1996 which came into force on April 1, 1996. Thus it is evident that for the relevant assessment year, the said provision was in force and it has not excluded cardamom, pepper and rubber from the agricultural produce for the purpose of levying tax. Therefore, the contention of the learned Government Advocate is not tenable.

9. Learned Government Advocate has relied on the book Mc. Graw Hill Encyclopaedia of Science and Technology, in which, "processing" has been stated as follows at page 589.

"Processing: In the crude state, natural and synthetic rubbers possess certain physical properties which must be modified to obtain useful end-products. The raw or unmodified forms are weak and adhesive. They lose their elasticity with use, change markedly in physical properties with temperature, and are degraded by air and sunlight. Consequently, it is necessary to transform the crude rubbers by compounding and vulcanization procedures into products which can better fulfil a specific function".

10. Relying on this, learned Government Advocate contended that, even mixing of chemical or acid forms part of processing and the character of the article changes. Therefore, rubber by adding acids and drying with smoke for making rubber sheets will change it from agricultural produce to non-agricultural produce. There is no dispute in the meaning of the processing given in the dictionary. But the Supreme Court considered the same and held that this character will not change by adding acid or any chemicals and treating with smoke for the purpose of drying it. Therefore, we are not able to agree with the contention of the learned Government Advocate.

11. It is contended by the petitioner that the sale is inter-State sale. Once it is inter-State sale it is not taxable under the Karnataka Sales Tax Act or Central Sales Tax Act. It is to be noticed that the Assessing Authority, first Appellate Authority and the Tribunal held against the Revenue after considering all the facts of the case. Assailing that, the Sales Tax Department has not filed any revision and the same is not challenged. This Court is not a fact-finding authority. We do not want to interfere with the same.

Accordingly, this revision petition is allowed and the earlier order of the lower Court is set aside.