
(1967) 03 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No's. 2068 to 2072 of 1964

K.M. Jamal Mydeen

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 02-03-1967

Acts Referred:

General Sales Tax Act — Section 2(r)

Citation : (1968) 22 STC 45

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Advocate : R.S. Venkatachari, for the Appellant; M. Gunasekaran, for Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Venkatadri, J.—The petitioner Jamal Mydeen is a lessee of coconut topes and he has filed this batch of writ petitions to quash the orders of

assessment made for the years 1959-60, 1960-61, 1961-62, 1962-63 and 1963-64 by the Deputy Commercial Tax Officer, Papanasam, on 31st

October, 1964, on the ground that he is not liable to pay sales tax on the sale of coconuts to Messrs Khader Batcha Sons, Ayyampettai.

2. The petitioner is, as already stated, a lessee of coconut topes from several persons in Thanjavur District. He contends before me that he is not

liable to pay sales tax, because u/s 2(r) of the General Sales Tax Act, he is exempted from liability to sales tax, as the usufruct of the coconut trees

is agricultural or horticultural produce. To support his contention, the learned counsel for the petitioner has relied on a Full Bench decision of this

Court in Narayana v. Subramanian ILR 1937 Mad. 364 where it was held that coconuts are fruits, coconut trees are fruit trees and coconut

plantation is a fruit garden and as such coconuts are horticultural produce. Reference has also been made to *Arumugha Vettian v. Angamuthu*

Nattar (1965) 1 M.L.J. 170 where it was held that where a person has been given a right to cut and remove coconuts from a grove, his right to

enter upon the land would be in the nature of a licence if it is a case where he is to remove the goods immediately upon the grant of the right, but

that where he is entitled to the usufruct from the trees spread over a period of time, during which period the usufruct grew out of the soil, then the

right to collect the usufruct is in the nature of immovable property and would accordingly amount to a lease. Therefore, it is clear that the lessee, the

petitioner herein, is entitled to enjoy the usufruct of the coconut trees.

3. But it has been argued by the learned counsel appearing for the department that the petitioner is permitted to enjoy the usufruct of the trees only

by himself and, therefore, when he sells the coconuts to Messrs Khader Batcha Sons, a customer of his, the transactions become sales liable to

sales tax. I do not agree with this contention. I have held that the usufruct of the coconut trees is horticultural produce the sale of which will not

attract the levy of sales tax. Even under the Income Tax law, income from coconut tope is treated as agricultural income, and even under the

Agricultural Income Tax Act, income from the coconut tope is exempt. Further, the petitioner is entitled to protection and exemption granted by

the Government in L. Dis, 677/63, dated 24th October, 1963, as seen from the Commercial Taxes Gazette, Volume I, No. II, Quarter ending

31st December, 1963, page 5, item 12. It will be noticed that Khader Batcha Sons, who purchased coconuts from the petitioner's tope, have

been treated as a first seller and assessed to pay sales tax, and the same articles cannot be subjected to tax at more than one point.

4. For all the reasons stated above, the petitions succeed and all the orders of assessment and levy of penalty are quashed. There will be no order

as to costs in any of these petitions.