(1965) 04 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No''s. 865 and 884 of 1963, 1774 of 1964 and 1280 of 1965

M. Varadarajulu Naidu — APPELLANT

Vs

The State of Madras and Another — RESPONDENT

Date of Decision : 19-04-1965

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 16
Constitution of India, 1950 — Article 286(3)
Tamil Nadu General Sales Tax Act, 1959 — Section 4

Citation : AIR 1967 Mad 317 : (1965) 16 STC 684

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—This batch of petitions raises the question whether cinder is included within the meaning of ""coal, including coke in all its

forms"" which is item 1 of the Second Schedule to the Madras General Sales Tax Act 1959. If it is a sale of coal or coke it will bear tax at the point

of first sale in the State as provided by Section 4 of the Act. I must say that I have not found it quite easy to find a solution for the question, but,

have eventually come to the conclusion that the expression does not include cinder. I shall presently give my reasons.

2. It will suffice to mention the facts in one of these batches as the point for decision in all of them is the same. In W. P. 1280 of 1965, the

petitioner is a dealer in cinder ash at Madras. On his returns for January, February and March 1964, disclosing the turnover for each month in

cinder, he claimed exemption on the ground that he was not a first dealer. The second respondent did not accept that view but proceeded to

provisionally assess the petitioner on the basis that the sale of cinder were not entitled to the benefit of single point tax. The petitioner seeks for a

rule of prohibition or other appropriate direction restraining the respondents from enforcing the demand make on him on 20-2-1965.

3. In G. O. 3300 Revenue dated 24-8-1962, it seems the Government held the view that sales of cinder were within the entry and it would be

subject only to single tax. But, in view of an order of the Madras Sales tax Appellate Tribunal, which had been made in the meantime, the

Government changed its view with effect from 1-4-1963. The Tribunal had followed Mahabir Singh Ram Babu v. Asst. Sales Tax Officer 1962 13

STC 248, where Brijilal Gupta, J. with reference to an exemption of sales of coal from tax held that cinder was not coal and sale of cinder was not

covered by tax exemption. This is on the ground that coal is a mineral as it is dug out of the bowels of the earth without anything more beings done

to it while cinder is got only after a process of complete burning of coal and all combustible property of coal has escaped. With respect I am of the

same view. See also Fletcher v. Fields, 1891 1 QB 790 and Madurai Municipality v. Rangaswami, 1958 1 MLJ 13. In the English case, which

was under the Metropolitan Streets Act, 1867 the learned Judges looked into the object of the statutory inhibition of loading and unloading coke

on or across the footway between certain hours, and, expressed that coke was no more coal than cinders were.

4. But the difficulty here is not so much in distinguishing coke from coal but cinder from coke. Learned Counsel for the petitioners referring to the

dictionary meaning of coke and cinder, particularly the one given in Webster''s of cinder as a piece of party burned coal capable of further burning

without flame, contends that cinder is a form of coke. Another meaning given by Webster of cinder is that it is a partly burned combustible, in

which fire is extinct, or which no longer gives off flame. This is the meaning generally given by practically all the other dictionaries. Coke, on the

other hand, according to Webster, is the solid left when a cooking coal is deprived of its volatile constituents by heating in a retort or oven, and,

consists mainly of carbon and is hard porous and gray with submetallic luster and is much used in metallurgy and also as a domestic fuel. The

Concise Oxford dictionary says that cinder is residue of coal wood etc., that has ceased to flame but has still combustible matter in it. A certain author on Inorganic Chemistry (V. Swaminathan Iyer) says that coke is the residue left at the bottom when coal is subjected to intentional and

controlled distillation in resort without access of air, and that, in the modern recovery coke ovens, coal is heated by gas in fire clay retort, the

evolved gases being collected and the residual coke thrown out and quenched by water. He further observes that it is employed largely as a fuel

and is used as a reducing agent for obtaining iron and other metals from their oxide ores as its comparative purity renders it more suitable than coal.

The Encyclopedia Britannica Volume 5, says that coke is the product obtained by strongly heating coal out of contact with the air until the volatile

constituents are driven off and it consists essentially of carbon, the so-called ''fixed carbon'' together with the incombustible matters or as contained

in the coal from which it is derived. It appears that in addition to this, coke also contains, almost invariably, small quantities of hydrogen, oxygen

and nitrogen, the whole, however, not exceeding 2 or 3 per cent. It also contains water, the amount of which may vary considerably according to

the method of manufacture. The latest volume of Encyclopedia Britannica further refers to coke of various qualities depending on a particular

method of process employed in making coke out of coal. Cinder is thus the residue or ash that is left when coal or coke is burned and is removed

of its combustible matter. It may be that cinder is still capable of preserving heat and emitting glow. But, it must be basically different in its

properties from coke which is but coal minus invited my attention to the definition of cinder and ashes in the agreement form used by the Southern

Railway themselves that cinder and ashes usually mean pieces of coal and firewood that have ceased to burn and the residue left after the

combustion of coal and firewood. The ashes that are left behind as a result of complete burning of coal or coke are no longer coal or coke.

5. Learned Counsel argues that as entry I says ""coal, including coke in all its forms"" it should be read in the widest possible manner, Granting the

proposition, it must be coke in form before it can be said that it is a form of coke. I do not find it possible to hold that cinder in the sense that it is

the remnant or ashes left after complete burning out of coal or coke still remains and retains its properties as a form of coke.

6. For the State it is argued that the history of legislation tends to support the view have taken. With reference to Art. 286(3) before it was

amended by the Constitution Sixth Amendment Act, Central Act 52 of 1952, included among the goods declared essential for the life of the

community, coal including coke and other derivatives, petroleum and petroleum products including kerosene and motor spirit. This Act was

repealed by S. 16 of the Central Sales Tax Act, 1956 and Section 14 of the Act declared, among other goods, coal, including coke in all its forms

as of special importance in inter State trade or commerce. Item 1 in the Second Schedule to the Madras General Sales Tax Act, 1959 uses

identical words and prescribes the single point at which sale of coal, including coke in all its forms, shall be taxed. It is said that the omission of the

words ""and other derivatives"" etc. in Central Act 52 of 1952 indicates that only coal. including coke in all its forms, was to be considered as of

special importance in inter-State trade and commerce, and it follows, therefore, that cinder, which is the product of coke, is not coke or a form of

coke. Perhaps there is force in this contention. It is further argued that having regard to the fact that ashes left off after complete burning of coke or

coal are of practically no economic value or material use, cinder, therefore, would not have been regarded by the Legislature as of special

importance in inter-State trade or commerce. But that is a matter on which one cannot speculate, and in the absence of further material, I cannot

express my opinion on this aspect of the question.

7. On the whole, as I indicated, I am inclined to the view that cinder is not coke or is not a form of coke and is not within the entry I of Schedule II

of the Madras General Sales Tax Act 1959. The petitions are dismissed, but, in the circumstances, I ought to say the petitioners cannot be mulcted

with costs.

8. Petition dismissed.