

(1988) 04 OHC CK 0016
In the Orissa High Court
Case No : S.J.C. No's. 36 to 40 of 1982

Madan Mohan Ghosh and Another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 22-04-1988

Acts Referred:

Central Sales Tax Act, 1956 — Section 14

Citation : (1988) 66 CLT 46 : (1988) 71 STC 73

Hon'ble Judges : H.L. Agrawal, C.J.;G.B. Patnaik, J

Bench : Division Bench

Advocate : B.M. Patnaik, S.C. Lal and N. Mohanty, for the Appellant; S. Mohapatra, Additional Standing Counsel (C.T.), for the Respondent

Judgement

H.L. Agrawal, C.J.—The common question that arises for consideration in all these five reference cases made u/s 24(1) of the Orissa Sales Tax Act, 1947 (for short "the Act") by the Sales Tax Tribunal is as to whether watery coconuts are liable to purchase tax or sales tax.

2. In the first four cases, the dealer is M/s. Madan Mohan Ghosh and in the fifth one, M/s. Bhadrak Coconut Store. The period in the first four cases is 1976-77 and 1978-79 and in the fifth case it is 1977-78.

3. According to Section 3-B of the Act, inserted in 1958, the State Government may by notification declare any goods or class of goods to be liable to tax on turnover of purchases. Once any goods is declared under this provision, then no tax is payable on the sales of such goods or class of goods. It may also be mentioned that there is a great difference in the rate of purchase tax and sales tax. Therefore, in this litigation the dealers have taken the stand that the commodity in question, namely, "coconut", being a declared goods under the notification issued u/s 3-B of the Act, the assessing authority had committed an apparent error of law in subjecting the goods to sales tax.

4. Let us first notice the legislative history of the declarations issued from time to

time u/s 3-B.

By Notification No. CTA-4/60-2109-F. dated 25th January, 1960 coconut was subjected to purchase tax at the rate of 1 per cent till 31st March, 1969 and at the rate of 2 per cent from 1st April, 1969 till 30th April, 1976. By Notification No. 32294-CTA-202/74-F. dated 26th August, 1974, which came into force with effect from 1st September, 1974, coconut, i.e., copra excluding tender coconuts (*cocos nucifera*) was declared and subjected to purchase tax at the rate of 3 per cent till 30th June, 1975 and 4 per cent from 1st July, 1975 to 30th April, 1976. On 23rd April, 1976 (the period relevant for our purpose), a fresh notification (No. 20209-CTA-14/76-F.) superseding all the previous notifications was issued making it effective from 1st May, 1976. The relevant entry reads as follows :

Schedule Serial No. Description of goods (1) (2) 13. Oil-seeds, that is to say (i) to (v)... (vi) Cocoanut (i.e., Copra excluding tender cocoanuts) (*Cocos nucifera*);

Under the genus "oil-seeds", in Clause (vi), coconut, i.e., copra, excluding tender coconut only (*cocos nucifera*) was included as a declared commodity.

By the notification of the same date, the rate of purchase tax was fixed at 4 per cent. It is on the basis of the above description that it was vehemently contended on behalf of the dealers that coconut has been included as an item in "oil-seeds", and all that the notification intended to exclude therefrom was only tender coconut which is usually understood to mean the early stage of the fruit during which it mostly contains water and kernel is not formed therein. We may usefully make a reference to Section 14 of the Central Sales Tax Act which enumerates "certain goods to be of special importance in inter-State trade or commerce". Section 14(vi)(viii) reads as follows :

(vi) Oil-seeds, that is to say,--

(i) to (vii)....

(viii) Coconut (i.e., Copra excluding tender coconuts) (*Cocos nucifera*);.

Clause (vi) describes oil-seeds which, inter alia, includes in serial No. (viii) "coconut" and it has been described in the same manner as in serial No. 13(vi) of the notification, i.e., copra excluding tender coconuts (*cocos nucifera*). This item had fallen for consideration times without number before different High Courts including this Court and the Supreme Court. Way back in the year 1976, this Court had the occasion in the case of *State of Orissa v. Mahamaya Coconuts* [1976] 38 STC 120(SC) to consider the question as to whether dried coconuts were oil-seeds and as such declared goods as per the description given in Section 14(vi) of the Central Sales Tax Act. In that case, it was observed that coconuts were usually of four types, namely, (i) panichi coconuts, meaning coconuts with fully developed kernel and plucked after being ripe ; (ii) maru coconuts, i.e., when a part of the kernel is spoiled in course of storing, it is partly spoilt; (iii) sunvamaru or bhutakhia coconuts in which there is absolutely no kernel and

were completely spoiled in course of storing ; and (iv) khurud coconuts, i.e., papichi coconuts in course of storing become completely dried. It was not disputed in that case that oil is produced from kernel, i.e., white substance contained within the shell, and when there is no kernel at all, i.e., of the third variety indicated above, it is incapable of producing any oil. In this case, although the period of assessment was 1968-69 which is a ground for distinguishing the authority and the subsequent notification in question had been issued thereafter, there is no gainsaying that the nature and character of the coconuts botanically would remain the same. As indicated earlier, this question had fallen for consideration before different High Courts and the decisions of some of the High Courts were also cited before us. On a perusal of the authorities, it would appear that different State Legislatures have described" different varieties of coconuts in their schedules which has led to divergence of opinion regarding the interpretation of the item. The Allahabad, Andhra Pradesh, Kerala and Mysore High Courts have held coconuts and copra to be "oil-seeds". But the Madhya Pradesh and Madras High Courts have taken a contrary view.

While in Patna, I had the occasion to consider the expression "copra" (gari gola), a variety of coconut, which may be very much close to the "khurud" variety mentioned in the judgment of this Court, just noticed above. I have held that the variety was an "oil-seed" within the meaning of Section 14(vi) of the Central Act. In that case, the divergent opinions of the different High Courts were also noticed. It is not necessary to narrate them in detail here.

The Orissa notification has adopted the same terminology as the Central Act. Section 14(vi) does not contain any definition of the expression "oilseed". The words "that is to say" are explanatory or illustrative and do not amplify or limit. See 1972 K LR 53 (State of Kerala v. C. Moidoo). The old Clause (vi), which was substituted by Act 61 of 1972, was in general terms like "iron and steel" which led to many a controversial and conflicting issue in different High Courts. The amendment makes the matter more precise and clear and it purports to express what is and what is not covered under this clause. However, it has to be kept in mind that the main entry is "oil-seed" and, therefore, we have to examine the expression "coconut" or "copra" in that context.

5. Let us first refer to the dictionary meaning of the expression "cocos nucifera". It is a tropical seaside palm-tree akin to coco-palm or coconut-palm which produces the coconut, a large edible nut yielding coconut-butter or coconut-oil and coconut-milk. "Copra", according to the Chambers Dictionary, is the dried kernel of the coconut yielding coconut oil.

6. It appears from the discussions in the order of the Tribunal that the nature of coconuts dealt with by the two dealers was fully grown coconuts with well-developed kernel containing water which could not be called either tender or dried coconuts. This is the well-known variety of coconuts used for culinary purposes and on auspicious occasions and as a part of offerings in temples, It is for this view that the Revenue authorities have come to hold that the nature of

coconut dealt with by the petitioners is not copra, i.e., dried coconut, and, therefore, they have rejected the claim of the petitioners.,

7. At this stage, I may also usefully refer to certain observations of the Karnataka High Court in the case of *Sri Lakshmi Coconut Industries v. State of Karnataka* [1980] 46 STC 404(KAR). In the 12th paragraph of the judgment, the description of coconut from its early stage to the final stage has been graphically described as follows:

Coconut is the product of coconut palm or coconut tree (*cocos nucifera*). It is a drupe. It consists of an outer fibrous husk or cover (pericarp) and an inner bony cover or shell (endocarp) and a white thick edible meat or kernel attached to the inner part of the bony shell and in the cavity or the inner part of the drupe lies the sweet juice called coconut milk. Coconut, as an agricultural produce, enters the market after the removal of the outer cover of fibre and is commercially called "coconut" or "watery coconut". The kernel taken out of watery coconut is used profusely for culinary purposes. It is one of the important ingredients used in the preparation of articles of food. It is also used in the preparation of confectionery items such as several kinds of sweets, coconut burfi, coconut biscuits, etc. The sweet juice within watery coconut is a delicious drink though tender coconuts are generally and mainly used for this purpose. When coconut is fully matured and it is allowed to dry along with its outer fibre cover, the sweet juice within it gets dried up and thereafter the kernel also gets dried up and shrinks and gets detached from the bony inner cover. The whole kernel after it has reached this stage would be in the shape of hollow sphere and is called "copra"....

The main or predominant use of copra is the manufacture of coconut oil, which is profusely used for various domestic purposes, such as hair-oil, cooking medium, etc. Coconut oil is predominantly used for these purposes in west coast belt....

8. Long before, the Andhra Pradesh High Court in the case of *Tagoob Mohammad of Kanchili Vs. The Commercial Tax Officer*, was considering a case of "watery coconut". It was held that if a commodity possesses all the qualities of an oil-seed mentioned in Section 14(vi) of the Central Act, such a commodity cannot be excluded from the ambit of the expression "oil-seeds" merely because it is not, in popular parlance or mercantile transactions, referred to as oil-seed.

After this decision, the Andhra Pradesh Act was amended which purported to validate the collection of tax on watery coconuts in the State during the period from 19th August, 1963 to April, 1971. Amendment was brought in the Third Schedule containing declared goods in respect of which a single point tax only was leviable. By the amendment, item No. 5 of the Third Schedule was amended as "coconuts of all varieties", which led to a lot of controversies in that State resulting in the filing of a large number of writ applications." But, as observed by the Supreme Court in the case of *Sri Siddhi Vinayaka Coconut and Co. and Others Vs. State of Andhra Pradesh and Others*, after the amending Act, there

was only two entries, 5 and 5-A in Schedule III, namely, "coconuts of all varieties" and "watery coconuts" and there was no possibility of "watery coconuts" suffering tax after they became dried coconuts, if they had already suffered tax as "watery coconuts".

9. On behalf of the Revenue, the Standing Counsel also referred to the following observations of the Supreme Court:

..."watery coconuts" and "dried coconuts" are two distinct commodities commercially speaking. Watery coconuts are put to a variety of uses, e.g., for cooking purposes, for religious and social functions, whereas dried coconuts are used mainly for extracting oil. This court has in a number of cases held that the same commodity at different stages could be treated and taxed as commercially different articles....

In my considered opinion, reliance placed upon this authority of the Supreme Court on behalf of the Revenue is entirely misconceived inasmuch as the relevant expression here is not "watery coconut" but "tender coconut". Tender coconut is that kind of coconut in which there is hardly any kernel developed, which in common parlance is called paido or dabo, which only has been excluded from the class of coconuts. It has been observed in *Mahamaya Coconuts*" case [1976] 38 STC 120 (Ori) that panichi coconuts, maru coconuts and khurud coconuts are all capable of producing oil. Panichi coconuts and khurud coconuts have alternate uses, but they are very much capable of producing oil and, in fact, often are used as oil-seeds. This position was conceded before the Bench on the earlier occasion by the Revenue.

10. Although some other decisions were cited at the Bar, I do not think that they would be of much help in view of the direct decisions on the point, as they mostly deal with analogous subject.

11. After a careful consideration of the object and purpose of the Act, I am of the view that the relevant entry in the notification u/s 3-B of the Orissa Act excludes from its ambit only that variety of coconut by deliberately using the expression "tender coconut", which contains mostly water or watery substance and no kernel which could yield any oil and thus would be completely outside the genus "oil-seed".

12. The answer to the question, therefore, must be given in favour of the dealers and against the Revenue. In the circumstances, however, I shall leave the parties to bear their own costs.

G.B. Patnaik, J.

I agree.