

(1956) 03 AP CK 0012

In the Andhra Pradesh High Court

Case No : T.A. No. 250-A of 1954 in Appeal M.P. No. 62/53-54 (Asst. No. A-3-6131/51-52 D.C.T.O. Amalapuram) (T.R.C. No. 20 of 1955)

Mangalapalli Ramakrishniah

APPELLANT

Vs

State of Andhra

RESPONDENT

Date of Decision : 03-03-1956

Acts Referred:

Citation : (1956) 7 STC 482

Hon'ble Judges : Viswanatha Sastry, J;M. Krishna Rao, J

Bench : Division Bench

Advocate : K. Kotayya and M. Seshachalapathi, for the Appellant;

Final Decision : Dismissed

Judgement

Viswanatha Sastry, J.—The assessee is a merchant who entered into a written contract with the Government, Exhibit A-1, described as "an agreement for the collection and disposal of bamboos in the bamboo coupes in Peddagiri Range at Amalapuram". The assessee was referred to in Exhibit A-1 as a "contractor". The period during which he was allowed to fell, collect and remove the bamboos from the forest extended for about 11 months from 7th May, 1951, to 31st March, 1952. There were clauses in the contract, Exhibit A-1, prohibiting the assessee from cutting all the bamboos in a cluster or tender shoots less than a year old. The bamboos were of spontaneous growth in the Government forest. There were restrictions imposed on the assessee and his men and servants with regard to the entry into the forest and egress out of it when cutting bamboos. The assessee paid a lump sum to the Government as consideration for the right of cutting the bamboos from the forest during the stipulated period. The assessee issued permits to cut and remove the bamboos to various persons for money received, the aggregate of such sums amounting to Rs. 41, 305-8-0. The assessee objects to the inclusion of this sum in his turnover for two reasons firstly because it does not fall within the definition of "turnover" in section 2(i) of the Madras General Sales Tax Act and secondly because the Government had

collected sales tax from the assessee, once at the time the contract was entered into and could not again levy sales tax on him under provisos (i) and (ii) to section 3(5) of the Act.

2. The proviso to section 2(i) of the Act runs thus :-

"Provided that the proceeds of the sale by a person of agricultural or horticultural produce grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover. "Could the bamboos sold by the assessee be said to be "agricultural or horticultural produce grown on land ?" The bamboos in question are of wild or spontaneous growth in a Government forest. If some trees in a cluster are cut and a clearance is effected, the remaining trees throw up new shoots which grow into trees and the cluster is re-formed. It does not appear that any human effort was expended in connection with the rearing of the bamboo trees in the forest. The etymological meaning of "agriculture" is the ploughing or tilling of a field. The decisions, however, have given a much wider interpretation to the expressions "agriculture" and "agricultural income" occurring in section 2 of the Income Tax Act. See *Commissioner of Income Tax v. Sundara Mudaliar* ` 6). Even for purposes of the Income Tax Act income from forests derived by sale of wood or trees or other produce has been held not to be agricultural income, (1948) 16 ITR 330 (Privy Council) , and a person who takes contracts in natural forests for the purposes of cutting down and selling timber has been held not to be earning agricultural income : *Commissioner of Income Tax, Madras v. Manavedan* (1930 ILR 54 Mad. 21). The juxtaposition of the words "agricultural" and "horticultural" and the reference to the "produce grown" in the proviso to section 2(i) of the Act indicate that what is exempted from the "turnover" by the proviso is the produce of land resulting from the application of human effort to the land in the shape of manuring, tilling, ploughing, planting, sowing, watering, weeding, pruning, harvesting, etc. Forest trees of spontaneous growth cannot be regarded as "agricultural or horticultural produce grown on land" within the meaning of the proviso. The further question is whether the assessee had an interest as "tenant or otherwise" in the land. Exhibit A-1 is not a lease. It conveys no interest in land to the assessee. The property in question is a Government forest and the assessee is granted the right to cut bamboos of a particular age in lieu of a lump sum payment. It is a short term contract for 11 months. The cutting of the bamboos by the assessee had to start at once and had to be completed within the aforesaid period. Except to cut bamboos found in the coupes specified in the contract, the assessee had no right to the other produce of the forest. He had no right to the possession, much less to the exclusive possession of the coupes where the bamboo clusters lay. Exhibit A-1 merely gave the assessee the right to cut and carry away bamboos found in specified portions of the forest, which, of course, implied the right to appropriate the trees cut, as his property. Under Exhibit A-1 it was the bamboo trees fit for cutting and nothing but such bamboo trees that were acquired by the assessee. The right to enter the forest with the permission of the officers of the Forest Department in order to cut bamboo trees

was merely ancillary to the real purpose of this contract and did not create any interest in land in the assessee. This is a case where, to quote Lord Coleridge, C.J., in *Marshall v. Green* (1875 L.R. 1 C.P.D. 35) "the parties agree that the thing sold shall be immediately withdrawn from the land, the land is to be considered as a mere warehouse of the thing sold, and the contract is for goods". The position is the same as if the bamboos had been stored by the Government in its godown and the assessee had bought the bamboos for a price with the implied or incidental right to go and fetch them and so reduce them into his possession and ownership. Exhibit A-1 is in substance a contract of sale of bamboos fit for cutting in certain coupes in a Government forest and an immediate severance and realisation of the trees by the assessee was stipulated. By no stretch of language could the assessee be regarded as having acquired a leasehold or any other interest in the land or any right to the possession of the land. The mere fact that Exhibit A-1 referred to the "lease period" or "leased area" is not of great significance for the use of these phrases does not affect the legal rights of parties, which depend upon the real nature of the transaction : *P. Venugopala Pillai Vs. V. Thirunavukkarasu and Others*, Even where the assessee was given the exclusive right to enjoy the usufruct of standing and growing trees deriving nutriment from the soil, and also the right to enter upon the land for gathering and appropriating the produce, it was held that the assessee acquired no interest in the land : *Sultan Ahmed v. State of Madras* (1954 5 S.T.C. 166; 1954 2 M.L.J. 93). It is an a fortiori case where the Government sells bamboos ready for cutting in coupes in a Government forest and requires the assessee to cut and remove the bamboos within a short period. The first point taken by the assessee must therefore be overruled. The second point is equally devoid of substance. It is argued that the assessee had already paid sales tax to the Government and that a second levy is not permissible under provisos (i) and (ii) to section 3(5) of the Act. This argument is fallacious because except in a few cases like those falling within section 5(iv) and (vi), the Act imposes a multiple tax at every point of sale and payment of tax at one sale point does not debar a levy of tax on another sale of the goods. u/s 8C of the Act, the State Government is entitled, in respect of any sale of goods effected by it, to collect by way of tax any amount which a registered dealer effecting such sale would have been entitled to collect by way of tax under the Act. The Government was therefore entitled to collect the tax from the assessee and the latter when he sold the bamboos would have realised from the buyers the tax that he had paid to the Government by including it in the cost price. When the assessee sold the bamboos to others, he was bound to pay sales tax to the Government for in the case of goods with which we are concerned, tax is levied at the point of sale and is payable by the seller who might collect it from his purchasers.

3. For these reasons, the revision case is dismissed with costs. Advocate's fee Rs. 50.

4. Petition dismissed.