(1952) 08 GAU CK 0008

In the Gauhati High Court

Case No : A.S.T. Reference No. 7 of 1951

Mohanlal Jogani Rice and Atta Mills — APPELLANT

Vs

The State of Assam — RESPONDENT

Date of Decision : 01-08-1952

Acts Referred:
Assam Sales Tax Act, 1947 — Section 2(3)

Citation : AIR 1953 Guw 42

Hon'ble Judges : Ram Labhaya, J;Deka, J

Bench : Division Bench

Advocate : S.K. Ghose and K.M. Brahmin, for the Appellant; R.K. Goswami, Jr. Govt. Advocate, for the Respondent

Judgement

Deka, J.—This is a reference u/s 32 (3), Assam Sales Tax Act, 1947 (Act 17 of 1947) and the questions of law referred by the Commissioner of Taxes, Assam are as follows:

"(1) Whether, in the facts and circumstances of the case, the turnover from the supply of bags was taxable under the Act ? (2) Is ''khudi'' a form of rice and, on that account, exempt under Item 1 of Schedule III of the Act ? (3) Is ''bhushi'' exempt either under Item 1 or 12 of Schedule III of the Act ?"

2. The facts leading to the reference as stated by the learned Commissioner of Taxes are as follows: The petitioner has a rice-milling business at Gauhati which is registered under the Act and supplied rice packed in bags to the Procurement Department of the Government of Assam. The mill also sold some quantities of ''Khudi'' (broken rice) and ''bhushi'' (rice bran) in the open market. Being a registered dealer and rice being an exempted commodity under the Act, the turnover from bags supplied to the Procurement Department and from ''Khudi'' and ''bhushi'' sold in the open market was assessed to tax by the Superintendent of Taxes, Gauhati on 9-5-1951. This assessment was challenged before the Assistant Commissioner of Taxes by means of an appeal, dated 5-6-1951. The objection then taken by the assessee was that for the bags supplied along with

the rice, only a bagging charge to cover the cost of sewing, filling etc., was received and not the price thereof and as such, there being no sale of bags, no tax was leviable. Further ''Khudi'' and ''bhushi'' being exempt under items 1 and 12 of Schedule III of the Act, the turnover therefrom was not taxable. The objections were not upheld by the learned Assistant Commissioner and he dismissed the appeal on 30-8-1951 though some relief was given by reducing the assessment. Being dissatisfied with the orders of 30-8-1951, the assessee has filed the present petition u/s 32 (2) requiring me to state a case to the Hon''ble High Court.

3. With regard to the first point, namely as to whether the turnover from the supply of bags was taxable under the Act, the learned Advocate appearing for the assessee raised the following points :

(1) That the assessee was not liable to be taxed for the gunny bags in which the rice delivered to the Procurement Department was packed, inasmuch as the dealers alone are liable to be taxed under the Act and the assessee was not a dealer in gunny bags according to the definition given in the Assam Act, 17 of 1947.

(2) That rice could not be supplied without bags or containers and as such, they formed the requisite part of the rice that had to be supplied to the Procurement Department and no assessment for the bags was, therefore, justified.

(3) That the assessee made no- profit on the price of gunny bags supplied as the Government was charged for the actual price at which the gunny bags were bought--and it could not, therefore, be a subject for assessment.

4. In regard to the first branch of Mr. Ghose''s argument, there is not much of substance. As defined in the Assam Sales Tax Act, a ''dealer'' means any person who carries on the business of selling or supplying goods in the Province whether for commission, remuneration or otherwise and the word ''goods'' means under the Act, all kinds of movable property other than actionable claims etc. Here, undoubtedly gunny bags come within the definition of ''goods'' and it is also admitted that the suppliers charged the Government for the bags supplied or for the bags which contained the rice. This transaction, therefore, comes within the definition of selling and the person selling the bags with the rice is a ''dealer'' as defined in Section 2 (3), Assam Sales Tax Act, 1947. He is accordingly liable to be assessed under the Act for the goods supplied. Mr. Ghose further argued that the assessee was only an agent for the purpose of supplying the bags along with the rice. This contention has no support from the statement of facts, and it is evident from the fact that the assessee was not liable to render any account for the bags purchased and he dealt in the commodity on his own behalf and not as an agent of the Procurement Department.

5. Mr. Ghose''s further contention that the rice cannot be supplied without bags has no foundation on facts and a similar case came up for consideration before the Madras High Court where the assessee raised an objection to assessment, on

the output of gunny bags in which salt was supplied. Varasuki and Co. Vs. The Province of Madras, There the question of agency as well was agitated and the point was decided against) the assessee.

6. With regard to the third branch of Ghose''s argument on this point, that is whether there was profit, is quite immaterial for the purpose of our consideration. Whether there was profit or loss is of no account as this was not an assessment on income. As a dealer, the assessee was rightly taxed.

7. The result is that with regard to the first point referred, we answer the point in the positive, that is the turnover from the supply of bags was liable to be taxed under the Assam Sales Tax Act, 1947.

8. With regard to the second point of reference, that is whether ''khudi'' is a form of rice and whether it is exempt from assessment under Item 1 of Schedule III, Assam Sales Tax Act, 1947, the learned Commissioner of Taxes has expressed his view that it is a form of rice and is exempt from assessment under Item 1 of Schedule III. The learned Junior Government Advocate concedes that it is so and as a matter of fact, it appears to us that ''khudi'' is nothing but broken rice and comes within Item 1 of Schedule III of the Act which excludes from assessment all cereals, and pulses including all forms of rice except when sold in sealed containers. Here, evidently ''khudi'' was not sold in sealed containers and as such, it is exempted from assessment and having regard to the form in which the second question under reference was framed, we answer it in the positive.

9. The third point of reference as I have already mentioned, is whether ''bhushi'' is exempt from assessment either under Item 1 or 12 of Schedule III, Assam Sales Tax Act. The learned Commissioner of Taxes while admitting that ''bhushi'' is a rice bran or a mixture of the outer and inner husk of rice, in his view, it is neither a form of rice as contemplated under Item 1, nor bran as contemplated in Item 12 of Schedule III of the Act. The learned Commissioner is prepared to exclude the assessment on the wheat bran or the inner husk of wheat but not of rice. The learned Junior Government Advocate appearing for the State urges that the word ''bran'' is strictly confined to wheat family and cannot be extended to cover rice or paddy. This, in our opinion, is a very invidious distinction but if we look to the word ''cereal'' as defined in Webster Dictionary, the inner coat of rice would come within the definition of ''cereal'' though it may be said as well to be bran office corresponding to that of wheat. The exact use of rice bran is not before us but the presumption is that if bran from wheat can be used as food it may as well be used as food when separated from rice and as a matter of fact, rice with bran is considered to be healthier food. In consideration of this fact, we are prepared to uphold the contention on behalf of the assessee that ''bhushi'' or rice-bran may be considered to be included in the word ''cereal'' in Item 1 of Schedule III of the Act. In this view, we answer the third question in the affirmative that is, ''bhushi'' is exempt from assessment as included in Item l of Schedule III. 10. In the final result, we hold that the turnover from the supply of gunny bags is rightly assessed and the two items of ''khudi'' and ''bhushi'' are

not assessable under the Assam Sales Tax Act. As two of the points referred have been decided in favour of the assessee and only one decided against him, we make no order as to costs. The reference is answered as indicated above.

Ram Labhaya J.

11. I agree.

