
(1961) 07 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 987 of 1960

Muhammed and Others

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 28-07-1961

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1961) 5 KLJ 1158 : (1962) 13 STC 54

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : V.R. Krishna Iyer and R. Krishnaswami, for the Appellant; The Government Pleader, for the Respondent

Judgement

S. Velu Pillai, J.—In this writ petition to quash exhibit P 1, the notice of provisional assessment and of demand for the payment of sales tax under Rules 13 and 14 framed under the General Sales Tax Act, 1125, referred to hereafter as the "Act", and exhibit P 5, the notice of provisional assessment and of demand for the payment of surcharge under Rule 8 framed under the Kerala Surcharge on Taxes Act, 1957, issued to the petitioners, the jurisdictional point arising for determination is, whether the petitioners who are growers of rubber in their estate and who collect and convert latex into rubber sheets and sell them, are dealers within the meaning of the Act. u/s 3(1)(a) of the Act, sales tax is payable only by a dealer and u/s 2(d) a "dealer" is any person who carries on the business of buying or selling goods. If a person who grows trees and sells the produce therefrom, is by such sale alone a dealer, there is no point in having defined a "dealer", as one carrying on the business of selling. The short question is, whether the petitioners can be said to carry on the business of selling, when they collect latex from rubber trees grown by them, convert it into rubber sheets and sell them. The conversion of latex into rubber sheets is but a process, the minimum process to render the produce marketable as observed in Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Sherneilly Rubber and Cardamom Estates Ltd. 1961 KLT 52. Whether after conversion into sheets,

rubber still continues to be agricultural produce, does not arise in the application of the definition of "dealer" in Section 2(d) of the Act. The exclusion of rubber from the definition of "agricultural or horticultural produce" in Section 2(a) of the Act does not impinge on the definition of "dealer" in Section 2(d), as the emphasis in it is on the business of selling and not on the nature of the produce sold. In my view, the sale of rubber sheets can be regarded as no more than incidental to the main business of growing rubber trees and collecting their yield.

2. This was the view held in *Konduri Buchirajalingam v. State of Hyderabad* AIR 1954 Hyd. 1, where M. A. Ansari, J., as he then was, observed:

Now an agriculturist when selling the produces of the land can hardly be said to carry on the business of selling the commodities he produces. Indeed, the income from the first sale of produces of the agricultural lands is called agricultural income as opposed to business income, and for the former there is a different item authorising taxation in List II of the Seventh Schedule to the Constitution.

The other two learned Judges expressed similar views on this aspect of the case. The Andhra Pradesh High Court held likewise, in the *Pithapuram Taluk Tobacco Cigars and Soda Merchants' Union v. State of Andhra Pradesh* [1958] 9 S.T.C. 723. These decisions were rendered on the content of the word "dealer" in the definition in the concerned enactments, which is practically on the same terms as in Section 2(d) of the Act, and not on the nature of the produce sold, whether it is agricultural or non-agricultural, as defined. Chagla, C.J., in *The State of Bombay v. The Ahmedabad Education Society* [1956] 7 S.T.C. 497 propounded a test, which may be useful in a case like this. He observed that,

...the activity, although it may be serious, although it may be continuous, unless it assumes the characteristics of a business, it is not an activity which can come within the ambit of Section 2(c)" in the Bombay Sales Tax Act, 1946, the material part of which defined a "dealer" as "...any person who carries on the business of selling or supplying goods...

3. The learned Government Pleader next relied on the proviso in the definition of "turnover" in Section 2(k) of the Act, the relevant part of which reads as follows :

"turnover" means the aggregate amount for which goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration provided that the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover

to found an argument, that the proceeds of sale of whatever is not agricultural or horticultural produce, being not intended to be excluded, the definition of the term "dealer" in the Act must be understood so as to include a person who sells rubber which is not "agricultural or horticultural produce" as defined in the Act.

To repel this argument, it is only, necessary to advert to what the Supreme Court has said in *Konduri Buchirajalingam v. The State of Hyderabad* [1958] 9 S.T.C. 397 on the meaning of the proviso and its effect; the Court observed at page 759 of the report:

The proviso leaves the main portion of the definition intact and it only says that certain things shall be excluded from a person's turnover. The main portion of the definition, however, shows that "turnover" only refers to the turnover of a dealer and not of an agriculturist. Therefore, the proviso deals with a person who is both an agriculturist and a dealer and it excludes the proceeds of the sale by him of his own agricultural produce from his turnover as a dealer in goods.

4. I therefore come to the conclusion, that the mere sale by a person of rubber sheets produced by conversion of latex collected from rubber trees grown by him, is not sufficient to constitute him a dealer. But if, for example, in addition to rubber produced by trees grown by him, he collects or buys latex or rubber sheets from other growers or suppliers and sells them, he may be said to engage himself in the business of selling, depending on the nature of such activity ; in other words, in addition to being an agriculturist, using that term in its wide and generic sense, and not as one growing what is agricultural, produce as defined in the Act, he can be a dealer, as envisaged by the proviso above referred to, in the same commodity, but this is a question of fact. Whether the petitioners here stand in that position, and if so to what extent, is more than I can say at present; this is a matter for the taxing authorities to determine.

5. The learned counsel for the petitioners had a further contention that the exclusion of rubber from the definition of "agricultural or horticultural produce" in Section 2(a) of the Act is hit by Article 14 of the Constitution, being devoid of any rational basis of classification. In the view I have taken, it is unnecessary to examine the soundness of this contention. Other objections raised to the assessment are still open to the petitioners before a final assessment is made on them. The notices now impugned having been issued, overlooking the jurisdictional point, as to whether the petitioners are dealers or not, cannot therefore be sustained and are quashed accordingly; the petition is allowed. No costs.