

(1987) 12 SC CK 0049
In the Supreme Court Of India
Case No : C.W.P. No. 984 of 1986

Mukesh Kumar Aggarwal and Company	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 18-12-1987

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (1988) J LJ 245

Hon'ble Judges : S. Natarajan, J; M.N. Venkatachaliah, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.N. Venkatachaliah, J.—In these petitions under Article 136 of the Constitution of India, Petitioners seek special leave to appeal from the judgment and order dated 10-9-1986 of the Madhya Pradesh High Court in Misc. Petition 2919 of 1985 and Misc. Petition No. 413 of 1985 respectively.

2. The appeal raise a short and interesting question whether stacks of "eucalyptus-wood sold by the Forest-Department after separating the "Bailies" and "Poles" constitute and answer the description of 'Timber' under entry 32A of Part 11 of the Schedule 11 to the Madhya Pradesh General Sales Tax Act, 1958 (the 'Act'). The High Court, rejecting the Appellant's contention that what was sold, being leftovers after the extraction of "Poles" and "Bailies of Eucalyptus (Nilgiri) Trees, was merely 'fire-wood, within the meaning of and attracting entry No. 12 of Part v. of Schedule II of the Act, held that goods were "Timber" under the said entry 32A. It was accordingly held that Appellants were liable to pay sales tax at the rate of 16% ad valorem.

Special leave is granted in both the cases. The appeals are taken-up for final hearing, heard and disposed of by this common judgment. We have heard Shri G.L. Sangbi, Senior counsel and Shri A. -K. Sanghi for the Appellants and Shri T.C. Sharma for the Respondent.

3. Though, the notifications inviting tenders and certain other documents appear to describe the goods variously as "eucalyptus fire-wood stacks", "eucalyptus wood stack", 'Nilgiri fuel wood' etc., the nomenclature is not determinative or conclusive of the nature of the "goods" which will have to be determined by the application of certain wellsettled principles, guiding the matter.

Three entries as they then stood in the Schedule to the 'Act' were pointed out by Learned Counsel as the possible alternatives:

Schedule II Part II

Entry 32A: Timber...16%

Part V

Entry 12: Fire-wood and charcoal... 3%

Part VI

Entry 1: All other goods not included in Schedule I or any other part of the Schedule... 10%

Appellant's contention urged before the High Court--add reiterated before us--was that what was sold were the leftovers and rement of eucalyptus trees after the extraction of the substantial timber in the from of 'Poles' and 'Bailies and that even on the basis of what the Forest-Department itself described the goods to be while putting the 'goods' to tender, the goods were fire-wood heaps'. It was urged that having regard to the well-known concept of what constitutes Timber' the wood-stacks sold could, by no stretch of imagination, be held to answer the description of 'Timber'. The wood sold was, it was said, "fire wood" or at all events, plain 'wood' not amounting to Timber' or 'firewood' in which case the goods fall within the residuary-entry. This contention did not find favour with the High Court.

4. In a taxing statute works which are not technical expressions or words of art, but are words of every day use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance i. e. "that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it" Such words must be understood in their 'popular sense' The particular terms used by the legislature in the denomination of articles are to be understood according to the common, commercial understanding of those terms used and not in their scientific and technical sense "for the legislature does not suppose our merchants to be naturalists or geologists or botanists.

The expression 'Timber', it seems to us, has an accepted and well-recognised legal connotation and is nomen juris. It has also a popular meaning as a word of everyday use, In this case, the two meanings of 'Timber' the legal and the popular, coalesce and are broadly subsumed in each other.

In *Honywood v. Honywood* (1874) LR 18 Eq 306 at p. 309 Sir George Jessel referred to what distinguishes and is "Timber":

The question of what timber is depends, first on general law, that is the law of England; and secondly, on the special custom of a locality. By the general rule of England, oak, ash and elm are timber, provided they are of the age of 20 years and upwards, provided also they are not so sold as not to have a reasonable quantity of useable wood in them, sufficient... to make a good post. Timber, that is the kind of tree which may be called timber may be varied by local custom. There is what is called the custom of the country, that is, of a particular country or division of a country, and it varies in two ways. First of all, you may have trees called timber by the custom of the country-- beech in some countries, hornbeam in others, and even whitethorn and blackthorn and many other trees are considered timber in peculiar localities in addition to the ordinary timber trees. Then again, in certain localities, arising probably from the nature of the soil, the trees of even 20 years old are not necessarily timber, but may go to 24 years, or even to a later period, I suppose, if necessary; and in other places the (sic)est of when a tree becomes timber is not its age but its girth

In *Shantabai Vs. State of Bombay and Others*, this Court, referring to the distinctions between 'standing timber and 'tree' referred to the following lexicographic meaning of 'timber':

(30) Timber is well enough known to be--"wood suitable for buliding houses, bridges, ships, etc, whether on the tree or cut and seasoned. (Webster's Collegiate Dictionary).

It was accordingly, held:

Therefore, "standing timber" must be a tree that is in a state fit for these purposes and, further a tree that is meant to be converted into timber so shortly that it can already be looked upon as timber for all practical purposes even though it is still standing.

(Emphasis supplied)

Legal Glossary (published by the Ministry of Company Affairs, Law and Justice) gives this meaning of 'Timber':

wood meant for building or such like use." In the Chambers 20th Century Dictionary, the meaning of the word 'Timber' is this:

wood suitable for building or carpentry, whether growing or cut: standing trees of oak, ash, elm or (locally by custom) other kinds etc

(Emphasis supplied)

In words and phrases by John B. Saunders (Vol. J) 'Timber' is held to be:

Trees less then six inches in diameter have been said not to be timber.

(Emphasis supplied)

5. In its popular sense, 'timber' is understood to be 'Imarathi-Lakdi'. In a popular-sense 'Timber' has certain association of ideas: as to its size, stability, utility, durability the unit or measure of quantity and of valuation, etc. The question is whether by the standards of these popular connotations, the 'wood-stacks' or 'wood-heaps' sold to, and purchased by the Appellants can be held to answer the popular notions of "Timber". When 'standing timber' is sold as uncut tree different considerations may arise.

The nature of the "wood" sold is described in the letter, dated 30-5-1985, addressed by the Divisional Forest Officer, The subject matter of the sale has been referred to as 'Nilgiri fuel-wood'. The wood was offered for sale in slacks of the size of 1 x 1.25 x 2 mtrs. With each piece of a length of 1.25 metres and a girth, at the thinner end, of not less than 10 cms. They were sold not by volume or by the number of pieces. The wood was offered with a particular kind of user in mind, viz. as a source of industrial raw material for 'pulp' in the manufacture of synthetic fibre. As pointed out by the High Court, in the returns filed by the Respondent, it was mentioned that eucalyptus-plantation was a recent development and promoted with the specific purpose for use specifically in the preparation of pulp and sold throughout the State with this specific object.

Respondent in their endeavour to controvert Appellant's contention that the wood sold was "fire-wood" went on to say that while stacks of fire wood of similar sizes fetch prices between Rs. 20 to Rs. 80 each, the stacks of the eucalyptus-wood on the other hand, fetch Rs. 300 to Rs. 600 per stack and that, therefore, nobody uses eucalyptus as "fire-wood". The High Court felt persuaded to the view that the 'wood, sold did not admit of being described as "fire wood". It reasoned:

Fire wood in common commercial parlance and as understood by the trade as well as by the consuming public, is not just any wood that can be used as logs of fuel. Every kind of wood is potential fire-wood for you can start a fire with any wood. But this is not the test. Fire-wood is wood of a kind which has attained notoriety as fuel. Nobody who sells fire-wood debarks the wood before sale. Nobody who buys fire-wood requires them to be shaved and debarked. Purchasers may desire the wood to be cut to size. But that is all. There may be eccentric sellers and eccentric buyers who may indulge their fancies in specialities in fire-wood. But that, again, is not the test. Where the wood is not in the normally accepted commercial practice fire-wood, and more especially where the wood is sold and purchased subject to specifications which conduce the wood to particular purposes other than fuel, which is the case in the present two revisions, the goods sold cannot be regarded as fire-wood.

While something perhaps, could be argued in support of this reasoning, what however, emerges is that the finding that the goods was 'Timber' appears to have been reached as a necessary consequence and logical corollary of the goods not being 'fire-wood'. If the wood is not 'fire-wood', it need not necessarily and

for that reason alone be Timber. All wood is not timber as, indeed, all wood is not 'fire-wood' either though perhaps it may not be incorrect to say the both 'fire-wood' and 'Timber' are wood, in its generic sense.

The High Court further reasoned;

...It has also been mentioned that timber is obtained by cutting standing trees. It may be hard wood timber, or soft wood timber. Eucalyptus trees are covered by soft wood timber...

...The Petitioners offered to purchase the goods which could be used for manufacture of woodware, furniture, etc. as well as manufacture of pulp. The Petitioners deal in timber...

Here again, pushed to its logical conclusions, the reasoning incurs the criticism of proceeding to determine the nature of the 'goods' by the test of the use to which they are capable of being put. The 'user-test' is logical; but is, again, inconclusive. The particular use to which an article can be applied in the hands of a special consumer is not determinative of the nature of the goods. Even as the description of the goods by the authorities of the forest-department who called them varyingly as 'eucalyptus fuel wood' 'eucalyptus wood-heap' etc. is not determinative, the fact that the purchasers were dealers in timber is also not conclusive.

The High court also observed:

... The length of the pieces is not relevant criteria to determine whether the wood is timber or not. The goods offered for sale were eucalyptus wood-stacks....

Length is, no doubt a relevant consideration; but it is a relative concept and associated with the idea of utility. A piece of rope, it is said, is itself a rope, provided it serves the purpose of one.

6. The question is not really whether "Eucalyptus" (Nilgiri) Tree is or is not a 'Timber' tree. By every reckoning it is Eucalyptus is a large, rapid growing, evergreen tree of the myrtle family, originally a native of Australia, Tasmania and Malaysia. There are a large number of its species. The ideal species under ideal conditions, it would appear reaches a height of 370 ft. with a girth of nearly 35 ft. Apart from its utility as a source of gum and medicinal oils, the slowgrowing species are especially known for the quality of their timber marked for strength, size and durability (See Encyclopaedia Britannica: 1968: Vol. 8, pages 806, 807; Encyclopaedia American; Vol. 10, pages 648 and 649). But the question is whether the subsidiary parts of the tree sold in heaps after the 'Bailies' and 'Poles' are separated, can be called 'Imarathi-Lakdi' or 'Timber'. We think, it would be somewhat of a strain on the popular meaning of the expression 'Timber' with the sense, size and utility implicit in the idea, to call these wood-heaps 'Timber' meant or fit for building purposes. Persons conversant with the subject-matter will not call these wood-heaps 'Timber' whatever else the goods might, otherwise, be. It would appear that at one stage the forest-department

itself opined that the 'goods' were not timber; but only "fire-wood". We must, however, add that no tests of general validity applicable to or governing all cases can at all be laid down. The point to note and emphasise is that all parts or portions of even a timber tree need not necessarily be 'Timber'. Some parts are timber, some parts merely "fire-wood" and yet others merely 'wood'. Having regard to the nature and description of the wood in the present case, we think, the 'wood-heaps' are not susceptible to be or admit of being called 'Timber' with all the concomitants and associations of that idea. Perhaps, different considerations might apply if, say, the pieces of eucalyptus-wood are of a longer length or of a higher girth. Differences of degree can bring about differences of kind.

7. What emerges, therefore, is that the goods in question are not 'Timber' within the meaning and for purposes of entry 32A of the Act.

In regard to the question as to what other description the goods answer and which other entry they fall under, Learned Counsel on both sides submitted that, if we hold that entry 32A is not the appropriate one, the matter be remitted to the High Court for a fresh consideration of the matter in the light of such other or further material the parties may place before the High Court. We accept this submission.

8 In the result, these appeals are allowed in part and the finding of the High Court that the goods in question fall within and attract entry 32A of Part II of Schedule II of the 'Act' is set aside and the matter is remitted to the High Court for an appropriate decision as to which other entry the goods in question attract. The appeals are disposed of accordingly.

9. We might advert to yet another submission of Sri Sanghi. He submitted that consistent with the finding that the 'goods' do not attract tax at 16% under the said entry 32A Respondent cannot retain the tax already collected at 16%. Learned Counsel submitted that even if the goods are said to fall under the Residuary entry, the rate of tax would only be 1% and that Respondents, accordingly, should be directed to refund to the Appellants sums equivalent to 6% of the tax, wherever tax at 16% has been collected, without waiting for a decision on remand as indeed, there would be no prospect of the goods attracting tax at a rate higher than 10%-now that entry 32A is held inapplicable. This, in our opinion is a reasonable request and requires to be accepted. The concerned Respondents are directed to refund to the Appellants sums equivalent to 6 % wherever the taxes are already recovered at 16 %.

10 In the circumstances, there will be no order as to costs.