(1977) 08 MP CK 0011

In the Madhya Pradesh High Court

Case No : C.R. No. 218 of 1972

Nagar Palika Parishad, Sabalgarh — APPELLANT

Vs

Damodardayal Laxmichand and others — RESPONDENT

Date of Decision : 09-08-1977

Acts Referred:

Citation : (1977) JLJ 724

Hon'ble Judges : U.N. Bhachawat, J

Bench : Single Bench

Advocate : R.A. Roman, for the Appellant; D.K. Kothari For opposite party, for the Respondent

Final Decision : Allowed

Judgement

U.N. Bhachawat, J.—This is a revision by the defendant, arising out of the Small Cause Suit No. 46 of 1971, filed by the plaintiff-non-applicants for refund of the octroi duty of Rs. 42-96 charged by the defendant-applicant on 58 bags of paddy costing Rs. 2,143.33 at the rate of Rs. 0.02 P. per rupee.

2. The defendant Municipal Committee, Sabalgarh had imposed octroi duty for the goods brought in for use, consumption or sale in its municipal area. The items relevant for the decision of the controversy in this revision on which ocroi was imposed are set out below from the memorandum of revision:--

HAR KISMI ANAJ VA DAL, BHUNE HUVE CHANE, MURMURE (CHAVAL, GEHU, CHANA, JWAR, BAJRA KO CHHOD KAR), CHAVAL".

(The correctness of this is not disputed by the counsel for the plaintiff-non-applicants).

3. The plaintiffs had filed the suit for the refund of the aforesaid amount, contending that paddy was not covered in any of the aforesaid items and hence, no octroi duty could be charged from the plaintiffs. The charging of the octroi duty from the plaintiffs, treating the paddy bags as rice was illegal. The

contention of the plaintiffs found favour with the trial Court and it held that the paddy was neither ''Anaj'' nor rice and hence, no octroi duty was chargeable from the plaintiffs.

4. The short question for decision, therefore, in this revision is whether paddy is rice and if it is not rice, whether it is covered under the item "HARKISMI ANAJ." It is an admitted case of the parties that ''Anaj, Chaval'' and paddy are not defined in the bye-laws framed by the defendant Municipality regarding imposition of the octroi duty on these items. In view of this, the dictionary meaning shall have to be referred to find out the general sense in which the words are understood in common parlance, (See Bhogilal Chunilal Pandya Vs. The State of Bombay,

5. According to Shorter Oxford English Dictionary (Vol. Two, Third Edition)'' ''Paddy'' means: ''Rice in the straw, or (in commerce) in the husk''. According to Chamber''s Twentieth Century Dictionary (New Mid-century version) also, ''Paddy'' means ''growing rice: rice in the husk''. According to Webster''s New World Dictionary (Second College Edition), ''Paddy'' means ''1. rice in the husk, growing or gathered 2. rice in general 3. a rice field: often rice paddy''. The Hindi word for paddy is ''Dhan'' as would be evident from the dictionary meaning of ''Dhan'' given in Bhargava''s Standard Illustrated Dictionary of Hindi language (Hindi-English) as: ''the rice plant, paddy (plant).''. It, therefore, becomes evident that paddy is rice with husk. In other words, paddy is the natural product of the earth which is untreated and for its being rice, the husk or the straw has to be removed by a process of treating it and therefore, according to the dictionary meaning, rice is something different from paddy.

6. In the light of the foregoing discussion, paddy includes rice, but rice does not include paddy.

7. In Bhargava''s Standard Illustrated Dictionary, at page 43, the word ''Anaj'' means grain, corn. Same is the meaning according to A Practical Hindi English Dictionary by Mahendra Chaturvedi and Dr. Bhola Nath Tiwari.

8. Now the question for consideration is whether paddy is a grain. Word ''grain,'' according to various dictionaries is meant as:

1. a Obs. A single Small hard seed. b. In modern usage, the seed or seed like fruit of any cereal grass, as wheat, maize, oats, rice, millet etc. See GRASS CARYOPSIS.

2. Collectively: a The unhusked or the threshed seeds or fruits of various food plants, now usually, specif., the cereal grasses, but in commercial and statutory usage (as in insurance policies, trade lists, etc.) also flax, peas, sugar cane seed etc. In British usage all kinds of grain are popularly known as corn. See 1st CORN.

(Webster''s New International Dictionary-Second Edition).

Grain'' means any CORN, rice, paddy, pulse, seeds, nuts or nut kernels.

(Stroud''s Judicial Dictionary of Words and Phrases Third Edition).

9. From the definition of the word ''grain'' as reproduced hereinabove in paragraph 8 of this order, especially that in Stroud''s Judicial Dictionary paddy is a grain. The argument of the learned counsel for the plaintiff-non- applicants is that paddy in its natural form is not eatable and, therefore, it cannot be included in the term ''grain''. His argument was that unless the husk is removed, it cannot be ate and, therefore, it cannot be a grain. The argument is devoid of all force. Merely because the husk has to be removed in order to take out rice from it, it cannot be taken out of the category of grain. My this view finds support from the following observation of their Lordships of the Supreme Court in The Collector of Customs, Madras Vs. K. Ganga Setty,

(8) In the present case it could not be contended that uncrushed oats did not answer the description of "grain" and therefore the decision of the Customs authorities holding that the oats imported fell within item 32 could not be said to be a view which on no reasonable interpretation could be entertained. In other words, the conclusion or decision of the Customs authorities was rationally supportable. We consider that even if there was no specific reference to "cats" in entry 32, any particular species of grain cannot be excluded merely because it is capable of being used as cattle or horse feed. The word "fodder" is defined in the Oxford dictionary as "dried food, hay, straw etc., for stall feeding cattle". Without resorting to Johnson''s famous definition of "oats" in his Dictionary, it is sufficient to point out that oats, though they may serve as food for horses, is also used as human food; in other words it is not by its nature or characteristic capable of serving solely as food for animals and incapable of use in the human dietary. For instance, all coarse grains-like Ragi and Khambu-serve as food for man as well as for cattle. The mere fact therefore that a grain is capable of being used as horse or other cattle feed does not make it "fodder" excluding it from the category of grain to which it admittedly belongs. The decision of the Assistant Collector and of the Collector on appeal holding the oats imported by the respondent to be grain cannot therefore be characterised as perverse or mala fide and in the circumstances we consider that the learned judges of the High Court erred in interfering with the order of the appellant.

10. As a result of the foregoing discussion, I am of the view that octroi duty should have been charged on the paddy-tax at the rate chargeable on grains, i.e. under item No. 15 "HAR KISMI ANAJ". The charge according to this rate as per the agreed statement given by the learned counsel for the parties which is placed on record being marked as ''X'' was Rs. 9.30. In this view of the matter, Rs. 33.66 have been charged excess from the plaintiff non-applicants. The plaintiffs were, therefore, entitled to refund of Rs. 33.66 only. The order of refund of the whole amount of Rs. 42.96 vide the impugned order by the trial Court deserves to be modified accordingly.

11. In the result, the revision is partially allowed and the decree of the trial Court is modified and it is ordered that the defendant shall refund a sum of Rs. 33.66 to the plaintiff-non-applicants. The parties shall bear their own costs as incurred.

