

(1973) 01 KL CK 0020
In the High Court Of Kerala
Case No : T.R.C. No. 23 of 1971

National Timber Co.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 25-01-1973

Acts Referred:

Citation : (1973) 31 STC 572

Hon'ble Judges : T.C. Raghavan, C.J.;V. Khalid, J

Bench : Division Bench

Advocate : V.K.K. Menon, M. Ramachandran, C.J. Balakrishnan and U.K. Ramakrishnan, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.C. Raghavan, C.J.—The petitioner was a forest contractor taking in auction from the Government the right to cut and remove the "tree-growth" in coupes; and in such a contract, he kept accounts regarding the timber and the firewood he obtained from the tree-growth. The accounts were produced before the Sales Tax Officer, who rejected the accounts and assessed the petitioner on the best judgment principle; and the turnover fixed was three times the bid amount; and on that turnover, the petitioner was directed to pay sales tax at the rate of 3 per cent. The petitioner paid that amount too. In the agreement between the Government and the petitioner, there was a provision that the petitioner should supply 780 tons of firewood out of the tree-growth to some fair price shops at Trichur at a specified price per ton. The petitioner supplied that firewood as well. Subsequently, the Sales Tax Officer assessed the petitioner on the sales of firewood by him. (The turnover fixed by the Sales Tax Officer on this occasion was also on the best judgment principle.) And this turnover of firewood was sought to be assessed under head 55 of Schedule I to the Kerala General Sales Tax Act at the reduced rate of one per cent.

2. Two objections were raised by the petitioner before the authorities below : one, that the assessment of the sales of firewood a second time was illegal; and

two, that, even if the sales of firewood could be assessed, the amount obtained from the fair price shops for giving them 780 tons was not liable to be taxed. Both the objections were rejected; and the question we have to consider is whether this rejection by the Sales Tax Appellate Tribunal is incorrect.

3. The argument of the Government Pleader in support of the assessment is that what was purchased at the auction was tree-growth, a commodity and what was extracted out of the tree-growth was a quantity of timber, another commodity and another quantity of firewood, a third commodity; and that, in extracting timber and firewood from the tree-growth, industry was involved, so that the firewood and the timber have to be separately taxed. In short, the argument is that these three commodities, namely, tree-growth, timber and firewood, are commercially three different commodities and, therefore, they may be taxed separately.

4. This contention we find difficult to accept. In our opinion, there is no commodity like "tree-growth". What was being purchased at the auction as tree-growth was something like purchasing standing crops. In purchasing tree-growth, what is purchased is really the timber and the firewood available from the tree-growth, as, in the case of a purchase of standing crops, the purchase is of the grain and the hay that the crops yield. Suppose, the standing sugar-cane in a particular area is purchased and the sugar-cane is cut and sold. In our opinion, the purchase of the sugar-cane in the particular area cannot be of a different commodity different from the sugar-cane cut and removed from the area.

5. We are certainly aware of a case where the cane is cut, the juice out of it is taken and candy is prepared out of it and sold; in such a case, the sugar candy is certainly another commodity different from the sugar-cane and the candy can be separately taxed. Still, there is no justification for making a distinction between the sugar-cane standing in an area and the sugar-cane cut and sold from there as two separate commodities; they are not two different commodities; what is purchased is sugar-cane, what is sold is also sugar-cane. This is the view to be taken in a case like this; and this is the correct view too. If this view is taken, we do not think there is any need for considering any decision. (A few decisions including decisions of the Supreme Court have been cited before us.)

6. It will also appear presently that the Sales Tax Officer treated all that was cut and sold from the tree-growth in the coupe as timber and taxed it also as such. The petitioner kept accounts-accounts of timber and firewood he obtained from the tree-growth. He had also no objection to have tax imposed on him on the quantity of timber and on the quantity of firewood obtained by him. In fact, the correct mode of taxing would have been to tax the sales of firewood as firewood under the schedule and the sales of timber as timber at the higher rate. What was done in this case was something different. The Sales Tax Officer rejected the accounts of the petitioner and fixed the turnover at three times the bid amount on the best judgment principle and imposed tax on the whole amount at 3 per

cent., i.e., treated the whole as a turnover of sales of timber. Really, the amount the petitioner was supposed to have obtained was by selling the timber and the firewood he got from the tree-growth; that was what was shown in the accounts of the petitioner too. After treating the entire turnover as of timber (really it was not so) and collecting a higher tax thereon, to assess a portion thereof over again as a turnover of sales of firewood coming under head 55 of Schedule I cannot be allowed; what is sought to be done in this case is to tax over again a portion of the turnover which was already taxed-and that at a higher rate. Thus, there is inequity writ large in the assessment sought to be made. We may point out here that even if the contention of the Government Pleader that forest-growth, timber and firewood are three different commodities is accepted, still the assessment cannot be sustained. What the petitioner was liable to pay was tax on his sales of timber and firewood; all his sales were treated as sales of timber and taxed as timber at a higher rate (in fact, part of the sales was of firewood); the sales of firewood which were treated as sales of timber and taxed once cannot be treated as sales of firewood and taxed a second time.

7. In the view we have taken above, we need not consider the other question whether, in supplying the 780 tons of firewood to the fair price shops, there was a sale or not, because the effect of our conclusion already recorded is that no portion of the sales of firewood can be taxed.

8. The result is we allow the revision case and set aside the assessment on the firewood. The petitioner will also get his costs.