(1959) 12 MAD CK 0016

In the Madras High Court

Case No : Tax Revision Case No. 31 of 1957

P. Nagarathinam and Brothers — APPELLANT

Vs

The State of Madras — RESPONDENT

Date of Decision : 03-12-1959

Acts Referred:

Citation : (1960) 73 LW 506 : (1960) 2 MLJ 487 : (1960) 11 STC 342

Hon'ble Judges : Ramachandra Iyer, J;Rajagopalan, J

Bench : Division Bench

Advocate : K. Srinivasan and D.S. Meenakshisundaram, for the Appellant; G. Ramanujam, for The Government Pleader, for the Respondent

Judgement

Rajagopalan, J.—This is an application u/s 12-B of the Sales Tax Act to revise the order of the Tribunal. Two questions arise for

determination: (1) whether the Tribunal was right in holding that the turnover of Rs. 16,718 was assessable to tax and (2) whether the Tribunal was

right in including in the assessable turnover, a sum of Rs. 7,166-4-0 which was the estimated cost of the gunnies in which the petitioner, assessee,

sold vegetables prior to the date of the notification in December, 1954.

2. The turnover of Rs. 16,718 represented the sale turnover of four items of vegetables. We find it convenient to refer to these vegetables by their

Tamil names, the vegetables are indigenous. The turnover was : Sales of karunai (sic) Rs. 8,121, sales of senai (sic) Rs. 4,001, sales of sembu (sic)

Rs. 2,968 and sales of sirukizangu (sic) Rs. 1,628. Total Rs. 16,718. The question for consideration is whether these or any of these come within

the scope of the expression ""yam"" as that expression is used in Notification No. 42 as it was amended in 1956. The effect of that amendment in

1956 was to withdraw for yam the exemption that had been granted to vegetables from sales tax and make sales of yam taxable.

3. The Tribunal took the view that, in the absence of any statutory definition the normal English meaning, as can be gathered from the dictionary,

should be given to yam and all the four varieties mentioned above were of the turberous variety .The Tribunal took the view that each of the four

items came within the scope of the word "" yam."" We quite agree that in the absence of any statutory definition, the normal meaning the expression

bears ought to be given to it; but we are here dealing with vegetables with Tamil names for which really there are no corresponding English

equivalents, that is, English words which would convey something definite to Englishmen. Therefore the English dictionary meaning of the

expression ""yam"", with or without reference to the botanical names, may not be a deciding factor in determining what to the rule-maker the

expression yam meant, when the notification in question was issued. We have really to go by how the word ""yam"" has been understood in relation

to the Tamil words by which the vegetables have been known from time immemorial.

4. On a reference to the Tamil Lexicon we find that the English equivalent for karunai (sic) is given as elephantyam. That was how karunai was

understood very much earlier also because in Volume III of Maclean''s Manual of the Administration of the Madras Presidency at page 288,

karunai is described as elephantyam. Again in the Tamil Lexicon the word senai has been translated as arrow root, but in the description portion it

is referred to as a species of karunai (sic). The utmost that can be said is that senai (sic) is another species of yam, whether it is specifically called

elephantyam or not.

5. At one stage we were inclined to accept the contention that when the taxing enactment makes only yam as such taxable when it is sold, a strict

construction should rule out elephantyam, but on further consideration we are of the view, that in normal usage both karunai and senai have been

understood and treated all along as species of yam which was what apparently the authorities had in view when they decided that yam as such

should cease to have the exemption from sales tax accorded to other vegetables.

6. In Knight''s Dictionary yam has been translated as (sic) and if that translation

were to prevail even karunai and senai would be out of the scope

of the notification; but we prefer to rest our decision on how karunai and senai have been understood in the Tamil Lexicon and how karunai has

been understood much earlier in Maclean''s report. Sembu and sirukazangu have never been known to have been described as yam; in our

opinion, there is no real basis for including these two varieties of vegetables in the expression yam and therefore the general exemption accorded to

vegetables, from which yam was excluded ,should apply to the sales of sembu (sic) and sirukizangu. We think that where indigenous vegetables are

referred to there would be more precision if Tamil expressions themselves are given in the notification, whether or not English words have been

used.

7. We hold that out of the turnover of Rs. 16,718 a turnover of Rs. 2,968 and Rs. 1,628 should be excluded. They represent the turnover of sales

of sembu and sirukizangu, which, as we have pointed out, should not be brought within the expression by yam in the notification.

8. The second question is, whether the Tribunal was right in holding that Rs. 7,166-4-0, which represented the estimated turnover of gunnies in

which the vegetables were sold, was taxable. Learned counsel for the petitioner urged that the petitioner was not a dealer in gunnies as such,

because he did not purchase gunnies or sell them.

9. The position, however, was that he got vegetables by purchase and those vegetables came packed in gunny bags. When he sold them, he sold

the vegetables in gunny bags. It should be obvious that the price of gunny bags was included in the purchase price as well as in the sale price. That

the petitioner did not deal separately in gunnies did not make him any the less a dealer for the purpose of the Sales Tax Act. There was a sale of

vegetables packed in gunny bags. It has been well settled by decisions of this Court that where there is a sale of an article, the container and the

contained article are both sold; and as there was an element of sale when the property in the gunny bags was passed by the petitioner to those who

purchased from him, the Tribunal was right in holding that on the turnover of gunny bags also the petitioner was liable to be taxed.

10. The order of the Tribunal is modified to the extent indicated above. As neither party has wholly succeeded there will be no order as to costs in

this petition.