(1936) 09 MAD CK 0001

In the Madras High Court

P. Ramanujah, Sole Proprietor of P. Thiruvengadaiah and Son — APPELLANT

Vs

The Commissioner, Corporation of Madras — RESPONDENT

Date of Decision : 29-09-1936

Acts Referred:

Madras City Municipal Corporation Act, 1919 — Section 98

Citation : 168 Ind. Cas. 492

Hon'ble Judges : Gentle, J

Bench : Single Bench

Judgement

Gentle, J.—The matter which is for consideration here and which I have to decide is whether a commodity known as plywood is timber

within the meaning of Section 98 of the Madras City Municipal Act of 1919. The relevant passages in that section are as follows:

The Corporation may levy (f) a tax on timber brought into the City.

2. Section 129 of that Act has been repealed and there is substituted for it the provisions of Section 77 of the Madras Act No. X of 1936. The

relevant passages of the latter section are as follows:

(1) If the Council by a resolution determines that a tax shall be levied on timber brought into the City, such tax shall be levied at such rates not

exceeding Rs. 5 per ton and in such manner as may be determined by the Council.

(2) No timber shall...be brought into City unless the tax due thereon has been paid.

(3) The tax shall be levied on timber kept within the City for sale if the Commissioner has reason to believe that the tax if any due thereon has not

been paid, provided that the tax shall not be levied if the person keeping the timber for sale produces satisfactory proof of the previous payment of

the tax theron

(4) The Commissioner may call for the accounts of any person keeping timber for sale for the purpose of levying the tax under Sub-section (3).

(5) If the Commissioner is satisfied that any person has wilfully evaded the payment of any tax leviable under this section, the Commissioner may

direct that such person shall in addition to such tax pay by way of penalty a sum hot exceeding the amount of such tax. Such penalty shall be

recoverable in the same as the tax.

3. The provisions of these two statutes give to the Corporation somewhat autocratic powers. They may levy a tax not exceeding Rs. 5 a ton upon

timber brought into the City. The Corporation can prevent timber upon which a tax has not been paid from being brought into the City. Then one

comes to the powers of the Commissioner; If he has reason to believe that timber is kept for sale within the city and that, that timber has not been

the subject of the payment tax, he may levy the tax, and the onus is cast upon the tax-payer or the person keeping the timber for sale to show that

in fact the tax which is demanded has been paid. The Commissioner in respect of the matter 1 have just mentioned is entitled to call for accounts of

the person keeping the timber for the purpose of levying the tax upon it. And then finally if the Commissioner is satisfied that any person has wilfully

evaded the payment of tax upon timber brought into the city, he may direct that in addition to the tax which is to be paid a penalty of a sum

equivalent to the amount of tax shall also be paid by the person having this timber in his possession. From their nature the provisions of these two

sections are tantamount to revenue legislation; and the last provision namely, requiring payment of double the amount of tax in the case of wilful

avoidance is penal legislation. Before the Corporation is entitled to recover under these provisions it must be fully established that the article they

propose to tax is one coming under the heading of timber within Section 98 and these statutes so far as they are relevant here must be construed

strictly. It is a revenue and a penal legislation. I was informed by the learned Counsel on behalf of the parties that there in no decided case and no

authority in any Law Report which in any way deals with this matter; and unfortunately neither of the statutes which T. have mentioned provides a definition for the word ''timber'' within the meaning of these Acts. One must, therefore, in effect dogmatise upon this matter. In my judgment, the

commodity known as plywood is not timber within the meaning of either of these statutes, that is to say it is not timber which is taxable by virtue of

the provisions of Sub-clause (f) of Section 98 of the Act of 1919. The intention, in my opinion, of the legislature was to authorise the imposition of

taxation upon raw material, that is to say, wood in respect of which no process of a manufacturing nature has been applied. Some process such as

cutting or shaping for transport convenience and the purpose of preparing the rough timber into convenient sizes suitable for commercial or

workshop uses must be contemplated because it is certainly most unusual to transport trees or the trunks or branches of trees in the condition in

which they are hewn in the forest. But if the legislature had intended to authorise the Corporation of Madras to inflict taxation upon timber or an

article of timber in respect of which a manufacturing or workshop process in the ordinary acceptation of the term had been applied, it would and

must have said so. In the absence of any precise enactment that a manufactured article or commodity is to be taxed, it is not taxable. It is conceded

by Mr. Krisbnasawmy Ayyar on behalf of the Corporation that an article which is a finished article such as a chair, table or carving, although made

entirely of wood or timber, is not an article which is the subject of taxation by the Corporation u/s 98. The expression ''plywood'' is not used in the

same way as one uses the expression ''oakwood'' ''teakwood'' and ''elm wood''. These expressions indicate the nature of the origin, of the wood.

There is no tree known us ply but there are teak, oak and elm trees. Plywood in my view is nothing more or less than a manufactured article made

from wood or timber in the same way that the chair and table which I mentioned are also manufactured from the same commodity. The method by

which plywood is manufactured, I am informed, and there is no dispute about it is this. First of all the tree trunks are obtained and the whole trunk

cut into convenient lengths. The bark having been stripped off, the wood is boiled. After boiling it is placed latitudinally in a machine in the

workshop and caused to rotate upon the axis running through the centre of the log. When rotating the trunk, the wood is cut and peeled into strips

of very thin sheeting much in the same say as one unrolls a roll of white tape. There long strips or sheets are then subjected to a further process.

The finished plywood varies in thickness from a minimum of three layers to a maximum of 7 or 8 layers or strips. The long strip or sheet obtained

from the log is known as veneer. Firstly, there is a sheet of veneer laid with the grain in one direction. The next sheet of veneer is then laid with the

grain parallel to the first veneer and these two sheets or veneers are joined together by glue and with the glue there appears to be another sheet or

strip of thin wood the grain of which is placed at right angles to the grain of the two pieces of veneer. Therefore, one has first of all the strip of

veneer with the grain running for example from east to west, then next to that another strip of some wooden material, the grain of which runs as

right angles, that is to say, north and south, and then comes the next sheet of veneer, the grain of which is running parallel to the grain of the sheet of

veneer on the other side of this cross-sheet of wood. Thus by alternating a sheet of veneer with a sheet of cross grain material and giue to attach

the veneer sheets together one has plywood manufactured. I have had shown to me samples of plywood. The largest thickness so far as 1 can see

is one of light strips altogether, including cross or adhesive strips. This plywood having been made in this way is then cut into planks of size of either

6 feet by 5 feet or 5 feet by 4 feet and it is in that size it is sold. Incidentally it"" is not without interest to consider that except perhaps for vast trees

in some South American forests one would never find planks of the width of the ones in which plywood is made. This process is more than cutting,

fashioning or the shaping of the raw tree for the purpose of transport or making it into convenient sizes for the workshop or for the use of the

artisan. It is a complicated method of manufacture requiring a degree of skill and no doubt an amount of time. The finished article is not in my view,

anything other than a manufactured commodity. Wh6none again turns to Sub-section (1) of Section 77 of ''the Act of 1936 one there finds that the

duty imposed is to be not more than Rs. 5 a ton. Therefore, the material upon which the tax is to be imposed has to be weighed and it is by the

weight of the timber that the Corporation are entitled to collect the tax. There must be a considerable amount of skill used in the manufacture of

plywood, the weight of which is made up partly by Wood and partly by glue. If plywood were timber within the meaning of Section 98i then the

Corporation would be taxing glue at the rate of not more than Rs. 5 a ton. Section 98 empowers them only to tax timber, not to tax glue; glue is manufactured from the hoof of an animal or may be from some vegetable. The fact supports the contention that plywood is not timber within the

moaning of the above section. In common parlance when one speaks of plywood one does not convey to the hearer, timber in the raw state,

whether it be in the trunk or the joist or the plank. It conveys the result of workmanship and skill in the factory. One has seen in several dictionaries

a definition of timber. One definition says ""building materials of all kinds."" It has never been suggested that tiles, slates, iron stanchions and glasses

are timber and that definition does not help. In the 1934 Concise Oxford Dictionary a definition of plywood is given. Plywood is there defined as a

straight thin board made by glueing layers with the grains crosswise."" For the reasons I have given in my judgment, the word ''timber'' in Section 98

of the Act of 1919 does not include such an article or commodity as plywood. Plywood, a manufactured article is outside the contemplation of that

section and for that reason in my view the Corporation have not powers under the statutes, I have mentioned to tax plywood wuich is being

brought into this city. The lesult of my finding is that theirs will be an order that the Commissioner of the Corporation of Madras will forbear from

levying and collecting a tax upon the consignment; of eleven bundles of plywood belonging to the petitioner. Mr. P. Ramanujiail and which arrived

in Madras on August 5, 1938, by the steamship Simla and further there will be an order that the Commissioner will forbear from either preventing

the import into the city by the petitioner of plywood or attempting to levy any tax upon plywood which he either brings or has brought within the

city of Madras. This Rule is, therefore, made absolute with taxed costs of two Counsels.