(2006) 09 P&H CK 0272

In the Punjab And Haryana At Chandigarh

Panwar Timbers APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:
Central Sales Tax Act, 1956 — Section 9

Citation : (2007) 8 VST 211

Hon'ble Judges : Rajesh Bindal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

1. Following question of law has been referred for opinion of this Court by the Sales Tax Tribunal, Punjab, arising out of its order dated March 15, 1989, in respect of assessment year 1983-84.

Whether the ''khair'' wood sold by the dealer is ''timber'' and taxable as such ?

2. Facts noticed in the statement of the case are:

M/s. Panwar Timber, is a registered dealer under the Central Sales Tax Act, 1956. Assessment of this firm for the year 1983-84 was finalised by the Assessing Authority, Ropar, vide his order dated March 10, 1987. In this assessment orders, inter-State sale in regard to supplying of khair wood to M/s. Mahesh Wood Products (P) Limited, Khawra Road, Bahetgarh, District Sonipat (Haryana) against ''C'' forms was taxed at four per cent and on this account additional demand of Rs. 16,241 was created. This additional demand included penalty and interest u/s 9(2) of the Central Sales Tax Act, 1956 read with Sections 10(6) and 11(d) of the Punjab General Sales Tax Act, 1948. Against the orders of the Assessing Authority, dated March 10, 1987 an appeal was filed before the Deputy Excise and Taxation Commissioner (A) who vide his order dated May 30, 1988 dismissed the same. Still not satisfied with the orders of the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala, M/s. Panwar Timber filed an appeal before the Sales Tax Tribunal, Punjab, who did not interfere with the orders of lower officers holding that ''khair'' is not timber in Punjab and is a wood used for the preparation of katha or for fire-wood.

3. The Tribunal examined the question whether the entry relating to "timber" included "khair" wood. It was held that in common parlance, "timber" was wood used in house construction as beams and pillars and could be used as planks like tables and chairs, while "khair" was not used for making material in construction of houses but was used for katha. Reference was also made to the judgment of the Orissa High Court in Krupasindhu Sahu & Sons v. State of Orissa [1975] 35 STC 270. Reliance was also placed on judgment of the honourable Supreme Court in Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola [1961] 12 STC 286 holding that if a word was not defined in the Act, the same was to be construed in its popular sense.

4. Learned Counsel for the assessee submitted that the view taken by the authority was erroneous, as definition of "timber" under the Himachal Pradesh Private Forest Act, 1954 and meaning of the word "timber" in Webster Universal Dictionary, quoted in the order of the appellate authority, were wrongly brushed aside on the ground that "khair" sold by the assessee was not used as "timber" for building purposes but was sold for extraction of katha, which fact was not denied by the assessee. It was submitted that use of "khair" wood by the assessee could not be conclusive. The order of the appellate authority referred to by the learned Counsel for the assessee which extracts the definition from the Himachal Pradesh Private Forest Act, 1954 and the dictionary is as under:

Himachal Pradesh Private Forest Act, 1954

Timber includes trees when they have fallen or have been fallen and all wood whether cut up or fashioned or followed out for any purpose or not.

Webster Universal Dictionary (page 1557)

Timber, timber, a building, to build, wooden building; a wood cut up and prepared for building growing trees thought of as wood with commercial value for building, a shaped, fitted piece of wood designed to form, or actually forming, a structural element in a building.

5. Reliance was also placed on judgment of the honourable Supreme Court in Mukesh Kumar Aggarwal and Co. Vs. State of Madhya Pradesh and Others, wherein the question was whether subsidiary parts of eucalyptus trees could be called "timber". It was held by the honourable Supreme Court that such wood heaps could not be called "timber" meant or fit for building purposes. The honourable Supreme Court observed : (paras 4 to 6 in STC)

6. In a taxing statute words which are not technical expressions or words of art, but are words of everyday 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''.

...

15 ... 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.

...

17. 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 25 ft. Apart from its utility as a source of gum and medicinal oils, the slow-growing species are especially known for the quality of its timber marked for strength, size and durability (See : Encyclopaedia Britannica : 1968. 8 AC 806; Encyclopaedia Americana : 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 ''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.

6. Learned Counsel for the assessee also relied upon the Himachal Pradesh Forest (Sale of Timber) Rules, 1969, wherein "timber" is defined as including "khair".

7. In Krupasindhu Sahu''s case [1975] 35 STC 270 (Ori) the question was whether logs made from timber in saw mill continued to be timber. The question was not answered for want of finding by the Tribunal about the size of the logs. It was, however, observed that if timber was converted into different commercial commodity or into firewood, the same could no longer be called timber.

8. Learned Counsel for the Revenue submitted that "khair" was raw material for katha, which was used by the assessee as such and its use as such has been noticed in judicial decisions, which shows that in common parlance also katha was a different commercial commodity than timber. He relied upon judgments reported in State of Himachal Pradesh and others etc. Vs. Ganesh Wood Products and others, etc., and also judgment of the honourable Supreme Court in Ramavatar''s case [1961] 12 STC 286. In State of Himachal Pradesh and others etc. Vs. Ganesh Wood Products and others, etc., , it was observed in para 36:

It is well to remember that manufacture of katha requires cutting of khair trees. Only the central portion of the trunk of the tree is used for the manufacture of katha and the rest is of no use except perhaps as firewood.

9. We have considered the rival submissions and perused the record.

10. To determine the question referred, we have to go by common parlance test and for holding "khair" wood to be "timber" or otherwise, we have to ascertain whether in common parlance, "khair" wood and "timber" are considered to be the same commodity. It has been concurrently held by the authorities in the present case that "khair" wood was a different commodity than timber. In common parlance, meaning of term "timber" has been noticed in the judgment of the honourable Supreme Court in Ramavatar''s case [1961] 12 STC 286. It has also been judicially noticed in the judgments relied upon by the learned Counsel for the State that "khair" wood is a raw material for katha and it is used as such which supported the stand that in common parlance also, "khair" wood was not treated as same commodity as timber. Merely because "khair" wood could also be used for construction purposes, as contended by the learned Counsel for the assessee or was described in the definition of "timber" in the Forest Rules for purposes of enforcing the provisions of the Forest Act, would not be enough to say that in common parlance, "khair" wood was timber. There is no evidence to support the submission on behalf of the assessee that in common parlance, "khair" wood was treated as timber and used as such. In these circumstances, it has to be held that "khair" wood was different from timber for purposes of the entry specifying lesser rate of tax.

11. For the above reasons, we answer the question referred against the assessee and in favour of the Revenue.

12. Reference is disposed of accordingly.

