(1981) 07 KAPT CK 0031

In the Karnataka Appellate Tribunal

Case No : STA. 492, 493 & 494/80

Planters Coffee Curing Works APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 10-07-1981

Acts Referred:

Citation : (1981) 1 KarLJ 142

Hon'ble Judges : T. Balachandran, Member;C. K. Mallikarjuna, J

Judgement

Sri T. Balachandran, M.-These three appeals have arisen from the orders passed by the Deputy Commissioner of Commercial Taxes (Appeals) Mangalore, in appeal Nos. KST/AP. 79-80, 84 and 85/75-80 and KST/AP 81/79-80 dated 28-2-1980 under S. 20 of the Karnataka Sales Tax Act, 1957 (hereinafter called the Act). STA Nos. 492/80 and 493/80 relate to the assessment orders passed for the years 1974-75 and 1975-76 respectively, wherein the appellant has challenged the jurisdiction of the assessing authority to re-open the assessment under S. 12-A of the Act and the classification of Rock Phosphate sold by the appellant under S. 5(1) of the Act for the purpose of levy of tax under the Act. STA. Nos. 494/80 relates to the assessment for the year 1976-77 under the Act wherein the appellant has questioned the classification of Rock Phosphate sold by the appellant under S. 5(1) of the Act for the purpose of levy of tax under the Act.

2. Sri S.P. Bhat, the learned Advocate appearing on behalf of the appellant submitted that he is not pressing the question of jurisdiction of the assessing authority tore-open the assessment for the years 1974-75 and 1975-76 under S. 12-A of the Act. Therefore, we are to decide to issue of classification of Rock Phosphate sold by the appellant for the purpose of levy of tax under the Act in all these three appeals. Hence all the three appeals are clubbed, heard together and covered by this common order.

3. The learned Advocate for the appellant submitted that the assessing authority had applied his mind while concluding the original assessments for the years

1974-75 and 1975-76 and come to the conclusion that the Rock Phosphate sold by the appellant was chemical fertiliser falling under entry 48 of the Second Schedule to the Act. Accordingly he made proper assessments for those two years. Subsequently, the succeeding officer initiated proceedings to re-open the assessments under S. 12-A of the Act on 16-11-1979 to levy tax on the sale of Rock Phosphate at 31/2 per cent for the year 1974-75 and 4 per cent for the year 1975-76. merely on the basis of a Circular No. NSR. 493/74-75 dated 27-2-1975 issued by the Commissioner of Commercial Taxes, Karnataka, Bangalore. The authority finally came to pass the orders under S. 12-A of the Act on 28-11-1979. For the year 1976-77, the assessing authority passed an order under S. 12(3) of the Act levying tax at 4 per cent on the sale of Rock Phosphate The action of the authority in levying tax on the sales of Rock Phosphate under S. 5(1) of the Act for all the three years relying on an earlier clarification of the Commissioner of Commercial Taxes, Karnataka, Bangalore is wholly arbitrary and pre-judicial when the Commissioner has already clarified in his Circular No. MSR CR. 757/78-79 dated March, 1979 that Rock Phosphate (Fertiliser) is taxable at 3 per cent under entry 48 of the second schedule to the Act (vide page 28 of the Commercial Taxes Bulletin for the quarter ending March, 1979) Therefore, the order passed by the assessing authority is bad in law.

4. Proceeding further, Sri Bhat argued that reference made by the Deputy Commissioner of Commercial Taxes (Appeals) Mangalore, to a decision of the Allahabad High Court in Mini Fertilisers (P) Ltd. v. Commissioner of Sales Tax, U.P., (1979) 44 STC. 494, related to a case in which Sulphur Rolls obtained from Rock Sulphur were held taxable as minerals in the notification issued under the U.P. Sales Tax Act, 1948. Since there was no essential change in the quality and the character of sulphur in Sulphur Rock and Sulphur Rolls, they were held as minerals. Chemical Fertilisers are mostly minerals. Therefore Rock Sulphur, though a mineral, continues to be a chemical fertiliser. The true test to know whether the commodity is a fertiliser is to find out how the goods are sold in the market. The learned counsel also brought to our notice a decision of the Kerala High Court in Deputy Commissioner of Sales Tax (Law) v. Champakulam Village Service Co-operative Society, Ltd., (1980) 46 STC 318, wherein it was held that Rock Phosphate in all its forms is a chemical fertiliser under item 54 of the I schedule to the Kerala General Sales Tax Act, 1963 even before the amendment of that entry reading "Chemical Fertilisers including Bone Meal". Rock Phosphate in its raw form (natural form) is also held to be a chemical fertiliser.

5. To prove that rock phosphate is a chemical fertiliser the learned counsel has filed a certificate from the Principal Agricultural Officer, Bangalore District and also from the President, Hassan District Planter''s Association, Sakaleshpur. A pamphlet published by Madhuvan Chemicals and Fertilisers Pvt., Ltd. Udaipur regarding the use of rock phosphate and also two phamphlets and a hand bill published by Pyrites, Phosphates and Chemicals, Ltd., (a Government of India Undertaking) relating to the use of Rock Phosphate as a chemical fertiliser are also filed before us. Thus he argued that even according to the common parlance

theory as laid down in the decision of the Supreme Court of India in the Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam v. G.S. Pai & Co., (1980) 46 STC 58, the rock phosphate sold by the appellant can be considered as Chemical Fertiliser only. He has also referred to a decision of the High Court of Punjab and Haryana at Chandigarh in Porritts and Spencer (Asia) Ltd. v. State of Haryana, (1977) 40 STC 333 to stress that the popular usage theory should be adopted to determine the classification of the article.

6. Before concluding his arguments Sri Bhat produced before us a copy of the Fertiliser (Control) Order, 1957, wherein Rock Phosphate is enumerated at Sl. No. 23 of the Schedule I as a fertiliser. Considering the usage of the commodity by the sellers and the buyers, who are persons concerned by the commodity, Rock Phosphate sold by the appellant can be considered only as a Chemical Fertiliser.

7. The learned State Representative argued that entry 48 of the II Schedule to the Act is a general entry reading as chemical fertiliser and the same does not cover rock phosphate which is a mineral used in the manufacture of Acids, Explosives and other industrial products. Of late, with advent of green revolution the commodity is used as chemical fertiliser though the predominant use of the commodity is for industrial purposes. People who are in the agricultural field only consider rock phosphate as a chemical fertiliser. However, the trade considers the same as raw material for industrial purposes. According to the decision of the Madras High Court in Trac Industries and Components Ltd v. The State of Tamilnadu, (1979) 43 STC. 120, the predominant use of the commodity should prevail upon its use for some other purposes to determine the classification of the commodity and the tax liability under the sales tax law. When Trac Pins, Bolts, Nuts and Chains were to be mainly used as components of Tractors and Bull Dozers, the fact that the same could be used for some other purposes does not make them any the less parts of Tractors and Bull Dozers. Applying this theory the learned State Representative contended that the Rock Phosphate sold by the appellant is taxable under S. 5(1) of the Act. He also argued that the view taken by the High Court of Kerala in Champakulam Village Co-operative Society''s case, (1980) 46 STC 318, that Rock Phosphate is a chemical fertiliser is because of the amendment to item 54 of the I schedule to the Kerala General Sales Tax Act 1963. Therefore, that decision has no application to the facts of the case. Thus he submitted that rock phosphate cannot be considered as a chemical fertiliser falling under entry 48 of the second schedule to the Act.

8. We have considered the arguments for both the parties and perused the records. There is no doubt that Rock Phosphate in its natural form is freely used as a chemical fertiliser for some years now with the advancement of science. It can also be used in combination with others as a chemical fertiliser. It is also used after chemical processing for industrial purposes as a submitted by the learned State Representative, though he has not adduced any evidence to that effect. Therefore, the question for our consideration is how to treat the commodity when the same falls into more than one entry under the Act. The best

test to ascertain the classification in such an event is to avail of the users theory or the test of buyer/seller.

9. There is no dispute about the fact that the appellant is selling Rock Phosphate as a chemical fertiliser to his customers. The original assessments for the years 1974-75 and 1975-76 are also finalised by the assessing authority on that assumption. Subsequently relying upon a clarification issued by the Commissioner of Commercial Taxes, Karnataka, Bangalore, the successor in office changed his opinion and re opened the assessments, under S. 12-A of the Act This authority finalised the assessment for the year 1976-77 also under S. 12(3) of the Act holding Rock Phosphate as taxable under S. 5(1) of the Act. Unfortunately he did not notice the clarification issued by the Commissioner of Commercial Taxes, in March 1979 in Circular No. MSR. CR. 757/78-79.

10. In the case referred to by the learned State Representative in (1979) 43 STC. 120 the assessee claimed that the items could also be used for other purposes as components of Drilling Machines, but sales for such purposes had not been shown to be of any considerable magnitude (underlining Italics is ours). Therefore, the Madras High Court had to hold that as the pre-dominant user of the items manufactured and sold by the assessee was for use as components for Tractors and Bull-Dozers they would be liable to be taxed under entry 55 of the I Schedule to the Tamilnadu General Sales Tax Act, 1959.

11. The argument of the learned State Representative that the Kerala High Court has considered Rock Phosphate as a chemical fertiliser in its decision in Champakulam Village Co-operative Society''s case, (1980) 46 STC 318, because of the amendment to entry 54 of the I Schedule to the Kerala General Sales Tax Act has not much force In the same judgment it is observed in page 321 as follows:

"As already noticed, the description of the original item 54 "was chemical fertilisers including bone meal."

If the amendment has given only a more detailed description of the goods covered by the said item, as is made clear by the notes on clauses referred to above, it must necessarily follow that Rock Phosphate, which is now shown as sub item (21) in the amended item 54, was even originally intended by the Legislature to be taken in by the description Chemical Fertilisers including bone-meal."

There is therefore, no longer any room for controversy or speculation as to whether rock phosphate is a fertiliser falling within the description Chemical Fertiliser in item 54 of the I Schedule as it stood prior to the amendment.

12. Before coming to the conclusion that the Rock Phosphate sold by the appellant is a chemical fertiliser, we would like to go through some of the decisions of the courts as to how the sale of an article falling under two different categories should be placed.

13. In Bishamber Dayal Shrinivas v. Commissioner of Sales Tax, U.P., 14 STC 184, decided by the Allahabad High Court it has been held as follows:

"Having regard to the intention of the Legislature to tax sales, any ambiguity as to the category in which an article should be placed is resolved with reference to its sale. If an article is sold as an article belonging to one category it must be treated as a sale of an article of that category even though it answers the description of another category. If therefore an article is capable of being used as a chemical and also as a colour, the answer to the question what was sold could depend upon how it was treated by the vendor. If he stocked and sold it as a chemical, it would be a sale of chemical and more so if it was bought by the vendee also as such."

In the present case before us also the vendor and the vendee have considered rock phosphate as chemical fertiliser only.

14. The Andhra Pradesh High Court has observed in G. Ramaswamy v. State of Andhra Pradesh, (1973) 32 STC 309, at page 313 as follows;

"One of the most significant aids of construction in determining the meaning of a tax provision is the administrative interpretation given to it by the agency that is responsible for its administration and enforcement. The authority for such interpretation is usually traced to three distinct sources. One of the sources is the interpretation given by the administrative agency or its officers, appearing in less formal rulings such as the departmental rulings and the like. Such interpretation, it is true, is formal, or unauthoritative administrative construction. Nevertheless the courts have given weight to it in the construction of doubtful language. It may be that since such rulings or communications are made without the authority, care and deliberation with which ordinarily interpretative rules are promulgated, their efficacy is reduced. The courts, however, in interpreting a word used in a statute may have regard to the interpretation placed by those who are presumed to be acquainted with the economic significance of the tax in question It is true that these interpretations given by the authorities have no force of law nor are they binding upon the Courts. Nevertheless they may serve as a tool of construction of some words used in the Statute."

15. Again in Sapt Textiles Products (India) Ltd v. State of Madras, (1965) 16 STC 267, the Madras High Court has held "that the sales tax assessment being intended primarily for assessments of dealers engaged in the trade, the court cannot dissociate the meaning which the particular commodity has acquired in the market, for the purpose of identifying the commodity for the levy of sales tax. The proper rule in such cases will be to give the commodity the same meaning which the buyer and the seller in the market usually give to it (underlining Italics is ours), unless the statute has taken care to prescribe any special marks of description or identification."

16. Our own High Court in State of Mysore v. Santoomal Kishnomal, (1962) 13 STC 313 has held, while deciding that Crow Bar is an agricultural implement

exempted from tax under schedule III of the Mysore Sales Tax Act, 1948, as follows:

"Agricultural implement has not been defined in the Mysore Sales Tax Act, 1948 nor in the rules framed thereunder. Therefore, we have to take the ordinary meaning of the words "Agricultural Implement" into consideration. It is not denied that "Crow Bar" is generally used as an agricultural implement. The question whether it is predominantly used as such an instrument to our mind appears to be an irrelevant question. The use of the Crow Bar for agricultural purposes is by no means a remote use."

17. In Industrial Glasses Ltd. v. Commissioner of Sales Tax, U.P., (1968) 21 STC 124. the Allahabad High Court has held as follows:

"Oxygen was sold by the assessee for welding and also for medicinal purposes. It was held that it was taxable as a chemical when sold for industrial purposes and medicine when sold for medicinal purposes".

In view of the pronouncements of the courts referred to above, we have no hesitation to hold that the Rock Phosphate sold by the appellant can be considered as chemical fertiliser only as they are sold to customers to improve the fertility of the soil. We may not, however, be understood to say that rock phosphate when sold by a dealer as raw-material for industrial purposes is also a chemical fertiliser.

18. Thus we pass the following order:

All these three appeals are allowed. The orders passed by the lower authorities in so far as holding sales of rock phosphate made by the assessee as taxable under S. 5(1) of the Act for the years 1974-75, 1975-76 and 1976-77 are set aside. The assessing authority is directed to give effect of this order by treating the sales of rock phosphate made by the assessee as chemical fertiliser and granting such other relief as provided under the Act on the second sales of rock phosphate in the State.

Institution fees paid by the appellant in all these three appeals shall be refunded.