(1981) 11 MAD CK 0041

In the Madras High Court

Case No : T.C. No''s. 1117 and 1668 of 1977 (Revision No''s. 257 and 358 of 1977 respectively)

P.R. Lakshmi APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 05-11-1981

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 17

Citation : (1983) 52 STC 5

Hon'ble Judges : S. Padmanabhan, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Balasubrahmanyan, J.—These two sales tax cases raise the question whether the wood sold by the assessee in each case can be regarded

as ""firewood"" and so entitled to exemption from sales tax under a Gazette notification issued by the State Government in Notification No.

II(1)/Rev/386(g)/74 dated 4th March, 1974. The notification reads as under :

In exercise of the powers conferred by sub-section (1) of section 17 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of

1959), the Governor of Tamil Nadu hereby makes an exemption in respect of the tax payable by any dealer under the said Act on sale of -

(1) ....

(2) ....

(3) Firewood.

2. It will be observed that the exemption under this notification does not define or explain what ""firewood"" means, what the expression includes,

and what it excludes. The absence of such a definition is by no means regrettable. On the contrary, it leaves open the subject for discussion on the

basis of sound common sense. As Ever shed , Master of the Rolls, once observed, common sense is not entirely excluded even in tax cases.

3. The assessee in one of the revisions is a timber merchant under the name of National Timber Depot. He sold to South India Viscose,

Coimbatore, what was described in the sale agreement as ""blue-gum and wattle pulpwood"". The agreement stipulated that the goods must have

certain specifications. It was agreed, inter alia, that the pulpwood should be one meter in length without forks, knots or any projecting part; that

they should be debarked; and that they should be free from rot, decay and the like.

4. In the other case, the assessee is one P. R. Lakshmi. She is described as a ""pulpwood contractor"". She sold timber to the Gwalior Rayons

having their depot at Calicut. The Timber sold was described in her invoice as ""debarked and split eucalyptus blue-gum"". Incidentally, this

description of the process at once rules out the assessee''s contention, once urged, that she did not know what for were the items purchased

Gwalior Rayons.

5. The assessing authority held that the goods sold in each case was not firewood, but pulpwood which the purchasing concerns intended to utilise

as raw material in the manufacture of rayon. The Tribunal affirmed this decision in appeal.

6. The Tribunal''s decision is challenged in the present revisions. The learned counsel for the assessees argued the matter at some length. We

listened to the arguments only to find, at the end of it all, that a Bench of this Court had repelled a similar contention put forth in a comparable case,

in A.H.K. and Company v. State of Tamil Nadu [1980] 46 STC 117. The assessee in that case sold to Gwalior Rayons certain quantities of wood

according to certain specifications. This Court held that the wood in question was not firewood. The court referred to the specifications of the

goods mentioned in the sale contract, which showed that the subject-matter of the sale was not firewood.

7. The basis of this decision governs the present two cases. The specification of the goods in each case showed that what was sold was not

firewood or fuel wood. The specifications showed that the blue-gum eucalyptus must be split to size and debarked. What the purchaser in each

case obviously desired was that the eucalyptus should serve the intended purpose, namely, to be used in the manufacture of rayon or other kind of

man-made fibre. This applies to wattle wood as well. That the goods sold were firewood or fuel wood must have been farthest from the thoughts

of both the parties.

8. Apart from the particular specifications in the sale agreement to which we have referred, we think we must have regard for the colloquy of

commerce and the common vocabulary of the market for distinguishing between firewood and other kinds of wood. Firewood, in common

commercial parlance and as understood by the trade as well as by the consuming public, is not just any wood that can be used as logs of fuel.

Every kind of wood is potential firewood, for you can start a fire with any wood. But this is not the test. Firewood is wood of a kind which has

attained notoriety as fuel. Nobody who sells firewood debarks the wood before sale. Nobody who buys firewood requires them to be shaved and

debarked. Purchasers may desire the wood to be cut to size. But that is all. There may be eccentric sellers and eccentric buyers who may indulge

their fancies in specialities in firewood. But that, again, is not the test. Where the wood is not, in the normally accepted commercial practice,

firewood, and more especially, where the wood is sold and purchased subject to specifications which conduce the wood to particular purposes

other than fuel, which is the case in the present two revisions, the goods sold cannot be regarded as firewood.

9. We accordingly hold that the exemption relating to firewood cannot be extended to the cases under revision. The wood sold in both the cases is

eucalyptus blue-gum, which, as a commercial commodity, is only pulpwood, whether you call it by that name or not. This would be the case with

wattle wood also.

10. Both the revision petitions are, therefore, dismissed with costs. Counsel''s fee Rs. 250 (one set).

