
(1978) 08 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 125 of 1978 (R.)

Rameshwar Lal Prahlad Rai	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 23-08-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1979) 43 STC 497

Hon'ble Judges : Uday Sinha, J; Satyeshwar Roy, J

Bench : Division Bench

Advocate : K.N. Jain, G.C. Bharuka and Prabhu Dayal Agarwal, for the Appellant; R.N. Sahai Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Uday Sinha, J.—The short point which falls for decision in this application under articles 226 and 227 of the Constitution of India is whether palm oil is included within the expression "palm products", so as to entitle the petitioner to claim the benefit of exemption from Bihar Sales Tax Ordinance No. 209 of 1976. The petitioner with that end in view has prayed for quashing annexures 3, 4 and 5 to this application.

2. The facts about which there is no controversy are firstly that the petitioner sold palm oil during the period 22nd August, 1977, to 12th February, 1978, worth Rs. 6,90,364.55; secondly, the palm oil sold by the petitioner had been imported from outside this country; thirdly, the petitioner had not charged special or general sales tax from buyers of palm oil and, lastly, in the return for the relevant period, the petitioner had not deposited sales tax according to law on account of sale of palm oil during the aforementioned period. On 15th December, 1976, the State Government issued a notification (the English version of which is annexure 1), which was to the effect that in exercise of the powers conferred upon the Governor by Section 6(3a) of the Bihar Sales Tax Ordinance (Bihar Ordinance No. 209 of 1976), he was pleased to exempt articles mentioned

in that notification from the levy of general as well as special sales tax. Item 12 of the notification was "palm-gur and palm products". The authoritative version of the notification was in Hindi, item 12 of which reads as tar-gur aur tar ke saman. Subsequently, the Bihar Sales Tax Fifth Ordinance, 1977 (Bihar Ordinance No. 257 of 1977) (annexure 2), was also issued in supersession of all the previous notifications. In terms of Section 6(3a) of that Ordinance also, the State Government issued a notification dated 26th December, 1977, which was in terms identical to the earlier notification. Item 12 of this notification also exempted "palm-gur and palm products" from the levy of sales tax. The petitioner has averred that, relying upon the two notifications (annexures 1 and 2), the petitioner considering palm oil to be palm product did not realise sales tax from its customers and for the very same reason did not deposit the necessary sales tax due upon the sale of palm oil along with the return of sales tax. By notice dated 9th February, 1978 (annexure 3), the petitioner was directed to show cause before the Assistant Commissioner of Commercial Taxes, Jamshedpur, why penalty should not be imposed for failure to file correct return and payment of full admitted tax. The petitioner showed cause contending therein that palm oil being a palm product was exempted from the levy of sales tax, special or general. The cause shown by the petitioner was rejected by the Assistant Commissioner by order dated 27th February, 1978 (annexure 4). According to this order, palm oil fell in the category of vegetable oil and was exigible to tax at the rate of 7 per cent and that it was not included within the expression "palm products". Annexure 5 is a circular from the Commissioner of Sales Tax to all the Sales Tax Officers in regard to levy of tax on refined palm oil. It was clarified by this letter that palm oil was not a palm product, but was a specie of vegetable oil. The petitioner has, therefore, moved this Court for issuance of an appropriate writ by quashing annexures 3, 4 and 5.

3. The learned counsel for the petitioner has contended that fiscal statutes should be strictly construed and if there is any ambiguity the benefit of the doubt must be extended to the assessee. The proposition is unexceptionable. It goes without saying that the interpretation which cast the least burden upon the assessee must be preferred to that of consideration of income to the exchequer. The above proposition, however, cannot be a ruse for the assessee to evade payment of taxes. I am conscious of the fact that, in the instant case, the petitioner has not realised sales tax from the purchasers. Even so, if the State is entitled to realise sales tax on any item, the fact that the assessee has failed to realise it is a matter absolutely and entirely irrelevant for deciding the question in issue.

4. The learned counsel for the petitioner has contended that palm oil is nothing but a product of palm and, therefore, the process by which palm oil is extracted or whether it is an imported product is of no moment. According to him, palm oil is in effect and substance a palm product and must be treated as such.

5. The learned Government Pleader, on the other hand, contended that palm oil

is not palm product. According to him, the expression "palm products" is slightly misleading. The authoritative version being Hindi, the expression tar ke saman necessarily implied only such items which are directly derived from palm tree in its natural state and that could not include articles derived from palm after it has undergone severe changes by mechanical processes.

6. The question whether a processed article is the same as its source or not has been the subject-matter of consideration in several decisions of the Supreme Court. The decision in Ganesh Trading Co., Karnal Vs. State of Haryana and Another, completely negatives the submission urged on behalf of the petitioner. The principle firmly established by the Supreme Court is that in finding out the true meaning of entries mentioned in the Sales Tax Act, what is relevant is not the dictionary meaning but how those entries are understood in common parlance, specially in commercial circles. In the case of Ganesh Trading Co., Karnal Vs. State of Haryana and Another, , the question for decision was whether paddy and rice can be considered identical goods for the purpose of imposition of sales tax. It was contended before their Lordships that rice was nothing but dehusked paddy and, therefore, they were identical goods. According to the appellant in that case, there was no change in the identity of the goods merely by paddy having been dehusked and rice produced. Their Lordships repelled the contention in the following terms :

Now, the question for our decision is whether it could be said that when paddy was dehusked and rice produced, its identity remained. It was true that rice was produced out of paddy but it is not true to say that paddy continued to be paddy even after dehusking. It had changed its identity. Rice is not known as paddy. It is a misnomer to call rice as paddy. They are two different things in ordinary parlance. Hence quite clearly when paddy is dehusked and rice produced, there has been a change in the identity of the goods.

In my view, the observations of the Supreme Court leave no scope for the submission urged in this case that palm oil is same as palm or its products.

7. In my view, the submission urged on behalf of the petitioner has no substance and must be rejected. The word "product" means a thing produced by natural processes. A product obtained after being processed through mechanical process cannot be the same as its raw material. Cotton cloth cannot be characterised as the same as cotton. The mechanical process through which an article has to pass is a valid criteria for determining whether the end-produce is different or not. Palm oil in that sense is not derived from palm by natural process or manufacture. The oil is obtained by subjecting palm to a mechanical process of crushing and so it may be the product of copra, but not of palm. If the reasoning advanced by Mr. Jain for the petitioner were to be extended to its logical conclusion, every item on this earth could be traceable to earth and water, which are certainly not taxable. That, in my view, would not be a reasonable interpretation. Palm oil itself goes in the production of several articles, soap, hair oil, etc. In my view, all those products cannot be covered by the expression

"palm products".

8. It is well-known that palm oil is extracted after palm has been processed and oil extracted. In *Deputy Commissioner of Agricultural Income Tax and Sales Tax v. A. Khader Kunhi Sons, Catmanore* [1976] 37 S.T.C. 227, twisted cotton fishing twine was held to be different from cotton yarn. In *Mohta Trading Co. v. Commissioner of Sales Tax, U.P., Lucknow* [1976] 38 S.T.C. 11, the Allahabad High Court held that cotton sewing thread on cops and cones was entirely different from the exempted article cotton yarn on cops and cones. Similarly, in *State of Orissa v. Mahamaya Coconuts* [1976] 38 S.T.C. 120, a Bench of the Orissa High Court held that watery coconuts (paido) in its proper sense was not oil-seeds. Again, in *State of Orissa v. Patel Saw Mills* [1976] 37 S.T.C. 392, another Bench of the Orissa High Court held that the exempted articles logs and timbers were different from timber converted into different commodities known in the commercial market as planks, railway sleepers, rafters, beams, ribs and other sized timber. It will be useless to refer to other decisions as I am finally of the view that the item "palm products" in annexures 1 and 2 cannot include palm oil. I would like to add that there are certain principles behind the grant of exemption. There could have been no rationale for the sales tax authorities to exempt imported oil from the levy of sales tax.

9. There is another reason for holding that palm oil cannot be included in the expression "palm products". I have mentioned earlier that the expression used in Hindi is tar ke saman. This expression can include only articles derived from palm in its natural state. Further, if the expression "palm products" in item 12 was meant to convey products from palm trees in its widest amplitude, there was no point in saying "palm-gur and palm products". It is well-known that palm-gur is obtained from palm juice or toddy after it has been processed. It is obvious, therefore, that the expression "palm products" did not include processed articles derived from tree. But exemption was given only to palm-gur, which is a processed form of toddy. Thirdly, I am doubtful if palm oil can be extracted from all palm trees. If I am not wrong, the variety of palm trees producing palm seeds from which palm oil can be extracted is not grown in this country and, therefore, there could have been no rationale from exempting palm oil imported from outside from the levy of sales-tax. It will, however, be a matter to be considered* by the Tribunal on facts to consider whether oil producing varieties of palm are grown or not as well as the processes by which oil is extracted from palm. This Court cannot go into that question. I am, therefore, of the view, that palm oil could not have been intended to be exempted in terms of item 12 of annexures 1 and 2.

10. For the reasons stated above, I find no merit in this application and it is accordingly dismissed. There will be no order for costs.

Satyeshwar Roy, J.

11. I agree.