(1974) 12 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2825 of 1973

Sahu Mills and Others APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 18-12-1974

Acts Referred:

Andhra Pradesh General Sales Tax (Amendment) Act, 1970 — Section 7
Andhra Pradesh General Sales Tax Act, 1957 — Section 8
Central Excises and Salt Act, 1944 — Section 2

Citation : (1977) 1 ELT 88

Hon'ble Judges : Ramachanrpa Raju, J

Bench : Single Bench

Judgement

Ramachanrpa Raju, J.—The matter in this writ petition arises under the Andhra Pradesh General Sales Tax Act, 1957 herienafter referred to as the ''the Sales Tax Act. The petitioners are all businessmen registered as dealers under the provisions of this Sales Tax Act and the Central Sales Tax Act. They also deal in tobacco seeds. Previously when the petitioners were subjected to levy of tax under the Sales Tax Act on the transactions in tobacco seeds they and others filed writ petitions in this court challenging the levy of tax of tobacco seeds contending that tobacco seeds is an item exempted from tax in as much as it falls within the expression "tobacco and all its products" in Item 7 of Schedule 4 to the Sales Tax Act which contains Items of goods exempted from the levy of sales tax under the Sales Tax Act. This Court by a decision of a Bench dated 11.03.70 in writ petitions Nos 1445 to 1458 of 1968 and batch reported in Amara Purushotham Mammidi Obaiah and Co. v. State of Andhra Pradesh - (1972) 29 STC 654 (Andhra Pradesh) declared that the levy of tax on tobacco seeds is illegal as tobacco seed comes within the expression "tobacco products" and hence tobacco seed is an Item declared by Schedule 4 as an exempted Item from tax. This court set aside the various assessments so far as they were concerned with tax on tobacco seeds.

2. Subsequently the State Government passed Act 9 of 1970 ending certain

provisions of the Sales Tax Act. One of the changes made by this Amendment Act is the amendment of some Items including Item 7 of the Schedule 4 in the following manner. Section 7 of the Amendment Act is as follows: --

''7 In the Fourth as Schedule to the Principal Act :

(a) for Item 5, the following Items shall be substituted namely:--

"5. Cotton fabrics, rayon or artificial silk fabrics and woollen fabrics''."

(b) for Item 7, the following Item, shall be substituted namely:-- "7 ''tobacco''."

(c) the following explanation shall be added at the end, namely :--

"Explanation.--The Expression in Items 5, 6 and 7 shall have the same meanings assigned to them in the Additional Duties of Excise (Goods of Special Importance) Act 1957."

3. But in the Additional Duties of Excise (Goods of Special Importance) Act, 1957, as provided u/s 2(d) the definitions given in the Central Excises and Salt Act, 1944 are as follows--

`the words and expressions "sugar", "tobacco", "cotton fabrics", "rayon or artificial silk fabrics" and "woollen fabrics" shall have the meanings respectively assigned to them in the Central Excises and Salt Act, 1944.''

4. The Item which relates to tobacco is Item 4. Thus the meaning of the expression "tobacco" in Item 7 of Schedule 4 to the Sales Tax Act after its amendment is the one assigned to it in Item 4 of first Schedule to the Central Excises and Salt Act 1944, which reads as follow :--

"Tobacco" means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the lead stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth.

5. Thus, "tobacco" defined as above is the tobacco now entitled for exemption in Item 7 of Schedule 4 to the Sales Tax Act, 1957. Therefore the question for consideration is whether "tobacco seed" comes within the above definition to claim exemption.

6. The argument of Shri Babul Reddy learned counsel for the petitioners is that the definition of the expression "tobacco" as mentioned above is illustrative and not exhaustive and any part of a tobacco plant is tobacco once it is removed and not still part of the tobacco plant attached to the earth and therefore "tobacco seed" like tobacco leaf, stalks and stems of the tobacco plant or any other part of tabacco plant when they are removed from the tobacco plant is ''tobacco'' for the purpose of exemption from the tax under the provisions of the Sales Tax Act.

7. On the other hand, Sri D.V. Sastry, learned counsel for the Government, has argued that the contention that even after the Amendment Act 9 of 1970,

withdrawing the exemption on tobacco product still no tax can be levied on tobacco seed is untenable. According to the learned counsel from the definition of the word "tobacco" as given in the Central Excises and Salt Act, tobacco seed cannot be taken as part of the definition and it is only tobacco leaves, stalks and stems of the tobacco plant when they are not still attached to the earth along with the plant are only part of the definition and therefore those parts of the tobacco plant only (which) are exempt from the tax after the Amendment Act 9 of 1970 and the contention that the definition given to the word "tobacco" in the Central Excises and Salt Act is not exhaustive is not warranted. The main argument of Sri Sastry is that after the Bench decision of this court referred to above was rendered holding that "tobacco seed" is also a product of tobacco" the Legislature thought of amending old Item 7 in Schedule 4 to the Sales Tax Act to exclude tobacco products like tobacco seed from the exemption. With that view, in Item 7 the expression "tobacco" was substituted for the expression "tobacco" and all its products and therefore in this view of the matter it must be taken that parts of tobacco plant except those specifically mentioned in the definition of the word "tobacco" given in the Central Excises and Salt Act were not intended to be exempted from the tax. Therefore "tobacco seed" not having been mentioned in the definition must be taken as not exempted from the levy of sales tax.

8. In the statement of objects and reasons appended to the Andhra Pradesh General Sales Tax (Amendment) Bill, 1969, which subsequently became the Andhra Pradesh General Sales Tax (Amendment) Act 9 of 1970 it was stated that in order to overcome certain practical difficulties in enforcing the provisions of Section 8 of the Sales Tax Act it is proposed to make an amendment to that section and in the Fourth Schedule to the Sales Tax Act. What those difficulties were not specified Therefore, what exactly the intention of the Legislature was in amending Item 7 of Sch. 4 to the Sales Tax Act is not known. We have to go by the actual language used in the definition to the expression "tobacco" given in the Central Excises and Salt Act, 1944, which is now adopted for Item 7 of Schedule 4 to the Sales Tax Act.

9. From a reading of the definition as mentioned above it is clear that the definition is an inclusive one. In the definition after saving "tobacco" means any form of tobacco. It is further added including the leaves stalk and stems of the tobacco plant. That the parts of the tobacco plant like leaves, stalks and stems mentioned therein are not intended to be exhaustive also appears from the fact that in the definition it is further stated "but does not include any part of tobacco plant while still attached to the earth". The intention of the Legislature in giving that defination appears to be that all parts of a tobacco plant once they cease to be parts of the tobacco plant while still attached to the earth would be "tobacco". When the parts of the tobacco plant like, leaves, stalks and stems are mentioned in the definition they can be taken only as intending to be illustrative and not exhaustive." If in giving that definition the legislature intended that those parts of the tobacco plant, namely leaves, stalks and stems only come under the definition of the expression "tobacco" and not the other parts of it, the legislature

would have said as "and means the leaves, stalks and stems" instead of saying "and including, leaves, stalks and stems". In the Bench decision of this Court referred to above, the learned Judges also happened to consider this definition given to the word "tobacco" to the Central Excises and Salt Act. In considering that definition their Lordships observed that--

`It is true that no mention of seeds is made in this definition but this is no reason to infer that seeds do not form part of tobacco in view of the employment of the word "includes" in it, thereby indicating that it is only illustrative in nature and not exhaustive. A careful examination of this definition would reveal that the expression "tobacco" is very comprehensive and that all the parts of the plant going by that name, including seeds, come within the ambit of "tobacco", of course, only so long as the plant continues to remain attached to the earth.''

10. It is a generally accepted principle that in the matter of taxation laws if a provision is wanting in clarity and no meaning is reasonably clear, that meaning which is more favourable to the subject should be taken as its meaning. The word "tobacco", according to its ordinary dictionary meaning, is not merely any part of the tobacco plant like its leaves but the plant itself. Therefore, the expression "tobacco": without any definition would include the entire tobacco plant. But (by the definition in question the expression was intended to be given both some restricted and enlarged meaning. By its enlarged scope both cure and manufactured tobacco are brought into it and merely its natural state. By its restricted scope tobacco plant are any parts of it while the plant is attached to the earth were taken out of its purview. By giving an inclusive definition, it does not appear that the definition was intended to be restricted only to those parts of the tobacco plant mentioned therein.

11. Under these circumstances, I hold that tobacco seeds must be taken as part of the definition in question and therefore they are exempted from the tax. Accordingly, the writ petition is allowed with costs. Advocate''s fee Rs. 100.