

(1989) 07 KL CK 0013
In the High Court Of Kerala
Case No : T.R.C. No. 59 of 1989

Sosamma Pothen

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-07-1989

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 2
Kerala General Sales Tax Rules, 1963 — Rule 9

Citation : (1990) 78 STC 164

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : Jose Joseph, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Nayar, J.—The questions to be considered in the above two revision petitions are the same, even though the petitioners and the assessment years are different. The question to be considered is whether the rubber trees sold by the petitioners are liable to be taxed.

2. T.R.C. No. 59 of 1989 is concerned with the assessment year 1981-82. The matter arises under the Kerala General Sales Tax Act, 1963. The assessee had sold rubber trees earmarked to be cut and removed with a view to replanting the area. The assessee contended that the standing rubber trees are not timber and the sale value of the same will not form part of the turnover. But the assessing officer took the view that an estate owner felling standing rubber trees will come within the definition of the term "Dealer" and that the sale value will form part of the turnover and that the standing rubber trees were nothing else than timber. The Sales Tax Officer relied on a Bench decision of this Court in *George P. Mathew v. State of Kerala* [1979] 43 STC 438. On appeal the Appellate Assistant Commissioner also held that the decision in *George P. Mathew v. State of Kerala* [1979] 43 STC 438 (Ker) is apt and it is applicable to the case of the petitioner. It was held in that case that the contract to cut and sell trees standing on land was

a sale of goods and therefore the same would attract the definition of the Act. The assessee filed second appeal before the Tribunal and the Tribunal after noting the Bench decision of this Court on identical circumstances, confirmed the order of the authorities below and dismissed the appeal.

3. T.R.C. No. 60 of 1989 is concerned with the assessment year 1983-84. There also the assessee sold the entire old rubber trees to be cut and removed with a view to replant the said area. The Sales Tax Officer brought the turnover to sales tax following the decision of this Court in *George P. Mathew v. State of Kerala* [1979] 43 STC 438. The assessee's appeal to the Appellate Assistant Commissioner and further appeal before the Tribunal were also dismissed.

4. Aggrieved by the decision of the Appellate Tribunal in T.A. No. 538 of 1984 and T.A. No. 84 of 1986 the assessee filed the above tax revision cases. The questions of law raised in both the tax revision cases related to the taxability of the rubber trees.

5. We heard counsel on behalf of the petitioner. It is the contention of the assessee that the rubber trees sold by the assessee are not timber within the meaning of Section 2(xxvii) of the Kerala General Sales Tax Act. We held in the decision reported in *Kanakapalam Estate v. State of Kerala* [1989] 73 STC 336 : 1989 (1) KLT 270, that in Kerala the rubber trees will also come within the expression "timber" and therefore will be excluded from agricultural produce within the meaning of Explanation (1)(ii) of Section 2(xxvii) of the Kerala General Sales Tax Act. We also referred to the decision in *George P. Mathew v. State of Kerala* [1979] 43 STC 438 (Ker). When the above tax revision cases came up for admission counsel submitted that the decision in *Kanakapalam Estate v. State of Kerala* [1989] 73 STC 336 : 1989 (1) KLT 270, requires reconsideration in view of the decision of the Supreme Court in *Mukesh Kumar Aggarwal & Co. v. State of M.P.* [1988] 68 STC 324. The Supreme Court noted the description regarding the nature of the wood sold as Nilgiri fuel-wood and thereafter posed question in paragraph 6 as "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 : Vol. 8, pages 806, 807 ; *Encyclopaedia Americana* : Vol. 10, pages 648 and 649). But the question is whether the subsidiary parts of the tree sold in heaps after the "ballies" 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 the "goods" were not timber ; but only "fire-wood". The Supreme Court in the above circumstances held that the wood-heaps in question was not timber. The following passage in the Supreme Court decision on the aforesaid case is to be borne in mind in deciding the question :

"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."

We do not think that our decision requires reconsideration in the light of the above said Supreme Court decision.

6. The Tribunal also noted in T.A. No. 84 of 1986 that the rubber wood is used for several purposes like manufacture of furniture and certain structures, etc., and held that the rubber-trees are timber. Only proceeds of the sale by a person of agricultural or horticultural produce, grown by himself shall be excluded. Explanation (1)(ii) says that the timber shall not be included as agricultural or horticultural produce. Therefore, if the rubber trees are timber, it will not be an agricultural produce ranking for exemption from turnover. We have already held that the rubber trees are timber and the same will not be agricultural produce and therefore the sale proceeds of timber will form part of the turnover of the assessors in question.

7. There is an additional question raised in T.R.C. No. 60 of 1989 based on Rule 9(g). The contention is that the sale of rubber trees is akin to sale of business as a whole and therefore the specific exemption available under Rule 9(g) to all amounts realised by the sale of the rubber trees should be allowed as deduction. The Tribunal held that this argument is far-fetched and that the provision contained in Rule 9(g) will not apply to the sale of rubber trees by an agriculturist. Rule 9(g) has no application to this case, where rubber trees are sold by an agriculturist as there is no sale of his business as a whole. The argument that the land is a warehouse of trees and the sale of rubber trees is a transfer of business as a whole has no direct bearing on Rule 9(g) and cannot be accepted.

We find no sufficient ground for interfering with the orders of the Appellate Tribunal. The tax revision cases are dismissed.