

(1971) 07 KL CK 0020
In the High Court Of Kerala
Case No : T.R.C. No. 29 of 1970

Sree Rama Trading Company

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 13-07-1971

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5(1)(ii)

Citation : (1971) 28 STC 469

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;P. Unnikrishna Kurup, J

Bench : Division Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; K.S. Paripoornan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.S. Krishnamoorthy Iyer, J.—The petitioner was assessed to sales tax for the year 1966-67 overruling his plea which relates to the levy of tax at 5 per cent. on a turnover of Rs. 63,461.50 representing the first sales of kesophane cellulose films. According to the assessee, kesophane cellulose film does not come under item 42 of the First Schedule in the Kerala General Sales Tax Act, 1963, as it stood at the relevant time. The assessing authorities as well as the Tribunal took the view that kesophane cellulose film is "paper" falling within entry 42 of the First Schedule chargeable at 5 per cent. at the point of first sale.

2. Item 42 of the First Schedule reads:

Paper (other than newsprint), cardboards, straw-board and their products.

3. The case of the revenue is that though kesophane cellulose film is not included in the terms "cardboards, straw-board and their products" it is "paper" within the meaning of the item.

4. Kesophane cellulose film is only a trade name and it is agreed both by the assessee as well as the department that it is cellophane. The question is whether

cellophane is "paper" to come within item 42 in the First Schedule as it stood then.

5. The word "paper" is not defined in the Act. A word which is not defined has to be understood according to its popular and commercial sense with reference to the context in which it occurs.

6. We shall now state the principle to be borne in mind in examining the question whether cellophane can be considered as paper for the purpose of assessment under the Kerala General Sales Tax Act.

7. The following is the general meaning of the term "paper" in the Chambers's Twentieth Century Dictionary :

a material made in thin sheets as an aqueous deposit from linen rags, esparto, wood-pulp, or other form of cellulose, used for writing and printing, wrapping and other purposes: sometimes extended to similar materials not so made, as papyrus, rice-paper, to the substance of which some wasps build their nests, to cardboard, and even to tin-foil ("silver paper").

Cellophane" according; to the Reader's Digest Great Encyclopaedic Dictionary, Volume I, is the "proprietary name for glossy transparent material made of cellulose and used as wrapping etc." In Volume III of the same book "cellophane" is stated to be the "proprietary name for transparent cellulose sheet much used in the wrapping of foodstuffs; prepared by the extrusion of a film of viscose (cellulose xanthate) into an acid bath.

8. The following description of "cellophane" occurring at pages 556 and 557 in the Text Book of Organic Chemistry, 2nd edition, by Lloyd N. Ferguson, was brought to our notice. The learned author says:

Sodium hydroxide solutions of cellulose react with CS₂ to form xanthates.

* * * * The alkali solution of xanthate is a viscous, colloidal solution called viscose. When viscose is treated with acid, it decomposes to regenerate the cellulose. If this viscose is forced through a spinneret into an acid solution, cellulose fibres are formed. This is called rayon and is used for producing a textile offering some advantages over ordinary cotton. Note that its chemical composition, however, is still that of cellulose. It merely has different physical properties. When the viscose is extruded on to rollers in an acid medium, films are deposited, called cellophane. Cellophane is used as packing material.

9. In Webster's Third New International Dictionary, cellophane is said to be "a transparent sheet or tube of regenerated cellulose highly impermeable to dry gases, grease, and bacteria made by extruding alkaline viscose solution through a narrow straight or circular die into an acid bath, usu. moisture-proofed by thin coatings and sometimes dyed, and used chiefly as wrappers or bags for packaging food and merchandise, window envelopes, or bags for dialysis." It is not necessary to go into a minute analysis of the chemical composition of the

cellophane sheet. As is noted already cellophane is only the proprietary name for transparent cellulose sheet. It cannot be denied that paper and cellophane are both manufactured from cellulose. But that does not mean that they are the same in commercial and popular sense. It is, no doubt, true that cellophane sheets are used as packing materials. It is not possible to consider "cellophane" as paper coming within item 42 in the First Schedule merely because of such user.

10. In *Rein v. Lane and Ors.* 36 L.J.Q.B. 81 Blackburn, J., pointed out:

It is, I apprehend, in accordance with the general rule of construction in every case, that you are not only to look at the words, but you are to look at the context, the collocation, and the object of such words relating to such a matter, and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under such circumstances.

11. In *His Majesty the King v. Planters Nut and Chocolate Company Ltd.* (1951) C.L.R. 122 in considering the question whether salted peanuts and cashewnuts fell within the category of either fruit or vegetables for the purpose of Part XIII of the Excise Tax Act, 1927, the court after brushing aside a considerable volume of expert opinion (Cameron, J.) observed at pages 128 and 129:

It is equally clear to me that when in Canada the words "fruit" and "vegetables" are used, their obvious and popular meaning would not include "nuts" of any sort, or the peanuts, salted peanuts or cashews sold by the defendant. Counsel for the plaintiff suggested a test which I think apposite. Would a householder when asked to bring home fruit or vegetables for the evening meal bring home salted peanuts, cashewnuts or nuts of any sort ? The answer is obviously "no".

The learned Judge observed at pages 127 and 128 :

To the words "fruit" and "vegetables", therefore, there must be given the meaning which they would have when used in the popular sense--that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. Now the statute affects nearly everyone, the producer or manufacturer, the importer, wholesaler and retailer, and finally, the consumer who, in the last analysis, pays the tax. Parliament would not suppose in an Act of this character that manufacturers, producers, importers, consumers and others who would be affected by the Act, would be botanists. The object of the Excise Tax Act is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a "fruit" or "vegetable" which must govern the interpretation to be placed on the words, but rather what would ordinarily in matters of commerce in Canada be included therein. Botanically, oranges and lemons are berries, but otherwise no one would consider them as such.

Lord Tenterden stated a similar rule in *Attorney-General v. Winstanley* (1901) 6 E.R. 740 in the following words:

Now, when we look at the words of an Act of Parliament, which are not applied to any particular science or art, we are to construe them as they are understood in common language.

Pollock, J.

pointed out in *Grenfell v. Commissioners of Inland Revenue* (1876) 1 Ex. D. 248:

As to the construction of the Stamp Act, I think it was very properly urged that the statute is not to be construed according to the strict or technical meaning of the language contained in it, but that it is to be construed in its popular sense, meaning, of course, by the words "popular sense" that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it.

In *Holt and Co. v. Collyer* (1881) 16 Ch. D. 718, Fry, J., pointed out:

If it is a word of a technical or legal character it must be construed according to its technical or legal meaning. If it is a word which is of a technical and scientific character, then it must be construed according to that which is its primary meaning, namely, its technical and scientific meaning.

12. In *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, their Lordships of the Supreme Court had to consider whether charcoal is included in the word "coal" in entry 1, Part III, of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958. The principle of law was thus stated :

The result emerging from these decisions is that while construing the word "coal" in entry 1 of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute, being one levying a tax on goods, must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include "charcoal" in the term "coal". It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal; otherwise both of them would in ordinary parlance as also in their commercial sense be spoken as coal.

13. When a person goes to a trader and asks for "paper" we do not think that the customer will be given a cellophane sheet. We cannot assume that our Legislature supposed that our traders have got expert knowledge in the chemical composition of paper as well as cellophane. We have therefore no doubt to hold that cellophane is not paper coming within entry 42 in the First Schedule as it stood then. The turnover resulting therefrom cannot therefore be assessed at 5 per cent.

14. We, therefore, set aside the assessment in so far as it relates to the turnover of the sale of cellophane sheet and direct the authorities to reassess the same in accordance with Section 5(1)(ii) of the Act. The revision case is allowed, but without costs.