

(1968) 06 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2029 of 1966

Sri Krishna Coconut Company

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision : 12-06-1968

Acts Referred:

Central Sales Tax Act, 1956 — Section 5, 8, 9

Citation : (1968) 22 STC 404

Hon'ble Judges : P. Jaganmohan Reddy, C.J.; Madhava Reddy, J

Bench : Division Bench

Advocate : M. Suryanarayana Murthy, for the Appellant; Venkatarami Reddy, for the Principal Government Pleader, for the Respondent

Judgement

Jaganmohan Reddy, C.J.—The petitioners allege that they are the purchasers of watery coconuts from registered dealers in East Godavari District and in turn they export the same to other States. The period for which the tax became exigible under the Central Sales Tax Act is said to be August-September, 1966. The petitioner had filed returns in Form "C" under the Central Sales Tax Act for the relevant period and showed a turnover of Rs. 2,47,000. The Commercial Tax Officer, Amalapuram, on a scrutiny of these returns determined a turnover of Rs. 2,47,588.78 and proposed to levy a tax at 10 per cent, as all "C" Forms were not filed. On a show cause notice being issued on 25th October, 1966, calling for objections by 5th November, 1966, the petitioner asked for time which was given till 8th November, 1966. Certain other "C" Forms were filed and ultimately the tax levy was determined in accordance with the material placed before the officer, at 3 per cent, on Rs. 2,23,240.97 covered by "C" Forms, and at 10 per cent, on a turnover of Rs. 24,347.81 not covered by "C" Forms and a demand for a tax amounting to Rs. 9,132.03 according to the said rates was made on the petitioner. It is this demand that is challenged in this writ petition, on the ground that watery coconuts were at first totally exempt from the levy of tax under G.O.Ms. No. 1091, Revenue, dated 10th June, 1957; subsequently, however, this exemption was varied and he became liable to tax at the first sale under G.O.Ms.

No. 608 dated 29th April, 1965, which came into force from 1st April, 1965. Subsequently, the A.P. General Sales Tax Act was amended on 23rd December, 1966, by Act No. 18 of 1966 under which item 10 was added to Schedule II. As a consequence Explanation I of item 5 to Schedule III was also amended with the result that watery coconuts were liable to be taxed at the first purchase as and from the date of the amendment and from 1st August, 1963, to 31st March, 1965, at the last purchase. It is, therefore, contended that the inter-State sales by the petitioner during the months of August and September, 1966, are covered by the amendment and, therefore, no tax is exigible. In support of this contention the learned Advocate has cited a decision of the Supreme Court in *State of Mysore v. Lakshminarasimhiah Setty & Sons* 1965 16 S.T.C. 231 at p. 239, where Section 9(1) of the Central Sales Tax Act was considered vis-a-vis Section 5 of the Mysore Sales Tax Act. The principle, however, is applicable to all Sales Tax Acts, because their Lordships of the Supreme Court, by a majority held that the expression "levy" meaning "impose" in Section 9(1) of the Central Act referred to the expression "levy" in Section 5(3)(a) of the State Act and, therefore, the Central Act had not made a departure in the manner of levy of tax on the specified goods which are taxed only at the single point under the State Act. In other words, whatever is taxable under the State Act alone is taxable under the Central Act, so that if under the A.P. General Sales Tax Act the transaction in question cannot be taxed, inter-State sales cannot also be taxed under the Central Sales Tax Act,

2. The learned Government Pleader on the other hand contends that their Lordships of the Supreme Court were not considering Section 8(2A) of the Central Act which authorised the Central Act to levy tax in cases where goods were not totally exempt or where they were exempt at specified sales subject to conditions. In order to understand this contention it is necessary to set out briefly the history of the levy of tax on watery coconuts.

3. As we have already stated, coconuts under item 5 of Schedule III were taxable as declared goods only at the sale point and watery coconuts appear to have been exempted under the G.O.Ms., referred to by us. While this was the position, in *Sri Krishna Coconut Co. v. Commercial Tax Officer, Amalapuram* 1965 16 S.T.C. 511 (decided on November 7, 1964), Gopalakrishnan Nair, J., held that watery coconuts and tender coconuts formed a different category and they did not form part of item 5 to Schedule III and, therefore, it is open to the Government to tax them at multi-point. Probably, as a consequence of this decision, G.O.Ms. No. 608" dated 29th April, 1965, was passed with effect from 1st April, 1965, exempting the sale of watery coconuts at all stages of sale except at the stage of first sale by the dealer in the State under the tax payable under Sub-section (1) of Section 5 of the State Act with effect from 1st April, 1965. But for this notification, watery coconuts would have been liable to multiple point, which sales after 1st April, 1965, became liable at the first sale. Thereafter the Act was amended, in so far as watery coconuts are concerned and the statement of objects furnishes the reasons for the amendment. It states :-

By the Andhra Pradesh General Sales Tax (Amendment) Act, 1963,. "watery coconuts" became liable to tax at the rate of 2 paise in the rupee at each point of sale with effect from the 1st August, 1963. The coconut merchants of Andhra Pradesh represented to the Government that the levy of tax on watery coconuts at multi-point would adversely affect the trade and requested that a single point tax may be levied on watery coconuts at 2 paise in the rupee. As relief from the levy of multi-point tax was considered necessary by the Government pending amendments to the Act, instructions were issued to the assessing authorities to levy tax on watery coconuts at the point of last purchase in the State during the period from the 1st August, 1963, to the 31st March, 1965, and a notification was also issued u/s 9 of the Act, by which the dealings in watery coconuts were subjected to a single point tax from the 1st April, 1965, at the point of first sale in the State at the rate of 2 paise in the rupee. It is now proposed to amend the Second Schedule so as to provide for the levy of tax on watery coconuts at the point of first purchase in the State and in view of the increase in the general rate of sales tax from 2 per cent, to 3 per cent., it is also proposed to fix the rate of tax on watery coconuts at 3 per cent. It is also proposed to provide for the levy of tax on watery coconuts at the point of last purchase in the State at the rate of 2 paise in the rupee from 1st August, 1963, to the 31st March, 1965, so as to validate the levy of tax during that period by making a provision in the Act.

It is also proposed to amend the Explanation under the Third Schedule so as to make the intention clear that the expression "coconuts" does not include watery coconuts and tender coconuts. Item 9 relating to "tender coconuts" in the Fourth Schedule has been amended so as to make the intention clear that the exemption granted to the tender coconuts will apply to the variety of coconuts which are useful only for drinking purposes.

4. The actual amendments which have been effected are the addition of item 10 to Schedule II, Explanation I to item 5 of Schedule III and amendment of item 9 of Schedule IV. These are as follows:-

levy	Rate	of	tax	Description of Point of the goods.
				"10. Watery coconuts.
				(a) At the point of 2 paise in the last purchase in rupee. the State during the period from the 1st August, 1963 to the 31st March, 1965. (b) At the point of 3 paise in the first purchase in rupee. the State.

Explanation.-The expression "watery coconuts" in item 10 includes all coconuts other than coconuts falling under item 5 of the Third Schedule and tender coconuts falling under item 9 of the Fourth Schedule.

"5. Coconuts. At the point of 2 naye paise in last purchase in the rupee. the State.

Explanation 1.-The expression "coconuts" in item 5 means dried coconuts,

shelled or unshelled including copra, but does not include watery coconuts falling under item 10 of the Second Schedule and tender coconuts falling under item 9 of the Fourth Schedule.

Fourth Schedule.

9. Tender coconuts which are useful only for drinking purposes.

5. From these amendments it is clear that sales of tender coconuts for drinking purposes are exempt and watery coconuts which have developed kernel are not exempt and are liable to tax at the point of first purchase as from the date of the amendment. Prior to that, we have already seen that between 1st August, 1963, and 31st March, 1965, by reason of item 10(a) the action of the taxing authorities in levying tax at the point of last purchase was given legislative sanction, but from 1st April, 1965, to the date of amendment, viz., 23rd December, 1966, the tax would be levied at the point of first sale in accordance with G.O.Ms. No. 608 dated 29th April, 1965, read with Section 5.

6. The learned Advocate for the petitioner, however, contends that as the notification has not been ratified by the Legislature while adding item 10, it is not valid. We are unable to accept this submission inasmuch as the addition of item 10 to Schedule II has prospective effect only in so far as subsequent transactions are concerned. In so far as past transactions are concerned, the Legislature was careful enough to ratify only those transactions which fell between certain periods as specified in the second column of Schedule II, i.e., item 10(a). There is, therefore, a period between 1st April, 1965, to the date of the amendment, viz., 23rd December, 1966, which is not covered by the amending Act and, therefore, the amendment would not apply and operate to affect only the transactions during that period. If, as contended by Mr. Suryanarayana Murthy, this G.O.Ms. does not apply, then it is obvious that multi-point tax would be attracted by all transactions between 1st April, 1965, and 23rd December, 1966. But that was not the intention of the Government or of the Legislature, because, though as a result of Justice Gopalakrishnan Nair's judgment, there could be a levy of multi-point tax on watery coconuts, the tax has been specifically confined either to the last purchase, or the first sale or the first purchase according as it fell within that particular period enumerated above.

7. If the sales tax in respect of these transactions in question could be levied in the State only on the first sale, the next question is whether tax on inter-State transactions in respect of these goods could be levied at a different point. Sri Venkatarami Reddy on behalf of the Government Pleader contends, as we have already noticed, that the Supreme Court did not consider the effect of Section 8 particularly the addition of Sub-section (2A), by virtue of which tax could be levied under the Central Sales Tax Act notwithstanding that the goods were taxable at a different point or at a different rate. We are unable to accept this contention also, because what Section 8 is dealing with is the rate of tax. It was the intention of the Legislature that where there is a difference between the

rates, the rates according to the Central Sales Tax Act should be levied and collected according to the difference between the rate prescribed by the State Act and the rate prescribed by the Central Act. Section 8(2A) of the Central Act does not in any way change this position. It is as follows:

8. (2A) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), if under the sales tax law of the appropriate State, the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than two per cent, whether called a tax or fee or by any other name, the tax payable under this Act on his turnover in so far as the turnover or any part thereof relates to the sale of such goods shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation-For the purposes of this sub-section a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods.

8. In terms of the Explanation to Sub-section (2 A) of Section 8 the learned Advocate contends that the watery coconuts are not exempt under the notification imposing a levy at the first sale point. This cannot be disputed. But when this effect is sought to be applied to advance the further argument that under the Central Sales Tax Act the assessee cannot claim exemption at any point the controversy arises. Sri Suryanarayana Murthy contends that Section 8 has nothing to do with the levy and collection of tax but only the rate at which tax is to be collected if a transaction attracts the levy, but where the transaction itself does not attract the levy there is no question of it being taxed at any particular rate. We are inclined to accept this contention because what Sub-section (2A) categorically states is that the tax payable under the Act is either nil or, as the case may be, calculated at a lower rate and it is only for the purpose of determining the rate of tax that the Explanation was inserted to determine what is exempt and what is not. This provision, in our view, has nothing to do with Section 9 read with Section 9(3) on which the decision of the Supreme Court rests. This decision, as we stated earlier, clearly lays down that the levy under the Central Act is referable to the levy under the State Act, so that if under a State Act, the levy has to be made in a particular manner, that will also have to be made in the same manner for the purposes of the Central Sales Tax Act. In this case, it is averred that the petitioner is an exporter, having purchased watery coconuts from registered dealers. If this statement is true and we are not in a position to determine it as there is no material placed before us except a mere averment, then he will not be liable to tax, because he is not the first seller. This is a matter which has got to be decided by the assessing authority.

9. The assessing authority will, therefore, make the final assessment in the light of the above observations.

10. The writ petition is disposed of with the above observations as also a direction that the final assessment will be made within a month from the date of receipt of this order, for which period the taxing authority will refrain from collecting the tax.