

(2001) 01 KAR CK 0074

In the Karnataka High Court

Case No : Civil Revision Petition No. 2588 of 2000

State of Karnataka and Others

APPELLANT

Vs

Falcon Tyres Ltd.

RESPONDENT

Date of Decision : 30-01-2001

Acts Referred:

Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sales
Therein Act, 1979 — Section 2, 3 (6)

Citation : (2001) ILR (Kar) 3141 : (2001) 122 STC 635

Hon'ble Judges : M.F. Saldanha, J; D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : B. Anand, for the Appellant; M. Tirumalesh, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—This petition raises an issue which revolves around the short question as to whether rubber or for that matter latex can be construed as an agricultural produce which is exempted from tax under the provisions of the Karnataka Tax on Entry of Goods Act, 1979. There is no dispute about the fact that the respondents' company use this product for manufacturing purposes and the controversy that was generated at the earlier stages of the litigation centred round a question as to whether this item should be exempted from tax or not. The principal reason for this is because in Section 2 of the Act which contains the definition the term "agricultural produce or horticultural produce" has been defined as follows :

"Agricultural produce or horticultural produce shall not include tea, coffee, rubber, cashew, cardamom, pepper and cotton ; and such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or drying."

The defining section very clearly excludes rubber from one of the several items, which would otherwise clearly come under the definition of agricultural produce,

as there can be little dispute about the fact that latex in its original form is produced from the rubber tree. In Section 3(6) of the Act, provision has been made for exemption from tax under the Act all the items that are set out in the Second Schedule. Item No. 2 deals with agricultural produce including tea, coffee and cotton (whether ginned or unginned). The petitioners had contended that having regard to the fact that Second Schedule of the Act which enumerates the items that qualify for exemption uses the expression agricultural produce ; that there could be no dispute about the fact that rubber or latex for that matter would qualify as an exempted item. This view was canvassed before the assessing authority who rejected the same. The petitioners carried the case in appeal where they also failed after which they filed a further appeal to the Tribunal where the view canvassed by the assessee found favour. It is against this last decision that the present revision petition has been filed by the State.

2. The learned Government-Advocate submitted that the clear cut definition as emerges in Section 2(1) of the Act unequivocally excludes rubber from all other items that come under the head of "agricultural produce" along with a few of the others that are enumerated therein. It is his submission that for all intents and purposes as far as the present Act is concerned, that it is this definition that will govern the expression "agricultural produce". He therefore contends that while reading item No. 2 in the Second Schedule to the Act, there is absolutely no scope to include the item "rubber" which has been specifically excluded in the defining section. His submission therefore was that irrespective of the invalid reason that is contained in the Tribunal's order that the conclusion is incorrect and unwarranted and that the order is liable to be set aside. Dealing with the line of reasoning adopted by the Tribunal, the learned Government Advocate submitted that the basis of the error emerges from the fact that the Tribunal appears to have been influenced by some of the earlier judicial decisions which relate to the definition of "agricultural produce" under the Karnataka Sales Tax Act, 1957. The learned counsel was keen to point out that as far as the present Act is concerned, the Legislature has deliberately included and excluded certain items and that therefore, while interpreting the provisions of the present Act, the legislative intention will have to be given effect to in consonance with the definition as contained in the statute.

3. The respondents' learned counsel has advanced strong submissions while supporting the Tribunal's order that the court must be guided by the fact that the present Act is effectively what he termed as an off-shoot of the Karnataka Sales Tax Act. He uses the expression "parent Act", and his submission was that the Tribunal was fully justified in being guided by the earlier division Bench decision of this Court which in terms had followed the ratio of the Supreme Court decision while holding that rubber irrespective of the transition that latex may undergo, would still qualify for inclusion under the head of items comprising the expression "agricultural produce". The learned counsel submitted that in this view of the matter, this Court should also be guided by the definition as it appears in the parent Act, namely, the Karnataka Sales Tax Act, 1957, and

consequently that no interference is called for.

4. As far as the present order is concerned, in our considered view, the above argument contains a minor flaw in it in so far as it often happens that the subsequent legislation refers back to the main legislation ; then undoubtedly it would be permissible for the court to go back to the definitions and such other aspects of the main legislation on which the subsequent legislation may be silent or in the event of ambiguity. This formula will not hold good in those of the cases where the Legislature consciously incorporates a definition in the new Act which definition is at variance from the original one. It will have to be presumed that there was a certain reason for this variation and in this background, it would not be permissible for a court to either ignore or override the definition and go back to the definition in the parent Act, As far as the present case is concerned, it will have to be totally and completely circumscribed by the provisions of the present Act. Where the Legislature has made a very clear cut distinction between the general term "agricultural produce" and a situation where some items which do qualify in normal parlance for the expression "agricultural produce" but still excluded others the court will have to abide by the legislative intention.

5. The respondents' learned counsel drew considerable support from the earlier division Bench decision of this Court reported in [1999] 114 STC 77 Kar in the case of Karnataka Forest Development Corporation Limited v. State of Karnataka. That was a case which is almost on par with the present one wherein the controversy arose in relation to latex rubber and the division Bench of this Court irrespective of the minor aspect of processing that the product underwent while it was cut into pieces, still upheld the view that it would clearly come under the definition of "agricultural produce". The definition was in the Karnataka Sales Tax Act, with which the court was concerned, and it contains an omnibus definition of the term "agricultural produce" wherein the Legislature has not qualified that any particular items are either included or excluded. The division Bench had occasion to rely on an earlier decision of the Supreme Court reported in Karnataka Forest Development Corporation Ltd. Vs. M/s. Contreads Private Limited and others, wherein the Supreme Court had upheld precisely this position, The respondents' learned counsel submitted that even though the court may be dealing with another Act that the expression used in the Second Schedule, namely, the expression "agricultural produce" is identical and it is his submission that since the entry in the Second Schedule does not specifically exempt rubber that this Court must be guided for the purposes of interpretation of the expression by the earlier decisions. We would have readily accepted this argument without any difficulty under normal circumstances except for the fact that in the case of the present Act as indicated by us earlier, the defining section wherein the term "agricultural produce" has been defined by the Legislature specifically excludes rubber as an item, Under the law governing the principles of interpretation this Court is necessarily restricted while construing the expression "agricultural produce" in relation to the present Act by the definition that is incorporated in the Act itself. Under these circumstances we find it impossible to uphold the

submission that the expression "agricultural produce" as it appears in the Second Schedule should be given its normal and ordinary interpretation.

6. The last submission canvassed by the respondents' learned counsel was that on an examination of Sub-section (1) of Section 2 of the Act wherein the term "agricultural produce or horticultural produce" has been defined, refers to physical, medical or other processes made fit for consumption.....and that consequently, as far as the present item such as rubber is concerned, since it has not undergone any of the types of processing that are referred to in this section and is still in its physical, natural form that it would still very much qualify under the expression "agricultural produce". Again, this argument overlooks the fact that after having provided for specific exclusion for the reasons best known that there is a semicolon and we find the word "and" in the section which indicates that there is really no inter-connection between the earlier part of the section which excludes five of the items from the head of "agricultural produce" and what follows thereafter. In our considered view, even though there is undoubtedly some inconsistency between the defining section and what appears under item No. 2 of the Second Schedule the petitioners would still not qualify for any reliefs. It is true that the respondents' learned counsel submitted that in keeping with the theory of harmonious interpretation if there are certain inconsistencies, the court will have to adopt the ironing out process, in order to ultimately construe the different provisions in the manner that does not pose conflict. The learned counsel submitted that effectively the court must strictly construe the item No. 2 in Second Schedule wherein 2 or 3 of the items have been specifically included in the term "agricultural produce" without specifically again excluding the item which the petitioners are dealing with namely rubber. The inference according to the respondents' learned counsel would be that entry No. 2 will have to be strictly construed as indicating that irrespective of what has been set out in the defining section, that the Legislature ultimately intended for the purposes of exempting from tax that all those items which come under item No. 2 will qualify for exemption. In our considered view, it would be doing violence to the law if such a formula for interpretation were to be adopted. The principle of harmonious construction pre-supposes the fact that a certain logical process has to be followed, namely, that once an expression is defined in an Act that this definition will have to be consistently applied. It may be that, again for the reasons best known, the Legislature was of the view that some variation is required to be made when we come to the items enumerated in the Second Schedule for which reason, a specific inclusion appears in entry No. 2 just as specific exclusions appear in the defining section. Consequently, what emerges is that it would not be permissible for a court even applying the principles of harmonious construction to either ignore or by-pass what is contained in the defining section whereas, what is required to be done is that the court will have to be guided by the provisions of the defining section.

7. Having regard to the aforesaid situation, in our considered view, the finding recorded by the Tribunal to the effect that "rubber" would qualify for exemption

is rendered erroneous. The order passed by the Tribunal is accordingly quashed and set aside. The revision petition accordingly succeeds and stands disposed of. In the circumstances of the case, there shall be no order as to costs. The appellate order is consequently restored.