

(1990) 02 OHC CK 0011
In the Orissa High Court
Case No : O.J.C. No. 2659 of 1984

Straw Products Ltd. and Others

APPELLANT

Vs

Orissa Forest Corporation and Others

RESPONDENT

Date of Decision : 13-02-1990

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 4, 5, 6

Citation : (1990) 69 CLT 851

Hon'ble Judges : G.B. Patnaik, J;A.K. Padhi, J

Bench : Division Bench

Advocate : B.K. Mohanty, Bibek Mohanty, K.K. Jena and Ashok Parija, for the Appellant; Sitakanta Patnaik and A.B. Misra, Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—The common question that has arisen for our consideration in both these writ applications is whether "firewood" even though has been notified to be exempted from levy of sales-tax, yet when the same is used for the purpose of manufacturing paper, can it be taxed by giving a nomenclature "pulp wood", as has been done in the present case?

2. The Petitioners are the two paper manufacturers and they use firewood as one of the raw materials in manufacturing paper. The State Government in exercise of powers u/s 6 of the Orissa Sales Tax Act issued a notification No. SRO/208 of 1982 exempting firewood from the levy of sales-tax. Notwithstanding the aforesaid notification, the Orissa Forest Corporation from whom the Petitioners purchase firewood issued a letter to the Petitioners indicating that the firewood that is being supplied to the paper mills would be mentioned as "pulp wood" on the challan and sales-tax would be levied on the same. The Petitioners thereafter approached this Court.

3. The Orissa Forest Corporation (opposite party No. 1) in its counter affidavit

has taken the stand that though the Petitioners purchase firewood, but it is of a specified type of firewood specially prepared and is used for manufacture of paper and the sales-tax authorities came to hold that the said firewood would be taxable and, therefore, the Corporation was compelled to collect tax from the Petitioners.

The stand of the sales-tax authorities in their counter affidavit is that the exempted item is wood that goes directly to the making of fire which is a daily necessity in the household affair of the common man. But the wood that is supplied to the Petitioners is of a specified type and the same is used in the manufacture of paper and, therefore, cannot come within the notified exempted item rewo.

4. In view of the dual, stands of the parties, the question that arises for our consideration is whether the firewood purchased by the Petitioners for the purpose of manufacturing paper would cease to be firewood because of its end-use in the manufacturing process of paper manufacturing.

The notification notifying the list of goods, exempted from Orissa sales-tax describes item 13-B as "firewood". Under the scheme of the Orissa Sales Tax Act, every sale is taxable u/s 4 and Section 5 authorises the State Government to fix the rate for levy of sales-tax. Section 6, however, empowers the State Government to issue notification exempting goods from levy of tax on sale subject to such conditions and exceptions, if any. While notifying firewood as an exempted item, no conditions or exception has been attached to the same. The expression "firewood" has been defined in the Orissa Timber and Other Forest Produce Transit Rules to mean "wood which is unfit for any purpose other than fuel". The agreement between the Petitioners and the Forest Corporation clearly indicates that the Petitioners purchase firewood though undoubtedly the same is used as and of the raw materials for the manufacture of paper. In the aforesaid premises, we would now examine the law on the subject to find out whether a notified good notified to be exempted from levy of sales-tax would change its character and would be liable for levy of tax for its use for any other purpose.

5. Almost an identical question came up for consideration before the Allahabad High Court in the case of Commissioner of Sales Tax, Lucknow v. Marwah and Co., (1979) 43 S.T.C. 435. The question that arose for consideration in the said case was whether small pieces of waste wood called U Kokat" in the local area which is normally used as fuel-wood would come within the ambit of the word "firewood" used in the notification issued under the U.P. Sales Tax Act, even though they are sold to the paper mills and are used by them as raw material for manufacturing paper. It has been held by the learned Judge of the Allahabad High Court that it is a common user of an article and not its special use that determines the category in which a particular commodity is to be classified and the fortuitous event of a paper factory being located in the vicinity which uses it as raw material for producing paper, cannot be a ground for classifying "firewood as a different kind of wood. It has, therefore, been held that the "Kokat" which is

usually used as fuel and is, therefore, "firewood" must be held to be firewood as notified and will not lose its character of firewood, merely because it is used as a raw material for manufacturing paper.

In the case of *Dunlop India Ltd. etc. v. Union of India and Ors.*, AIR 1977 S.C. 597, the Supreme Court has laid down the rule of construction in interpreting fiscal statutes. It has been held by their Lordships;

It is well established that in interpreting the meaning of words in a taxing statute, the acceptance of a particular word by the Trade and its popular meaning should commend itself to the authority.

It has been further held:

... It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.

Their Lordships have further observed:

The basis of the reason with regard to the end-use of the article is absolutely irrelevant in the context of the entry where there is no reference to the use or adaptation of the article....

In another recent judgment of the Supreme Court in the case of *Mukesh Kumar Aggarwal and Co. v. State of Madhya Pradesh and Ors.* (1988) 68 S.T.C. 324, it was held that in a taxing statute words which are not technical expressions or words of art, but are words of every day use must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance. The particular terms used by the legislature in the denomination of articles are to be understood according to the common commercial understanding of those terms used and not in their scientific and technical sense. It has also been observed that the nature of goods cannot be determined by the test of the use to which they are capable of being put, and the particular use to which an article can be applied in the hands of a special consumer is not determinative of the nature of the goods. In that case, Entry 32-A was "Timber" and Entry-12 was "Firewood and charcoal" and Entry-1 was "All other goods not included in Schedule-I or any other part of the Schedule". The tax on timber was 16 per cent; on firewood as 3 per cent; and on all other goods was 10 per cent and the question was whether Eucalyptus wood stacks that had been purchased could come under "firewood" under Entry-12 or "Timber" under Entry 32-A. Their Lordships of the Supreme Court came to hold that it would not be "Timber" under Entry-32-A but remanded the matter to the High Court for determination as to whether it would come under Entry-12 or Entry-1.

All the aforesaid decisions relied upon by Mr. B.K. Mohanty, the learned Counsel for the Petitioners, support his contention that firewood will not cease to be firewood merely because it is used by a consumer for any other specified purpose.

6. Mr. A.B. Misra, the learned Standing Counsel for the Department, places reliance on the Bench decision of the Kerala High Court in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Ernakulam v. C.R. Paul & Sons, (19R5) 59 S.T.C. 231. In that case, firewood was described under Entry-55 of the First Schedule to the Kerala General Sales Tax Act and in respect of the same concessional rate of sales-tax was 1 per cent and the question that arose for consideration was whether the firewood sold by the Assessee to Gwalior Rayon Silk Manufacturing Company Ltd. was to be assessed at 1 per cent under Item-55 of the First Schedule to the Act or not. Their Lordships observed:

A number of decisions were cited, and the question was mooted at one stage whether the nature of the use to which a commodity is put by a purchaser is relevant at all. We think that it is neither proper nor desirable to pose the question in such a general form and attempt to answer it in the abstract. With regard to "firewood" under Entry-55 at least, it is not possible to hold that use or user is totally irrelevant under all circumstances.

That is because the very term "firewood" carries with it the concept of a well known use. Wood in any form and of every variety will burn, but only wood prepared for being used as firewood in the hearth or furnace can be so classified. It is reasonable to assume that the Legislature provided for the concessional rate under Entry-55 because it knew that fuel was an important item in every family budget. All that this Court said in the Western India Plywoods case (1980) 46 S.T.C. 331 was that once it was possible to identify a commodity as firewood with reference to the ordinary purpose for which it is bought and sold, the accident that a buyer was putting it to a different use could not alter the position. The decision did not go further and enquire into a situation where both the seller and the purchaser enter into the transaction with full knowledge that the commodity is being procured for a different purpose, with specifications and restrictions relevant for that special purpose, in fact specifications relating to variety, size, debarking, etc., were totally absent in the Plywoods case (1980) 46 S.T.C. 331, and it was therefore unnecessary to examine such a case.

Their Lordships differed with the view expressed by the Allahabad High Court in Marwah's case, ((1979) 43 S.T.c. 435) referred to supra, and held:

Firewood is wood of a kind which has attained notoriety as fuel. Nobody who sells firewood debarks the wood before sale. Nobody who buys firewood requires them to be shaved and debarked. Purchasers may desire the wood to be cut to size. But that is all. There may be eccentric sellers and eccentric buyers who may indulge their fancies in specialities in firewood. But that, again, is not the test. Where the wood is not, in the normally accepted commercial practice, firewood,

and more especially, where the wood is sold and purchased subject to specifications which conduce the wood to particular purposes other than fuel, which is the case in the present two revisions, the goods sold cannot be regarded as firewood.

The other decision of the Madras High Court on which learned Standing Counsel for the Department relies in the case of A.H.K. and Company v. The State of Tamil Nadu, (1980) 46 S.T.C. 117. It has been held in that case that even though the agreement between the parties describes the goods as "approved firewood" still the specification for supply of the goods clearly indicated that neither party intended that the goods should be sold or bought only as firewood, and, therefore, these goods could not be called "firewood" at all and would not be exempt from tax.

The learned Standing Counsel also relies upon another Bench decision of the Madras High Court in the case of P.R. Lakshmi v. The State of Tamil Nadu (1983) 52 S.T.C. 5, wherein the question for consideration was whether sale of bluegum and wattle pulpwood" or "debarked and split eucalyptus bluegum" for use in manufacture of rayon could be held to be sale of "firewood" which was an exempted item and it was held by their Lordships that what was sold was not the normally accepted firewood, more so when the sale was made subject to specifications which conduced the wood to a particular purpose other than fuel and, therefore, it would not come within the exemption notification for firewood.

7. The aforesaid decisions, no doubt, support Mr. Misra's contention to a great exteat, but the Supreme Court in Mukesh Kumar Aggarwal and CO.s case (1988) 68 S.T.C. 324, referred to supra, appears to have taken a view contrary to the Kerala view of which the learned Standing Counsel relies by enunciating that the user test is logical but inconclusive and by holding that the particular use to which an article can be applied in the hands of a special consumer is not determinative of the nature of the goods. The Kerala view in (1985) 59 S.T.C. 231, was followed in a batch of tax revisions by another Division Bench in The Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. A. Rajan and Company and that decision of the Kerala High Court has specifically been reversed by the S.C. in Civil Appeals arising out of S.L.R. (Civil) Nos. 11852-57, 11849-51 and 11 of 1986, by order dated 21st of November, 1988, following its, earlier view in Mukesh Kumar Aggarwal and Co's case. Thus the Kerala view on which the learned Standing Counsel relies has been specifically reversed by the Supreme Court. That apart, in the case of The Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. G.S. Pai and Co., (1980) 45 S.T.C. 58, their Lordships of the Supreme Court were considering a particular entry in a sales-tax legislation and held:

While interpreting entries in sales tax legislation words used in the entries must be construed not in any technical sense nor from the scientific point of view but as understood in common parlance. The words used by the legislature must be given their popular sense meaning, "that sense which people conversant with the

subjectmatter with which the statute is dealing would attribute to it." (quoted from headnote)

In this view of the matter, we express our respectful disagreement with the view taken by the Madras and Kerala High Courts, referred to supra, and applying the common par lance test to the entry "firewood" in item 13-B of the notification issued u/s 6 of the Orissa Sales Tax Act, are of the opinion that what was agreed to be sold to the Petitioners by the Forest Corporation was nothing but "firewood" within the ambit of entry 13B and, therefore, exempted from levy of sales-tax. Our conclusion above is further strengthened by the fact that though Section 6 authorises the State Government to issue notification exempting any goods from levy of tax, subject to such conditions and exceptions, yet while notifying "firewood" as entry 13-B no condition and exception has been provided for and, therefore, if what is used is firewood it must continue to be the same whether it is used for any other purpose. The Corporation cannot invent a name just to make it taxable and dub it as "pulp wood". In fact, the counter affidavit of the Corporation and Mr. Patnaik, the learned Counsel for the Corporation, also state that what was agreed between the parties was sale of firewood. Consequently, the direction of the Corporation contained in Annexure-1 in O.J.C. No. 2559 of 1984 is without jurisdiction and the same is accordingly quashed and it is further held that the sale made by the" Corporation to the Petitioners of firewood is exempted from levy of sales-tax.

The writ applications are accordingly allowed, but in the circumstances, there will be no order as to costs.

A.K. Padhi, J.

I agree.

Writ applications allowed.