

(1973) 01 KL CK 0033
In the High Court Of Kerala
Case No : T.R.C. No. 17 of 1972

Swaraj Printers

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-01-1973

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 35

Citation : (1973) 31 STC 559

Hon'ble Judges : T.C. Raghavan, C.J.;V. Khalid, J

Bench : Division Bench

Advocate : S.A. Nagendran and N.N.D. Pillai, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Khalid, J.—The petitioner, a printing press under the name and style of Swaraj Printers at Mattancherry, raises an interesting question whether the catalogue of sale by auction of products like tea dust, annual report of Indian Chamber of Commerce and annual statements of accounts and a publication called "Tea Review" printed at the press would come within the ambit of the expression "books meant for reading and reference" occurring in the Notification S.R.O. No. 342 of 1963 dated 31st March, 1963, under the Kerala General Sales Tax Act, 1963, hereinafter referred to as the Act.

2. The petitioner submitted a gross turnover of Rs. 1,63,100.89 for the year 1964-65 and claimed exemption for a turnover of Rs. 85,795.03 on the strength of the notification mentioned above. The Sales Tax Officer, I Circle, Mattancherry, upheld the exemption claimed. In a suo motu revision u/s 35 of the Act, the Deputy Commissioner of Agricultural Income Tax and Sales Tax, Central Zone, Ernakulam, held that the exemption granted by the assessing authority was irregular and improper and outside the scope of the protection given by the notification above-mentioned. He, therefore, directed the assessing authority to add back this amount to the taxable turnover and to refix the tax liability. The

matter was taken before the Sales Tax Appellate Tribunal, Trivandrum. And the Appellate Tribunal held against the assessee on the question of exemption and hence this revision.

3. The only question that falls for our consideration in this case is whether catalogues, annual reports of Indian Chamber of Commerce and annual statements of accounts and a publication called "Tea Review" are "books meant for reading and reference".

4. Before we discuss the question of law bearing on this point, it is useful to extract in full the notification, the relevant entry and the explanation.

S.R.O. No. 342/63.-In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963), the Government of Kerala having considered it necessary in the public interest so to do hereby make an exemption in respect of the tax payable under the said Act on the sale or purchase of the goods specified in Schedule I hereto appended and by persons specified in Schedule II hereto appended in regard to their turnover on the sales of goods specified therein subject to the conditions specified therein.

Appendix-Schedule I

1.

7. Books, journals, magazines and weeklies.

Explanation.-In this item, the term "books" means printed books meant for reading or reference not being account books, note-books, diaries and the like.

5. The learned counsel for the petitioner took us through the definition of the word "book" in various dictionaries and tried to argue that the publications in question would come within the definition of the term "books". We do not think it necessary to take guidance from the dictionary meaning so far as this case is concerned. In this case, the explanation to entry 7 in Schedule I to the notification affords sufficient guidance for us to come to the conclusion that such publications are books, for, account books, note-books, diaries and the like have been clearly excluded implying thereby that they are also books. We have, therefore, only to consider the limited question whether the publications in question are "books meant for reading or reference".

6. We may at the outset answer an argument advanced by the petitioner's counsel that in construing a fiscal statute, a liberal interpretation has to be given in favour of the subject and against the State. With this proposition of law, largely put, we have no objection. But in so doing, we should not forget the distinction between the taxing provision in a statute and a provision for exemption in the same statute. While the taxing provision has to be liberally construed in favour of the subject, the same principle is not applicable in construing an exemption. While the burden to bring a particular item within the taxing provision lies on the revenue, the burden to prove that a particular item

comes within an exemption is on the person who claims such exemption. If that be so, the burden in this case is heavily cast on the petitioner to prove to the satisfaction of the court that the items come within the exemption claimed.

7. In K.G. Rangaswami Chettiar and Co. Vs. Government of Madras, the scope of an exemption under a taxing statute has been considered by a Division Bench of the Madras High Court. The relevant observations in this are :

The provision in Rule 18(2) does not levy a tax but provides an exemption and "therefore the principle that in case of ambiguity a taxing statute should be construed in favour of the taxpayer does not apply to the construction of Rule 18(2).

8. In The Commissioner of Income Tax, Bihar and Orissa Vs. Sri Ramakrishna Deo, , their Lordships of the Supreme Court had to consider a similar argument. At page 316, the following observation appears :

At the very outset, we should dissent from the view expressed by the learned Judges that the burden is on the department to prove that the income sought to be taxed is not agricultural income. The law is well-settled that it is for a person who claims exemption to establish it and there is no reason why it should be otherwise when the exemption claimed is under the Income Tax Act.

9. Therefore, the law is well-settled that in a taxing statute where an assessee claims that his case comes within an exemption, the burden is on him to prove that he comes within the exemption and a liberal interpretation in favour of the assessee cannot be given in such cases.

10. The next question which has to be considered is whether these books are "books meant for reading or reference". One of the books in question gives details regarding the various blends of tea, estates from where they are available and the quantities available in each estate. These are informations to those intending to take part at the auction to be held periodically for sale of tea. The contention is that these are books of reference for persons interested in taking part in the auction of tea. The second variety of books is the balance sheet of the Indian Chamber of Commerce and other companies, which, according to the petitioner's counsel, are books statutorily maintained and are books meant for reading or reference for the companies and their shareholders. The third set of books is the "Tea Review", which again gives the details regarding the various types of tea. The petitioner's counsel put forward a strong plea that these books are books of reference. The persons intending to bid at the auction, the shareholders of companies and persons dealing with the tea have occasion to refer to these books in order to collect details therefrom and, therefore, they are books meant for reference and directly come within the explanation to entry 7 in appendix I to the notification. We find it difficult to agree with this line of argument. In the explanation, account books, note-books and diaries have been specifically taken out of the term "books meant for reading or reference". Diaries usually give various details, which members of the public have occasion to refer.

The books in question, according to us, do not stand on a higher footing than diaries so far as the public are concerned. The expression "books meant for reading or reference" has a definite connotation so far as the public are concerned. It takes in books meant for use of the public to improve their learning and for dissemination of knowledge. The exemption is primarily in the public interest. It cannot by any stretch of imagination be contended that persons taking part in the tea auction are the "public" in the contemplation of the rule-making authority. If we pursue this argument further, it would mean that owners of large printing presses primarily engaged only in printing and publishing catalogues and balance sheets of big companies will be wholly exempt from the levy of sales tax. We have no hesitation in holding that this can never be the intention of the rule-making authority. We are fortified in this conclusion by the express wording of the notification itself which reads :

...the Government of Kerala having considered it necessary in the public interest so to do hereby make an exemption in respect of the tax payable under the said Act....

It cannot be that the Government considered it necessary in public interest to extend such benefits to owners of printing presses and other companies who are engaged in printing and publishing such books only.

11. In a taxing statute, particular words used have to be given their ordinary meaning. When a person uses the word "book", an ordinary person understands by that expression a book meant for reading purposes. In the explanation referred to earlier, the object is made clear by the expression "meant for reading or reference". The object is further made clear by excluding "account books, note-books, diaries and the like". The words "and the like" take within their ambit books like "Tea Review", balance sheet and the catalogue with which we are concerned in this case.

12. How a word or words in a statute have to be construed came up for consideration in a few cases. In *Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Mammooty* 1970 KLT 142 to which one of us was a party, the question raised was whether "pine-apple" is a vegetable and consequently a green fruit. The court held that "pine-apple" is not a vegetable. The principle of construction is indicated as follows:

The word "vegetables" in taxing statutes should be understood "as it is understood in common parlance, i. e., denoting the class of vegetables which are grown in a kitchen garden or in a farm and are used for the table". It is the meaning which people conversant with the subject-matter attribute to the term "vegetable" or "fruit" that has to be taken. The test that must be applied in the present case is, will a householder or housewife bring pine-apple if he or she is asked to bring vegetables for preparing a meal ? The answer to this question will be in the negative. Therefore, "pine-apple" is not a vegetable....

In common parlance, pine-apple is not considered to be a vegetable whether in

its ripe state or in its unripe state; it is considered only as a fruit when it is ripe. Therefore, the first condition for pine-apple to come under item 10 of Schedule III, namely, that it should be a vegetable, is not satisfied. If it is not a vegetable then, even in its ripe form, it cannot be "green fruit". Thus, pine-apple is neither a vegetable nor a green fruit.

13. In *Krishna Iyer Vs. State of Kerala*, a Full Bench of this Court had to consider whether "green ginger" came within the expression "vegetables" and Govindan Nair, J., who spoke for the Bench observed as follows :

It is not the dictionary meaning of a term that will invariably prevail in the construction of a statute. The Rule of interpretation in such cases is that particular words used by the Legislature in the denomination of articles should be understood according to the common commercial understanding of the term used and not in their scientific or technical sense, for the Legislature does not suppose our merchants to be naturalists, or geologists or botanists.

14. In *Minerals and Metals Trading Corporation of India, Ltd. Vs. Union of India (UOI) and Others*, at p. 625, the Supreme Court has thus observed :

Apart from all this, it must be remembered that in interpreting items in taxing statutes resort should be had not to the scientific or technical meaning but to the meaning attached to them by those dealing in them in their commercial sense.

15. The counsel for the petitioner relied upon the decision in *Govindaswamy Binding Works and Others Vs. The State of Andhra Pradesh*, There, a Division Bench of the Andhra Pradesh High Court considered the expression "all books and periodicals", which were exempted from payment of tax under the relevant provision of the Sales Tax Act of that State. Obul Reddi, J., who spoke for the Bench, in his discussion of the case observes that the expression "all books" take in every book imaginary. He referred to the Allahabad decision reported in *Industrial & Commercial Service v. Commissioner of Sales Tax* [1963] 14 S.T.C. 299 CST and distinguished it. The emphasis by the learned Judge in that case was to the expression "all books". He did not consider whether the exemption related to books which were generally known as "books", but laid down that there was absolutely no ambiguity in the expression "books" and that the intention of the Government was abundantly manifest that it intended to include "any kind of books, including account books, note-books, loose sheets of paper fastened together and they need not be literary works...." We would have distinguished that decision on the ground that the expression used in that case was "all books and periodicals", but for the observation towards the end of the judgment, where the learned Judge observes as follows:

The expression "book" itself is comprehensive enough to take in all kinds of books and the word "all" will make it abundantly manifest and plain that the notification was issued to cover all cases of sales of books and is not restricted in its application to books of literary material or other kinds of reading material.

With great respect, we disagree with this observation of the learned Judge. We are of the opinion that the exemption in a taxing statute regarding books should normally be in respect of books as they are generally known, unless the Act itself specifically enacts to the contrary.

16. In *Industrial & Commercial Service v. Commissioner of Sales Tax* [1963] 14 S.T.C. 299 CST this question came up for decision before a Division Bench of the Allahabad High Court. In that case, the assessee who was a dealer of books and stationery and diaries claimed exemption from sales tax for the turnover on diaries sold by the applicant; the contention raised by him being that diaries were books and the question was whether the word "books" in Section 4 of the U.P. Sales Tax Act, 1948, would include diaries sold by the assessee. Desai, C.J., observed as follows :

In its wider sense it means a writing and a collection of sheets of paper, blank, written or printed, strung or bound together and a diary would come within this meaning. In the restricted sense it means that which we may read and find instructions or lessons, a literary composition....Popularly a book is what one can read for education, knowledge, enlightenment or recreation, what one would find in a literary or in a book-seller's shop.

17. We agree with the observations of the Division Bench of the Allahabad High Court and hold that there are sufficient indications in the explanation to item 7 in Schedule I to the notification that by "books for reading or reference", what is meant was books which one can read for education, knowledge, enlightenment or recreation.

18. On a consideration of the entire case, we are satisfied that what the notification exempted by the expression "books meant for reading or reference" are books which are literary in nature. As is often said, the meaning of a word is to be judged by the company it keeps. *Noscitur a sociis*. The word "reference" juxtaposed with the word "reading" can only indicate that the books meant for reference are books which are meant for reference for the public for education, knowledge, enlightenment or recreation. It is true that the books in question are used as books of reference by estate owners and auctioneers and also by the shareholders of companies. But to include them in the exemption will be to read into item 7 in Schedule I something which the above-said notification did not intend.

19. In the result, the tax revision case is dismissed, however, without costs.