

(1961) 01 KL CK 0005
In the High Court Of Kerala
Case No : T.R.C. No. 103 of 1959

Swasti Cashew Industries (Pte) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-01-1961

Acts Referred:

Citation : (1961) KLJ 897

Hon'ble Judges : M.A. Ansari, C.J;T.C. Raghavan, J

Bench : Division Bench

Advocate : A. Madhava Prabhu and D.A.Kammath, for the Appellant;

Final Decision : Dismissed

Judgement

Ansari, C. J.

1. The facts giving rise to this revision petition can be shortly stated. The petitioner is a firm doing business as exporters in cashew kernel, and for 1957-58 had been assessed to sales tax under the Madras General Sales Tax Act, 1939, and the Kerala General Sales Tax Act, 1125. The former enactment was operative in Kasargod, where the petitioner carried the business from April 1, 1957 to September 30, 1957; and, thereafter, the latter enactment was applied covering, in the assessment year, the period from October 1, 1957 to March 31, 1958. Under the Madras General Sales Tax Act, 1939, cashew was taxed on the purchase turnover at two per cent, and under the Kerala General Sales Tax Act, 1125, "cashew and its kernel" were taxed at four per cent on the purchase turnover in the hands of the last dealer in the Kerala State. It is common ground that during the period of the assessment year when the Madras General Sales Tax Act was operative in the area, the petitioner's turnover of cashew kernel amounted to Rs. 1,94,062.50; and exemption from being taxed was claimed on various grounds. All these grounds are not repeated before us and the only point now raised is that as the taxing statute does not mention kernel, the dealer cannot be taxed on sales of such a commodity. The question, therefore, inviting

adjudication in this petition is whether the word "cashew" includes "cashew kernel" as well. The petitioner's learned counsel has urged that cashew and its kernel are two separate commodities, so that the Kerala General Sales Tax Act, when it desired to tax their sales, has expressly provided for each; and the position cannot be different under the Madras General Sales Tax Act, where the word "cashew" only is used. It is conceded that the view entertained by the Madras High Court is against the revision petitioner, where the use of the word "groundnut" is held to cover its kernel as well. The same view has been taken by the Andhra Pradesh High Court, where Subba Rao C. J. (as he then was) held in *Motilal Hari Prasad v. State of Andhara* (6 S. T. C. 654) that the word "groundnut" is wide enough to make sale of its kernel also liable to tax. That has been followed in *Motilal Hari Prasad and Bros. and Others Vs. The State of Andhra*, and in *State of Madras (Now The State of Andhra Pradesh) Vs. Kasam Ayub*, . One of us, however, was party to the decision in *Kishenlal Oil Mills v. Commissioner of Sales Tax* (6 S. T. C. 650) wherein, relying on the different phraseology in the Kerala General Sales Tax Act, we held that groundnut and its kernel were two different commodities; and should the Legislature intend to tax sales of both, it should mention them. That view, it is conceded before us, has been reversed by the Supreme Court in appeal. It follows that if the use of the word "groundnut" in a taxing statute be wide enough to cover its kernel, a different interpretation cannot be placed on the use of the word "cashew". Therefore, turnover of kernel has rightly been held liable to sales tax under the Madras General Sales Tax Act. Nor do we see how any help can be got from the observation of Das J. in *State of Travancore-Cochin v. S. V. C. Factory* (4 S. T. C. 205) about cashew and its kernel being two different commodities. The observation was in connection with the Travancore-Cochin Act where the statute expressly mentions them; and, therefore, observations on such a statute can hardly afford assistance in interpreting a provision of another enactment differently worded.

It follows that this revision petition fails, with costs which we assess at Rs. 100/-.