

(1974) 04 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 255 of 1967

The Ratlam Bone and Fertilizer Co.

APPELLANT

Vs

The State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 03-04-1974

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Essential Commodities Act, 1955 — Section 3

Citation : (1975) ILR (MP) 216 : (1974) JLJ 425 : (1974) 19 MPLJ 581 : (1974) MPLJ 581 : (1975) 35 STC 132

Hon'ble Judges : Raj Krishna Tankha, J; M.L. Malik, J; G.P. Singh, J

Bench : Full Bench

Advocate : S.D. Sanghi and V.S. Pandit, for the Appellant; M.V. Tamaskar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, J.

This is a petition under Article 226 of the Constitution and is directed against two orders of reassessment; one under the Madhya Pradesh General Sales Tax Act, 1959, and the other under the Central Sales Tax Act, 1956.

The facts are that the petitioner, the Ratlam Bone and Fertilizer Company, is a partnership-firm carrying on business of grinding bones for use as fertilizer. It is registered as a dealer both under the State Act and the Central Act. The relevant period of assessment is from 1st November, 1959, to 19th October, 1960. The assessment order under the State Act was passed on 6th October, 1961. In this order the petitioner's turnover relating to sales of bone-meal, i. e., powdered bones used as fertilizer, was assessed at Rs. 147. The assessment order under the Central Act was passed on 30th October, 1961, in which the turnover of sales of bone-meal was assessed at Rs. 1,57,356. These turnovers of sales of bone-meal, both under the State Act and the Central Act, were held to be free from liability of tax on the reasoning that bone-meal being a fertilizer was exempt

from sales tax under entry No. 22 of Schedule I read with Section 10(1) of the State Act. Thereafter notices were issued to the petitioner for reassessment under both the Acts on the ground that the turnovers relating to sales of bone-meal had escaped assessment. The reassessment under the State Act was made on 30th September, 1966, and under the Central Act on 24th March, 1967. In these reassessment orders it was pointed out by the assessing authority that the High Court in Commissioner of Sales Tax v. Sagar Bone Mills, Sugar : No. 1 [1966] 18 S.T.C. 338 had held that bone-meal although a fertilizer was not exempt from sales tax. Following the judgment of the High Court, the assessing authority assessed the turnovers of bone-meal to tax both under the State Act and the Central Act. The petitioner thereafter filed the present writ petition challenging the aforesaid reassessment orders. When the petition came up for hearing before a Division Bench, the view taken by the High Court in Commissioner of Sales Tax v. Sugar Bone Mills, Sugar : No. 1 [1966] 18 S.T.C. 338 was questioned and, therefore, the petition was referred to a Full Bench and this is how the matter comes up before us.

Before we advert to the contentions raised by the learned counsel for the petitioner it is necessary to refer to the relevant statutory provisions of the State Act as they were in force during the period of assessment. Section 2(t) of the Act defines "turnover" in relation to any period as meaning:

the aggregate of the amount of sale prices received and receivable by a dealer in respect of any sale or supply or distribution of goods made during that period, whether or not the whole or any portion of such turnover is liable to tax but after deducting the amount, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period.

The expression "taxable turnover", in relation to any period, is defined by Section 2(r) which, in so far as it is relevant, reads :

"Taxable turnover" in relation to any period means that part of a dealer's turnover for such period which remains after deducting therefrom-

(i) the sale price of goods declared tax-free u/s 10 or Section 12.

Section 4 of the Act provides for incidence of taxation and Sub-section (1) of this section reads as follows:

Every dealer whose turnover during a period of twelve months immediately preceding the commencement of this Act exceeds the limit specified in Sub-section (5) shall, from such commencement be liable to pay tax under this Act, on his taxable turnover in respect of sales or supplies of goods effected in Madhya Pradesh.

Tax is levied u/s 6 of the Act, which provides that:

The tax payable by a dealer under this Act shall be levied on his taxable turnover relating to goods specified in Schedule II, at the rate and at the point mentioned

in the corresponding entry in columns 3 and 4 respectively, of the said schedule.

The relevant entry in Schedule II is entry No. 9, which reads as follows :

-----				S.	No.
Description	of	goods	Rate	of	tax
-----				9.	Bones
of animals including powdered bones, 2 per cent, horns and hoofs.					

Section 13 of the Act makes provision for recovery of licence fee in lieu of sales tax from the dealer who carries on business in any of the goods specified in Schedule III and whose yearly turnover does not exceed ordinarily Rs. 50,000. The relevant entry in Schedule III is entry No. 2, which is as under:

-----				S.	No.
Description		of			goods
-----				2.	Bones
of animals including powdered bones, horns and hoofs.					

Section 10 of the Act refers to tax-free goods. It provides that:

No tax shall be payable on the sales or purchases of goods, specified in the second column of Schedule I subject to the conditions and exceptions, if any, set out in the corresponding entry in the third column thereof.

The relevant entry of Schedule I is entry No. 22, which reads :

-----				S.	No.
Description		of			goods
-----				22.	Fertilizer
other than oil-cakes.					

The first contention raised by the learned counsel for the petitioner is that bone-meal is fertilizer within entry No. 22 of Schedule I and, therefore, sales of bone-meal are completely exempt from tax u/s 10 and cannot be included in taxable turnover. While so arguing the learned counsel did not dispute that bone-meal consists only of "powdered bones" which are included in entry No. 9 of Schedule II and entry No. 2 of Schedule III. But it was argued that Section 10 of the Act is the leading provision and, therefore, the entry of exemption in Schedule I will prevail over the entries in Schedules II and III. It was also argued that entry No. 22 of Schedule I itself shows that the legislature was conscious of excluding "oil-cakes" from that entry and that no further exception can be read in it. It was further argued that if exemption in respect of powdered bones is read in entry No. 22 of Schedule I, that will create an unreasonable classification between powdered bones and fertilizer other than powdered bones and will result in making the levy of tax on powdered bones invalid. For these reasons, the learned counsel submitted that the expression "powdered bones" finding place in entry No. 9, Schedule II, and entry No. 2, Schedule III, should be overlooked as a drafting error to give full meaning to the legislative intention of making all

fertilizers other than oil-cakes tax-free.

The difficulty in accepting the above contention of the learned counsel for the petitioner is that by accepting it we will have to strike off the specific inclusion of "powdered bones" by the legislature in entry No. 9 of Schedule II and entry No. 2 of Schedule III. A drafting error of this magnitude cannot be presumed and such a result can be reached only as a matter of last resort when it is not possible to resolve the conflict in the competing entries by resort to the rule of harmonious construction. Just as entry No. 22 in Schedule I read with Section 10 prima facie shows the legislative intention that sales of fertilizers other than oil-cakes should be tax-free, entry No. 9 in Schedule II read with Section 6 and entry No. 2 in Schedule III read with Section 13 go to show that the legislature intended to tax sales of powdered bones. Section 6 of the Act says that the tax payable by a dealer under the Act shall be levied on his taxable turnover relating to goods specified in Schedule II at the rate mentioned in the corresponding entry in the said schedule. The language of this section shows that the legislature intended to tax the sales of goods specified in Schedule II at the rates mentioned therein. Similarly, Section 13, which provides for payment of licence fee in lieu of tax in case of dealers doing business in goods specified in Schedule III, shows that the legislature intended to tax the sales of goods specified in Schedule III. The language used in Sections 4 and 13 thus shows that the sales of "powdered bones" were intended to be taxed by the legislature. Section 10 exempts from tax sales and purchases of goods specified in Schedule I. Therefore, Section 10 read with entry No. 22 in Schedule I shows that the legislature intended to exempt sales of fertilizer other than oil-cakes. As powdered bones also fall within the description of fertilizer, there is an apparent conflict between entry No. 22 of Schedule I and entries Nos. 9 and 2 in Schedules II and III. This conflict has to be resolved by applying the rule of harmonious construction.

The rule of harmonious construction means that when there is an apparent conflict between two provisions of the same Act, they should be so interpreted that, if possible, effect should be given to both: *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, . It is the very essence of this rule that effect must be given to both the provisions ; therefore, a construction which reduces one of the provisions to a "useless lumber" or "dead letter" is not harmonious construction : *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, and *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, . To harmonize is not to destroy : *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, and *The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc.*, . A familiar approach in the application of the rule is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one so as to exclude the more specific : *The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another*, , *Waverly Jute Mills Co. Ltd. Vs. Raymon and*

Co. (India) Private Ltd., and v. The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, .

The word "fertilizer" is more general than the expression "powdered bones". Within the word "fertilizer" comes all types of manures, natural and artificial, and standing alone the word is wide enough to include powdered bones. But as "powdered bones" have been separately mentioned in Schedules II and III showing clear intention that their sales are liable to tax, the word "fertilizer" in entry No. 22 in Schedule I must be construed to mean manures other than powdered bones. It is in this way that effect can be given to entries of "powdered bones" in Schedules II and III as also to the entry of "fertilizer" in Schedule I. It is true that a more careful draftsman would have excluded powdered bones from the entry of fertilizer just as oil-cakes have been excluded. But even in the absence of any specific exclusion of powdered bones from the entry of fertilizer, we reach the same result by applying the rule of harmonious construction. The argument that by so restricting the meaning of fertilizer we will be reading some words in entry No. 22 of Schedule I which are not there and this cannot be done must be rejected. Whenever the scope of a general word or provision is restricted because of some specific provision made elsewhere in the Act by applying the rule of harmonious construction, it may appear as if the court has read an exception in the general provision not specifically made in it by the legislature. But this is not really so. The exception is made by the legislature itself in enacting the specific provision and all that the court does is to read the general and the specific provisions together so as to avoid any apparent conflict and to give meaning to both the provisions.

The argument of the learned counsel for the petitioner that by holding that the sales of powdered bones are subject to tax, an unreasonable classification between powdered bones and other fertilizers will result and the tax on sales of powdered bones will be violative of Article 14 of the Constitution and, therefore, the word "fertilizer" should be given its full effect and the entries of "powdered bones" in Schedules II and III should be ignored as redundant is without any substance. It is well-settled that the power of classification allowed to the legislature in enacting a fiscal measure is very wide : S.B. Dayal v. State of U.P. AIR 1972 S.C. 1108. The legislature is allowed to pick and choose districts, objects, persons, methods and rates for taxation. The courts have permitted a very wide latitude for tax purposes and clear and hostile discrimination has to be established before a taxing Act is struck down as contravening Article 14 : The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another, . See further Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another, . No material has been placed before us to show that dealers in powdered bones and dealers in other fertilizers come under the same class and that a tax liability imposed on the former will create a hostile discrimination. We cannot assume in favour of unreasonable classification without any material being placed before us.

Equally untenable is the argument that Section 10 of the Act is the leading provision and, therefore, entry No. 22 of Schedule I must override entry No. 9 in Schedule II and entry No. 2 in Schedule III. We have already shown that these apparently conflicting entries in the schedules can be reconciled by applying the rule of harmonious construction and meaning can be given to each one of them. It is only when reconciliation is not possible that it has to be seen as to which of the conflicting provisions is the leading provision and which is the subordinate one. In cases where two provisions are absolute contradictions of each other, the leading provision is said to override the subordinate one. But this is an argument of last resort, as the first duty of the court is to give effect to both the provisions, for it is presumed that the legislature by including them in the same Act intended to give effect to both of them : *East Bourne Corporation v. Fortes Ltd.* [1959] 2 All E.R. 102 . As in the instant case reconciliation is possible and meaning can be given to the conflicting entries by harmonizing them, the entries of "powdered bones" in Schedules II and III cannot be struck down by reference to the entry of "fertilizer" in Schedule I, even assuming that the latter is the leading entry.

There is yet another reason to support the conclusion reached by us. Entry No. 22 of Schedule I was amended by the Madhya Pradesh Amendment Act No. 16 of 1966. The amended entry reads as follows :

	S.	No.
Description of goods	22	Fertilizer other than oil-cakes and powdered and crushed bonea.

The amendment makes it clear that powdered and crushed bones which come under Schedules II and III are not included in the entry relating to fertilizer. Although a later Act is not generally used for construing an earlier Act, in cases the earlier Act is ambiguous the later Act can be seen for clarifying the ambiguity : *Rama Krishna Ramanath Vs. The Janpad Sabha, Gondia,* . The Amending Act No. 16 of 1966 by which powdered and crushed bones are specifically excluded from entry No. 22 of Schedule I clarifies the ambiguity which existed in this entry as it originally stood. The amending Act thus supports the meaning that we have given to entry No. 22 of Schedule I as it stood before the amendment.

It was next contended by the learned counsel for the petitioner that the entries of "powdered bones" in Schedules II and III should be limited to powdered bones which are not fertilizer. It was submitted that powdered bones can be divided into two categories: (1) powdered bones which are fertilizer and (2) other powdered bones. On this premise it was argued that only the latter category is included in the entries of powdered bones in Schedules II and III as the former category is covered fully by the entry of fertilizer in Schedule I. In this connection we were referred to the definition of fertilizer given in the Fertilizer (Control) Order, 1957, made by the Central Government in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955.

Fertilizer, as defined in Section 2(d) of the Fertilizer (Control) Order, means any substance used or intended to be used as a fertilizer of the soil and specified in column 1 of the schedule and includes a mixture of fertilizer and a special mixture of fertilizers. Schedule I of this Order in entries 11 and 12 specifies bone-meal raw and bone-meal steamed in column 1. Bone-meal raw and bone-meal steamed, therefore, are fertilizers as defined in the Act. The second column of the schedule specifies the standard of fertilizer. In case of bone-meal raw, the following standard is prescribed :

- (i) Moisture, per cent, by weight maximum 8.0.
- (ii) Total phosphates (as P₂ O₆), per cent by weight, minimum 20.0.
- (iii) Available phosphates (as P₃ O₅) soluble 2 per cent, citric acid solution, per cent, by weight, minimum 8.0.
- (iv) Nitrogen, per cent by weight, minimum 3.0.

The material shall pass wholly through Is Sieve 240 (aperture 2399 microns) of which not less than 70 per cent shall pass through Is Sieve 80 (aperture 790 microns).

The prescription of standard in Schedule I is with reference to Section 13 of the Order which prohibits manufacture for sale, offer for sale, etc., of any fertilizer which is not of the prescribed standard. Bone-meal which is not of the prescribed standard as given in the schedule would still be a fertilizer, although the person selling it or manufacturing it for sale would be liable to punishment for contravention of the Order. The standard prescribed in Schedule I is, therefore, not relevant for construing the competing entries in the Sales Tax Act.

Four commercial products are obtained by crushing bones in bone crushing mills. These products are : (1) Bone sinews, (2) Crushed bones, (3) Bone grists and (4) Bone-meal. Useful information on this point is available from the report of the marketing of bones and bone-meal in India issued by the Directorate of Marketing and Inspection, Ministry of Food and Agriculture, Government of India. The characteristics of these products as given in this report are as follows:

Bone sinews.-These are the fibrous and tendinous portions adhering to bones. These are obtained as by-products from the bone crushing mills and contain a high percentage of nitrogen and phosphates. The glue-making industry in India uses only a small proportion of the sinews produced, the rest being exported. Bone sinews are also being used as fertilizer for paddy fields in South India and when needed for this purpose the sinews are further powdered by re-crushing.(P. 13).

Crushed bones.-These are small pieces of bones less than 2 inches in length but not smaller than 3/16th inch. Crushed bones are mainly exported and find a ready market abroad for use as raw material in the manufacture of glue and gelatine. These industries are not developed to any appreciable extent in India.

According to the trade there are no factories in India that produce bone glue of proper quality. In India generally glue is manufactured on cottage industry scale from hide fleshings and trimmings and bone sinews. (P. 14).

Bone grists.--These are crushed bones of a smaller size, i. e., less than 3/16 inch but more than 3/32 inch. Bone grist is mostly exported and the principal importing country is Ceylon where it is used as a fertilizer. A very small quantity of grist is put to use in India by engineering firms for case hardening of steel. (P. 14).

Bone-meal.--This is obtained as a powder on crushing of bones and can pass through 3/32 inch mesh. There are some mills particularly those situated in South India that crush all bones into bone-meal by re-crushing the crushed bones and grists. Bone-meal finds use only to the country as export of it is totally banned. It is used as a fertilizer both by itself and also in fertilizer mixtures.(P. 14).

The following extract from the Standard Cyclopedia of Modern Agriculture, Vol. II, (P. 185) is also useful:

Bone-meals and bone-dusts.-With modern machinery bones can be ground to any required degree of fineness, though it of course costs a little more to grind bones finely than to turn them out in a rough state. Old customs die hard, and as farmers have long been accustomed to purchase bone manures in a state in which there are pieces of bone large enough to be easily recognised by the eyes as bone, they are suspicious of anything which is so finely ground as not to show such pieces. The popular bone-meals and bone-dusts of commerce are in this State. In these manures a variable proportion of the bone is really ground to the state of a fine dust or flour, but a certain amount still remains in pieces from 1/10 to 1/4 in., or even more, in diameter. Such coarse pieces are too slow in action to be really of much value as manure. The writer has tested a great many commercial samples of bone-meal and bone-dust over a wire sieve with ten meshes per linear inch. As a rule, from 5 to 20 per cent of the manure failed to pass such a sieve. Exceptional samples entirely passed through the sieve, but these are rarer than coarse samples, of which over 20 per cent failed to pass. What are known as bone-dusts generally contain more of the coarse particles than bone-meals.

The above information will show that all crushed bones of a size less than 3/23 inch fall under the description of bone-meal. This makes it clear that all powdered bones properly so called can be described as bone-meal and used as fertilizer. The difference only is this that if the powder is coarse it is slow to act; its value as manure increases with the degree of fineness to which it is ground. But it is quite clear that it would be wholly artificial to divide powdered bones as suggested by the petitioner's learned counsel into two categories, viz., (1) powdered bones which are fertilizer and (2) other powdered bones. The first category itself is so wide as to include all powdered bones properly so-called

leaving nothing to come within the second category. Indeed, when we put it to the learned counsel that the premise that powdered bones are divisible into two categories on which he built his second contention is entirely unreal, all that he could say was that this was his alternative contention. If we accept this alternative contention of restricting the entries of powdered bones in Schedules II and III of the Act to powdered bones which are not fertilizer, we would be taking out everything from these entries leaving nothing on which they could operate and we would be virtually striking off the words "powdered bones" from these entries. This is not harmonious construction, for it reduces one of the competing entries to a dead letter. The only manner in which the competing entries can be harmonised is by restricting the entry of "fertilizer" in Schedule I by excluding from its ambit "powdered bones". Therefore, the second contention raised by the learned counsel for the petitioner must also fail.

In *Commissioner of Sales Tax v. Sugar Bone Mills, Sagar* : No. 1 [1966] 18 S.T.C. 338, the Division Bench, by applying the rule of harmonious construction, held that bone-meal will be excluded from entry No. 22 in Schedule I and will be included in entry No. 9 of Schedule II and entry No. 2 of Schedule III. We agree with this conclusion.

The petition fails and is dismissed. There will, however, be no order as to costs. The amount of security deposit shall be refunded to the petitioner. Petition dismissed.