
(1967) 04 AP CK 0010

In the Andhra Pradesh High Court

Case No : T.R.C. No"s. 5 and 13 of 1966

The State of Andhra Pradesh

APPELLANT

Vs

Satyanarayana Kaithan (P.) Ltd.

RESPONDENT

Date of Decision : 17-04-1967

Acts Referred:

Citation : (1968) 2 AnWR 451 : (1967) 20 STC 409

Hon'ble Judges : P. Jaganmohan Reddy, C.J; Krishna Rao, J

Bench : Division Bench

Advocate : Third Government Pleader in T.R.C. No. 5 of 1966 and T. Anantha Babu, in T.R.C. No. 13 of 1966, for the Appellant; Third Government Pleader in T.R.C. No. 13 of 1966 and T. Anantha Baku in T.R.C. No. 5 of 1966, for the Respondent

Final Decision : Dismissed

Judgement

Krishna Rao, J.—T.R.C. No. 5 of 1966 is filed by the State of Andhra Pradesh while T.R.C. No. 13 of 1966 is filed by the assessee against the same order of the Sales Tax Appellate Tribunal in Tribunal Appeal No. 635 of 1962 dated 8th November, 1965, under the following circumstances : The assessee is a private limited company at Cheepurupalli, Srikakulam district, and carries on the business of exporting manganese ore. The present dispute relates to the proper tax leviable in respect of the assessee's purchase turnover of manganese ore for the year 1956-57. It is common ground that during the relevant assessment year, the parties are governed by the Madras General Sales Tax Act. u/s 3(2-B), item (ii), "manganese" is taxable at the rate of six pies in the rupee at the point of purchase by the last dealer who buys it in the State, while manganese ore which is not enumerated in any of the classes of goods mentioned in the Act was taxable only as general goods falling u/s 3(1-b) of the said Act at every sale point at the rate of three pies in the rupee. The assessing officer held that all the transactions were local purchases in the hands of the assessee who is the last purchaser and accordingly levied tax on the entire turnover at six pies in the

rupee. The assessment was ultimately confirmed by the first appellate authority. The main point argued before the appellate authority was that the sales were in the course of inter-State trade and hence exempt from tax. But when the matter came up to the Sales Tax Appellate Tribunal, the main point argued on behalf of the assessee was that the commodity in respect of which purchases had been made was in respect of "manganese ore" and not "manganese", that the higher rate of six pies in the rupee provided for manganese in Section 3(2-B), item (ii), of the Madras General Sales Tax Act is not applicable and that manganese ore not having been specifically provided in the list of goods should be taxed only as general goods u/s 3(1-b) at the rate of three pies in the rupee. This contention found favour with the Tribunal which held that manganese cannot be interpreted as including manganese ore and that therefore the levy of tax on the purchase turnover of the assessee at the rate of six pies in the rupee is not sustainable in law. But as manganese ore is taxable as general goods at the point of sale, the Tribunal remanded the matter to the assessing authority for making a fresh assessment treating manganese ore as general goods taxable at the sale point.

2. The State Government filed T.R.C. No. 5 of 1966 against the said order of the Tribunal contending that "manganese" includes manganese ore and that manganese ore is taxable at six pies in the rupee. The assessee filed T.R.C. No. 13 of 1966 contending that the Tribunal having set aside the assessment, which was on the basis of six pies in the rupee on the purchase turnover of the assessee, it had no longer any jurisdiction to remand the matter to the assessing authority for fresh assessment treating manganese ore as general goods at sale point.

3. We will first take up T.R.C. No. 5 of 1966 preferred on behalf of the Government. The short question for decision is whether "manganese" mentioned in item (ii) of Section 3(2-B) of the Madras General Sales Tax Act, 1939, includes "manganese ore". It may be noted by way of contrast that item (vi) of Section 3(2-B) of the said Act mentions iron ore. It is, therefore, clear that the Legislature was aware of the distinction between the metal as such and the ore. At this stage, it is also useful to notice that under the Andhra Pradesh General Sales Tax Act, 1957, Schedule III, item 1, mentions "manganese" (including "manganese ore") taxable at the rate of three pies in the rupee at the point of purchase by the last dealer who buys in the State. The said entry in the Andhra Pradesh General Sales Tax Act gives an indication that manganese and manganese ore are treated as two different commodities though tax thereon is provided at the same rate. If the words manganese and manganese ore are synonymous, there is really no need to mention both the names in the description of the goods. "Manganese" is defined in the dictionary as "hard, brittle, greyish, white metal, somewhat like iron" whereas "ore" denotes the mineral from which a metal can be profitably extracted and exists as a mixture of various impurities including rock, etc. and manganese can only be obtained by a process of purification from the ore.

4. No doubt from the scientific point of view, manganese ore contains manganese. But in matters relating to the levy of tax on the sale or purchase of goods, the question is what is the proper test to be applied in determining the nature and character of the goods. In Craies on Statute Law (Sixth Edition, Chapter 9, page 162) dealing with interpretation of words, it is observed as follows :

...This rule was stated by Lord Tenterden in *Attorney-General v. Winstanley* (1831) 2 D. & Cl. 302, 310, "the words of an Act of Parliament which are not applied to any particular science or art" are to be construed "as they are understood in common language".

5. Referring to *Attorney-General v. Bailey* (1847) 1 Ex. 281, 292, it was pointed out at page 163 that the word "spirits" being a word of known import is used in the Excise Acts in the sense in which it is ordinarily understood and that in common parlance, the word "spirits" does not include a liquid "sweet spirits of nitre" which is a known article of commerce. In *The King v. Planters Nut and Chocolate Company Limited* [1951] C.L.R. (Ex.) 122, 127-8, in considering the question whether salted peanuts and cashew-nuts fall within the category of either fruits or vegetables, it was observed by Cameron, J., as follows:

A perusal of the consumption or sales tax sections of the Act and of the list of exemptions set out in Schedule III is sufficient to indicate that Parliament, in enacting the sections and the schedules, was not using words which were applied to any particular science or art, and that, therefore, the words used are to be construed as they are understood in common language. To the words "fruits" and "vegetables", therefore, there must be given the meaning which they would have when used in the popular sense—that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. Now the statute affects nearly everyone, the producer or manufacturer, the importer, wholesaler and retailer, and finally, the consumer who, in the last analysis, pays the tax. Parliament would not suppose in an Act of this character that manufacturers, producers, importers, consumers, and others who would be affected by the Act, would be botanists. The object of the Excise Act is to raise revenue, and for this purpose, to class substances according to the general usage and known denominations of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a "fruit" or "vegetable" which must govern the interpretation to be placed on the words, but rather what would ordinarily in matters of commerce in Canada be included therein. Botanically, oranges and lemons are berries, but otherwise no one would consider them as such....

Counsel for the plaintiff suggested a test which I think apposite. Would a householder when asked to bring home fruits or vegetables for the evening meal bring home salted peanuts, cashew-nuts or nuts of any sort ? The answer is obviously "no".

6. Applying the above principle, the Supreme Court in *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer* [1961] 12 S.T.C. 286 held that "betel leaves" cannot be regarded as "vegetables" and that the words must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance, that is to say, vegetables which are grown in a kitchen garden or in a farm and are used for the table. Similarly in *Motipur Zamindary Co. (Private) Ltd. v. The State of Bihar and Anr.* [1962] 13 S.T.C. 1, the Supreme Court held that sugar-cane does not fall within the group of green vegetables. In the latest case of the Supreme Court in *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, in considering the question whether charcoal is included in the word "coal", it was held that a Sales Tax Act being one levying tax on goods must, in the absence of a technical term or a term of science, or art, be presumed to have used an ordinary term as "coal" according to the meaning ascribed to it in common parlance and that viewed from that angle, both the merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include "charcoal" in the term "coal". It was further pointed out that in interpreting items in statutes like the Sales Tax Act, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their ordinary sense.

7. Applying the tests laid down in the above cases, we hold that "manganese" does not include manganese ore in the popular sense of the term, though from the scientist's point of view(manganese ore may contain manganese. In the instant case, the assessee was purchasing what are popularly known as stocks of manganese ore and has been exporting the same as manganese ore and if he wanted to purchase manganese ore, the seller would not bring him pure manganese. The transactions of purchases and sales by the assessee show that manganese ore was described as a distinct commercial commodity. We are not, therefore, prepared to accept the contention of the learned Government Pleader that there is no difference between a transaction relating to the purchase of manganese ore and one relating to the purchase of pure manganese. Our conclusion is also strengthened by a reference to the *Indian Mining and Engineering Journal* and the reports of statistics of the foreign trade in India placed before us by Sri Anantha Babu, the learned counsel for the assessee, which show that manganese ore is treated as a different commodity from manganese and its alloys. On the other hand, we have not been able to derive any assistance from the extract relating to manganese from the textbook of Geological Survey supplied by the learned Government Pleader. The said extract merely shows that manganese exists in almost every kind of rock and that manganese ore contains 45 to 55 per cent, of the metal. We do not find any further indication that the words "manganese" and "manganese ore" are interchangeable. For the above reasons, we hold that manganese and manganese ore are two distinct and different commodities and that the Tribunal is right in

holding that manganese ore is not liable to be taxed at six pies in the rupee. The learned Government Pleader suggested that an opportunity may be given to the department to let in evidence to show that manganese ore is popularly called manganese. We are not inclined to think that this is a matter of evidence and hence there is no need to give any opportunity of adducing evidence on the point. T.R.C. No. 5 of 1966 is, therefore, dismissed with costs. Advocate's fee Rs. 150.

8. T. R. C. No. 13 of 1966.-The contention of the assessee is that once the assessment is set aside, the Tribunal has no longer any jurisdiction to remand the matter. We are unable to agree with this contention. If manganese ore is taxable on sale point as general goods at the rate of three pies per rupee, there is nothing wrong in the Tribunal remanding the matter for fresh assessment according to law. The learned counsel for the assessee suggests that the proper procedure for the Tribunal is to issue a fresh notice in which event he would have raised all necessary pleas. The learned counsel further complains that the order of remand reads as if it is a directive issued to the assessing authority to make the assessment on the lines indicated. But we do not find any such mandate issued to the assessing authority to make the assessment. The order of remand is, therefore, confirmed but the assessing authority will afford all reasonable and adequate opportunity to the assessee to raise all his contentions germane to the assessment proceedings. T.R.C. No. 13 of 1966 is therefore dismissed ; but there will be no order as to costs.