
(1968) 06 GUJ CK 0008
In the Gujarat High Court
Case No : Sales Tax Reference No. 20 of 1965

The State of Gujarat	Vs	APPELLANT
Keshavlal Mangubhai		RESPONDENT

Date of Decision : 18-06-1968

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 61

Citation : (1968) 22 STC 271

Hon'ble Judges : R.B. Mehta, J;B.J. Divan, J

Bench : Division Bench

Advocate : J.M. Thakore, A.G. and H.V. Chhatrapati, instructed by Bhaishanker Kanga and Girdharlal, for the Appellant; S.L. Modi, for the Respondent

Judgement

Mehta, J.—In this reference the Tribunal has referred the following two questions u/s 61 of the Bombay Sales Tax Act, 1959, hereinafter referred to as "the Act".

(1) Whether on the facts and in the circumstances of the case, babul wood purchased by the opponents would be covered by entry 19 of

Schedule A of the Bombay Sales Tax Act, 1959 ?

(2) If the answer to the first question is in the negative, whether the babul wood would be covered by entry 32 of the said Act ?

2. The short facts which have given rise to this reference are as under :-

The opponents-assessees are manufacturers of agricultural implements and parts for bullock-carts. For the purpose of manufacturing agricultural

implements and parts for bullock-carts, the opponents purchased babul wood. The said purchase consisted of the trunk, twigs and parts of the

tree, all loaded in a cart and this cart-load is known as hel. The wood purchased by the opponents was mostly and substantially used in the

manufacture of agricultural implements and the residue was sold as firewood. On these facts the Sales Tax Officer assessed the opponents and the

Assistant Commissioner dismissed their appeal on the ground that the babul wood was mainly and substantially used for the manufacture of

agricultural implements and it was, therefore, "timber" falling within entry 32 of Schedule C and was not covered in the entry of firewood in entry

19 of Schedule A. In appeal the Tribunal has, however, reversed that decision holding that the opponents had purchased in this case not timber but

firewood. The Tribunal has, therefore, referred the aforesaid two questions to this Court.

3. The present controversy has to be resolved by considering the two relevant entries in question. Entry 19 in Schedule A gives the description of

the goods as "firewood and charcoal". Purchases and sales of these articles are completely exempt from tax. On the other hand, entry 32 of

Schedule C, which provides for a sales tax and a purchase tax, gives the description of goods as "timber (other than firewood) and bamboo

whether whole or split". It is, therefore, clear that if the commodity purchased by the assessee is firewood, it would be completely exempt from tax

being covered by entry 19 of Schedule A. Entry 32 in Schedule C in terms excludes from timber, firewood and it would cover only that category

of timber which does not fall in the definition of firewood. The Act has not defined these two terms and, therefore, we will have to interpret these

two terms "firewood" and "timber" on settled principles of interpretation.

4. The principles of interpretation of entries in such taxing statutes are now well settled. In *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer*

[1961] 12 S.T.C. 286, their Lordships had to consider the question whether betel leaves were covered under the head of vegetables. At page 288

their Lordships followed the ratio in *Planters Nut and Chocolate Co. Ltd. v. The King* [1952] 1 D.L.R. 385 and held that when the term is not

defined in the Act and it is a word of everyday use it must be construed in its popular sense meaning "that sense which people conversant with the

subject-matter with which the statute was dealing would attribute to it". It is to be construed as understood in common language. Their Lordships,

therefore, held that the term "vegetables" must be construed not in any technical sense nor from the botanical point of view, but as understood in

common parlance, i.e., denoting a class of vegetables which were grown in a kitchen garden or in a farm and were used for the table and on that

view it was held that "betel leaves" did not fall within the term "vegetables" and that they were not exempt from taxation. The ratio of this decision

was reiterated by their Lordships of the Supreme Court in Commissioner of Sales Tax v. Jaswant Singh Charan Singh [1967] 19 S.T.C. 469

where the question which was before their Lordships was as to whether "coal" included "charcoal". At page 472 their Lordships pointed out that it

was now well settled that while interpreting items in Statutes like the Sales Tax Acts, resort should be had not to the scientific or the 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 commercial

sense. At page 473 their Lordships pointed out that while construing the word "coal" in entry 1 of Part III of Schedule II, the test that would be

applied was what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax

statute, being one levying a 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 such as "coal" according to the meaning ascribed to it in common parlance. Viewed from that angle both a 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 only when the question of the kind or variety of coal would arise that a distinction would be made between

coal and charcoal; otherwise both of them would in ordinary parlance, as also in their commercial sense, be spoken of as coal. The expression

"coal" was, therefore, interpreted to include "charcoal" and was held taxable at the rate of 2 per cent. under the said Act under the said entry. In

view of this settled legal position we must interpret these two relevant terms in the commercial sense and see as to how they would be understood

in the commercial community when these goods would be purchased or sold. There is no dispute in the present case that the goods purchased by

the assessee consisted of the trunk, twigs and parts of the babul tree, all loaded in one cart and this whole cart-load was known as hel. It was this

cart-load or hel which was purchased by the assessee who was manufacturing agricultural implements and parts for bullock-carts and who had

mostly and substantially used the wood purchased in the manufacture of agricultural implements and had sold only the residue as firewood.

Therefore, on the facts of the present case, there could be no doubt that what was purchased was the fallen babul tree as loaded in a cart. When

that cart-load was purchased, the tree consisted of the trunk, twigs and other parts, all of which were loaded in that cart. Even Mr. Mody could

not dispute the position that when the tree was standing on land it was standing timber. Even after the tree had fallen, it retained its character as

timber and the only difference was that the standing timber was now fallen timber, as no other process was applied to change timber into another

commercial commodity, viz., firewood. This timber, which essentially consisted of the trunk of the babul tree, would have to be reduced by a

process of chopping into smaller parts so that it could be prepared for fuel. The ordinary dictionary definition of the term "firewood" is "wood

prepared for fuel" and timber even could be used for the purpose of firewood after it is chopped and reduced to the condition of firewood. The

chopped timber after this process of chopping is totally a different commercial commodity so far as the present Act is concerned as it is reduced

from timber to firewood. These two commercial commodities which are sold under two different marketable names have totally different

connotations. When timber is reduced to firewood it has to be burnt as it is used firewood. As we have already stated, we have to find out what

was the commercial commodity which was purchased by the assessee on the facts of the present case. We are not applying the test of the user

which the particular purchaser might make. We are deciding this question on the broader principle as to what is the actual commodity of which the

purchase or sale has taken place. If for all substantial purposes the marketable commodity was timber, other than firewood, it would fall clearly

under entry 32, while if the commercial commodity was firewood then only it would get exemption. In the facts of the present case as the entire

tree which had fallen was sold as a cart-load to the assessee who had purchased this cart-load of the fallen tree and as the commodity had not

undergone the manufacturing process of chopping, which would reduce it to firewood by converting it into another commercial commodity, it

cannot be held that the assessee purchased firewood. The Tribunal was, therefore, in error in holding that the assessee had purchased firewood, as

the purchase was clearly of timber itself.

5. Mr. Mody also argued that in any event this commodity would not fall within the definition of the term "timber". We are referred to a standard

work of reference, "Bhagvadogomanda-1" for the Gujarati term for "babul-Baval" at page 3445, which states that it is used for agricultural

implements, as building material or timber for beams, door and window frames as it is not corroded by ants or moth and as the wood also does

not get spoilt in water. It is also used as firewood. Thus, the Tribunal was right in mentioning all these uses of babul wood. That itself makes it clear

that babul wood, which was standing timber when the tree was standing on land and which became fallen timber and was purchased as such,

continued to retain its essential character of "timber". Thus, it cannot fall under any residuary article as it falls under specific entry 32 of Schedule C.

In that view of the matter, our answer in the present reference so far as question No. (1) is concerned is in the negative; while so far as question

No. (2) is concerned it is in the affirmative. This reference is accordingly disposed of. The assessee shall pay the costs of this reference to the State

of Gujarat.

6. Reference answered accordingly.