

(1956) 04 MAD CK 0012
In the Madras High Court

The State of Madras

APPELLANT

Vs

R. Saravana Pillai

RESPONDENT

Date of Decision : 16-04-1956

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 2(i)

Citation : (1957) ILR (Mad) 152 : (1956) 69 LW 582 : (1956) 2 MLJ 306

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—The limited question that arises in this application, preferred by the Government u/s 12-B of the Madras General Sales

Tax Act is whether the arecanuts sold by the respondent in the assessment year 1951-1952 constituted agricultural or horticultural produce grown

by (the assessee) himself or grown on any land in which he had an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, within

the meaning of the proviso to Section 2(i) of the Act.

2. The Deputy Commercial Tax Officer rejected the accounts of the petitioner and estimated the turnover of the cured nuts sold by the petitioner

during 1951-52 at Rs. 40,736 and assessed him to a tax of Rs. 636-8-0 on that turnover. An appeal to the Commercial Tax Officer failed. The

assessee took the matter up on further appeal to the Appellate Tribunal. The Tribunal rejected the assessee's contention that he was not a "dealer

at all as defined by the Act. The Tribunal, however, accepted the contentions of the assessee: (1) That what the assessee sold was horticultural

produce within the meaning of the proviso to Section 2(i) of the Act, and (2) that the assessee had an interest in the land in which that produce was

grown, within the meaning of Section 2(i) of the Act. It was only the correctness of the finding of the Tribunal, that what was sold by the assessee

in 1951-53 was horticultural produce, that the Government challenged in the proceedings before us.

3. The assessee's appeal was heard by the Appellate Tribunal along with appeals preferred by others similarly situate. They were all persons who

grew and marketed arecanuts in Coimbatore district in accordance with the practice that prevailed in that district. It was not disputed at any stage

that there was no market for the arecanuts as gathered from the tree. While the practice in South Kanara district is to gather the nuts after they are

ripe, the practice in Coimbatore district is to gather them while they are still raw. After gathering the produce, the arecanuts are peeled and the

kernels are then sliced, boiled and dried. In the course of boiling, the tannin content of the nuts gets minimised, and that itself colours the nuts, and

that colour persists after the nuts are dried. It is only after they are dried that they are fit to be marketed. So much was common ground. While the

assessee contended that what was sold was still horticultural produce, the contention of the Government was that it was produce subjected to a

manufacturing process that was sold, and that what was sold had ceased to be horticultural produce as such before it was sold.

4. The Tribunal disposed of the question before it on a very narrow basis. In an earlier batch of appeals of 1952 preferred by assessees of

Coimbatore district, the Tribunal discussed the question at some length and came to the conclusion that despite the processing to which the raw

arecanuts had been subjected, what was sold was still horticultural produce. The respondent before us was one of the appellants in that batch of

1952 appeals. In that batch of appeals the question whether the assessees had any interest in the land on which the arecanut was grown, within the

meaning of Section 2(i), had, also to be considered. Against the decisions of the Tribunal in the 1952 appeals, petitions were preferred to this

Court u/s 12-B of the Act, and the judgment in that batch of petitions was reported in S.T. Sultan Ahmed Rowther v. State of Madras (1954) 2

M.L.J. 93. In that batch of cases, this Court had no occasion to go into the question whether what was sold was agricultural or horticultural

produce. In that judgment it was recorded,

The finding of the Appellate Tribunal, which differed from the Departmental Authorities on that point, was that the cured arecanut sold by the assessee was agricultural or horticultural produce. The correctness of that finding was not challenged, and the argument before us proceeded on the assumption that the arecanut sold by the assessee was horticultural produce within the meaning of Section 2(i) of the Act.

5. The Tribunal referred to this aspect in its judgment in the batch of 1954 appeals, of which the respondent assessee's was one, and held that

what was sold, was horticultural produce. We have had to set out all this only to show that the reasons for the view taken by the Tribunal, that

what was sold was horticultural produce, will have to be sought not in its judgment in the 1954 batch of appeals now before us but in the 1952

batch of appeals. We cannot, of course, treat the question at issue as concluded by authority, because the question was certainly not decided in

S.T. Sultan Ahmed Rowther v. State of Madras (1954) 2 M.L.J. 93.

6. What the proviso to Section 2(i) of the Act excludes from the turnover of a dealer is

the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest....

It is true, no specific provision has been made in the Sales Tax Act to correspond to

the process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to

market,

which the Income Tax Act specifies in Section 2(i)(b)(ii) of that Act. If the principle of that test can be applied in deciding whether what was sold

by the assessee was still horticultural produce, it should be obvious that the question at issue should be answered in favour of the assessee.

7. As we have pointed out, it was common ground that there is no market in Coimbatore or elsewhere for arecanuts as they are when plucked

from the trees, and it should be remembered they are gathered when they are still unripe. The proviso to Section 2(i) of the Act is obviously

conceived in the interests of agriculturists. It excludes from any tax liability under the Act sale of agricultural and horticultural produce, the primary

condition to be satisfied being that it must be produce of the land which either

belong to the seller or of the land in which he has an interest as specified by Section 2(i). To restrict that concession to sale of arecanuts, for instance, only if those arecanuts are sold in the state in which they are immediately on being gathered from the trees, would render the statutory exclusion meaningless. The person who grew that produce could not sell it in that form. He could not use it. It was not, of course, the contention of the learned Government Pleader that the arecanuts could retain their character as horticultural produce only in the state in which they were immediately after being gathered from the trees. That what was horticultural produce ceases to be horticultural produce when it is subjected to a manufacturing process, and what is sold is that manufactured produce, does not admit of any doubt. In the present case, however, it could hardly be said that the marketed commodity was the product of a manufacturing process, to which the arecanuts as horticultural produce had been subjected. No doubt the arecanuts gathered have to be processed before they could be sold at all. But that processing falls far short of what is normally understood as a manufacturing process. That was not seriously denied. The processing is just to preserve the commodity against its eventual sale. The difficulty which the learned Government Pleader experienced was in drawing a line where arecanuts ceased to be horticultural produce within the meaning of Section 2(i) of the Act, especially when he was asked to consider the comparable cases of paddy, rice and particularly boiled rice.

8. Under the Act, tax liability is imposed only on sales by a dealer, and the agriculturist who sold his agricultural produce has to satisfy the statutory requirements of the definition of a "dealer" before any question of tax liability or exclusion therefrom could arise. In the present case that the assessee was a "dealer" as defined by the Act did not admit of any controversy at any rate before us. The limitations the Court can impose in construing the statutory expression ""horticultural produce"" must conform to the scheme of the Act, particularly the scheme that underlies Section 2(i) of the Act, the object of the scheme of course, being gathered in the first instance from the language of the statutory provision itself. We are of opinion, that, where any agricultural or horticultural produce has to be subjected to a minimum processing before that produce can be marketed at all, it will still retain its character as agricultural produce or horticultural produce,

despite that minimum processing. In the case of arecanuts, we have pointed out earlier that what the goods sold by the assessee were subjected to was that, minimum processing, absolutely necessary before his horticultural produce could be sold at all. We have confined ourselves only to the case of arecanuts, because what the minimum processing should be for any other, kind of horticultural produce may not determine the question, what is the minimum processing to which the arecanuts have to be subjected before they are sold.

9. The processing to which the arecanut was subjected, which we have described above, did not really change the character of the produce. There was no process of manufacture. Something was no doubt excluded, for example, tannin. The size shrunk by the process of boiling and drying. But otherwise it was the same produce. That the produce coloured itself during the process of boiling and drying still left in tact the real nature of the commodity, the nut that was eventually sold, collected from the green nut that had been gathered from the tree. The process to "cure" the arecanuts was only to preserve the commodity. Once again, we have to point out that the process the assessee had subjected the produce as he gathered it from the tree was in accord with the established practice of such agriculturists in that locality, Coimbatore district. We are, therefore, of opinion, that despite the process, the minimum necessary, that the goods sold had been subjected to, what the assessee sold still retained its character as horticultural produce within the meaning of the proviso to Section 2(i) of the Act. As we said, any narrow construction of the term "horticultural produce" would tend to defeat the very object of the Legislature with which the proviso to Section 2(i) was enacted. The view taken by the Tribunal was correct.

10. The learned Government Pleader referred to the decision in Killing Valley Tea Co. Ltd. v. Secretary of State for India I.L.R.(1920) Cal. 161.

That case dealt with tea and the decision was under the Indian Income Tax Act. At page 171 the learned Judges pointed out the tea that was sold had been subjected to a manufacturing process. We fail to see any scope for applying the test laid down in that decision to the question now before us.

11. The petition fails and is dismissed with costs. Counsel's fee Rs. 100.