

State of Kerala Vs. C. Moidoo

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Court : Kerala

Decided On : Nov-26-1971

Reported in : [1972]29STC373(Ker)

Judge : P. Govindan Nair and; T.S. Krishnamoorthy Iyer, JJ.

Appeal No. : T.R.C. No. 30 of 1970

Appellant : State of Kerala

Respondent : C. Moidoo

Advocate for Def. : M.M. Pareed Pillai,; K. Bhaskaran,; P. Thankappan an

Advocate for Pet/Ap. : Government Pleader

Judgement :

P. Govindan Nair, J.

1. The only question raised in this tax revision case by the revenue is whether dhania (coriander seeds) are 'oil-seeds' or not.

According to the learned counsel for the revenue coriander seeds are not oil-seeds. The question arose with reference to the assessment to sales tax for the year 1964-65 and the Sales Tax Appellate Tribunal relying on the decision of the Orissa High Court in State of Orissa v. Dinabandhu Sahu & Sons [1969] 24 S.T.C.

233 came to the conclusion that dhania (coriander seeds) are oil-seeds within the meaning of that expression under Section 14(vi) of the Central Sales Tax Act, 1956, and it was so held that the turnover relating to the sale of coriander seeds are taxable only at a single point. On behalf of the revenue it is urged that coriander seeds are not oil-seeds and so the turnover relating to the sale of those seeds are taxable at all points of sale.

2. Section 14(vi) of the Central Sales Tax Act, 1956, is in these terms :

14. It is hereby declared that the following goods are of special importance in inter-State trade or commerce....

(vi) oil-seeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics and the like.

And Section 15 of the Central Sales Tax Act, 1956, provides that:

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three per cent. of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

3. Consistent with the provision in Section 15(a), which we have just read, oil-seeds are taxable at the point of first sale in the State as mentioned in item 2 of the Second Schedule to the Kerala General Sales Tax Act, 1963, which deals with

declared goods in respect of which a single point tax only is leviable under Sub-section (1) or Sub-section (2) of Section 5 of that Act. It is unnecessary to read Section 5 but we will extract what is mentioned in item 2 of the Second Schedule.

2. Oil-seeds as defined in Section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), other than coconut and copra, groundnut and cardamom.

4. Item 2 uses the expression 'as defined in Section 14 of the Central Sales Tax Act', and a view has been taken in a number of decisions that what is stated in Section 14 is a definition of the term 'oil-seeds' and that therefore when the definition is satisfied, a seed which may not be an oil-seed in common parlance will have to be held to be an 'oil-seed' for the purposes of Section 14(vi) and so for the purposes of sales tax.

5. The decision relied on by the Tribunal in *State of Orissa v. Dina-bandhu Sahu & Sons* [1969] 24 S.T.C. 233 also proceeds on the above basis that Section 14(vi) of the Central Sales Tax Act, 1956, contains a definition of the term 'oilseeds'. A glance at the head-note to the decision makes this clear:

Where the Legislature uses an expression-it may be an expression commonly used-and has proceeded to explain what that expression means, full effect has to be given to that definition and it is not permissible to resort to the popular meaning of that expression. 'Popular understanding' theory can only be resorted to in the absence of any definition of the expression in the statute.

Isaac, J., took the same view in the decision in *C. M. Hamsa Haji v. Sales Tax Officer, Tirur* [1967] 20 S.T.C. 470 :

The Legislature itself has in clear terms stated in the above section what oil-seeds are. That being so, no question arises as in what way, they are understood in common parlance. If a commodity satisfies the definition which the Legislature has given to the word 'oil-seeds' it is an oil-seed within the meaning of the said provision.

6. It is unnecessary to multiply decisions on the subject, there having been many decisions taking this view. This view however is seriously challenged before us by

counsel on behalf of the revenue and what is contended is that Section 14(vi) of the Central Sales Tax Act, 1956, does not contain a definition at all, that it merely uses the expression 'oil-seeds', and that what followed in Section 14(vi), 'that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics and the like' are merely illustrative or explanatory of oil-seeds and are not words of limitation and not intended to qualify or modify the meaning of the expression 'oil-seeds'. It is further urged that these expressions like oil-seeds, vegetables, green ginger, coal etc., occurring in taxing statutes must be understood according to how they are understood in common parlance, as understood by the common man and not in a technical sense nor should the dictionary meanings of such expressions or the technical meaning be applied. In support of the contention that the words in Section 14(vi) of the Central Sales Tax Act, 1956, commencing with 'that is to say' are not words of limitation, nor words defining the term but merely illustrative or explanatory of what is stated above, reliance has been placed on two decisions ; one of the Federal Court of India and the other by the Judicial Committee of the Privy Council. The decisions are in *Bhola Prasad v. Emperor* A.I.R. 1942 F.C. 17 and in *Megh Raj and Anr. v. Allah Rakhia and Ors.* A.I.R. 1947 P.C. 72.

7. The Federal Court had to consider the power to legislate 'with respect to intoxicating liquors' and incidentally the words 'that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs' in Schedule 7, List 2, item 31, of the Government of India Act, 1935, particularly the words 'that is to say' came up for construction and their Lordships observed with reference to these words:

In our opinion these words are explanatory or illustrative words, and not words either of amplification or limitation.

The same is the view taken by the Judicial Committee of the Privy Council where the same words, 'that is to say' occurring in item 21 in List II of the Seventh Schedule of the Government of India Act, 1935, came up for construction and the following observations of the Judicial Committee are apposite:

As to item 21, 'land', the governing word is followed by the rest of the item, which goes on to say, 'that is to say'. These words introduce the most general concept- 'rights in or over land'. 'Rights in land' must include general rights like full ownership or leasehold or all such rights. 'Rights over land' would include easements or other collateral rights, whatever form they might take. Then follow words which are not words of limitation but of explanation or illustration, giving instances which may furnish a clue for particular matters; thus there are the words 'relation of landlord and tenant and collection of rents'. These words are appropriate to lands which are not agricultural equally with agricultural lands.

These observations were no doubt made by the Federal Court and the Privy Council with reference to the entries in the List of the Seventh Schedule to the Government of India Act, 1935, and therefore while interpreting constitutional entries dealing with legislative powers. It was suggested that this being so, those decisions can have no application in construing the words 'that is to say' occurring in Section 14(vi) of the Central Sales Tax Act, 1956. We do not see the force of this argument. The words 'that is to say' interpreted by the Federal Court and the Privy Council were interpreted as they were, not because of any particular or special rule that must apply in interpreting the entries in the Constitution. We understand the decisions as authority for the proposition that the words 'that is to say' are not words of limitation or amplification but are merely illustrative or explanatory. This rule, we think, must apply wherever such words occur in any statute. We see no reason not to apply this meaning that has been given to the words by the Federal Court and the Privy Council. We are therefore of the view with great respect that the decisions that had proceeded on the basis that Section 14(vi) of the Central Sales Tax Act, 1956, contains a definition of 'oil-seeds' have erred.

8. The test therefore to be applied is what has been laid down by the Supreme Court in more than one decision. The first of the decisions of the Supreme Court brought to our notice is the decision in *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer Akola, and Anr.* (1961) 12 S.T.C. 286 (S.C.), where the question whether betel leaves are vegetables within the meaning of the latter expression occurring in item 6 of Schedule II of the C P. and Berar Sales Tax Act, 1947, came

up for consideration. Their Lordships held that the expression 'must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been denned in the Act and being a word of every day use it must be construed in its popular sense meaning 'that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it'. It is therefore to be understood as denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. Consequently 'betel leaves' are not vegetables and would not be exempt from sales tax under item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947.'

9. The same principle has been applied by the Supreme Court in Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh [1967] 19 S.T.C. 469 (S.C.) wherein the question whether charcoal is 'coal' as specified in entry 1 of Part III of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958, arose for decision. Their Lordships observed :

While construing the word 'coal' in entry 1 of Part III of Schedule II to the Act, the test that would be applicable is, what is 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 as 'coal' according to the meaning ascribed to it in common parlance. 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'.

10. In the light of these two decisions of the Supreme Court, it is unnecessary to multiply more decisions but we may refer to a Full Bench decision of this court in Krishna Iyer v. State of Kerala [1962] 13 S.T.C. 838. This court took the view that green ginger is not a vegetable by applying the above principles. It was observed :

It is not the dictionary meaning of a term that will invariably prevail in the construction of a statute. The rule of interpretation in such cases is that particular words used by the Legislature in the denomination of articles should be understood according to the common commercial understanding of the term used

and not in their scientific or technical sense, for the Legislature does not suppose our merchants to be naturalists, or geologists or botanists.

11. The question whether dhania is oil-seed or not has therefore to be determined on the basis of the principles we have enunciated above. This has not been done. The Tribunal proceeded on the basis of the decision of the Orissa High Court in *State of Orissa v. Dinabandhu Sahu & Sons*¹, which in turn proceeded on the basis that Section 14(vi) of the Central Sales Tax Act, 1956, contained a definition of the term 'oil-seeds'. We have held this is not so. We therefore set aside the decision of the Tribunal on this point and remit the case back to the Tribunal for reinvestigation of the question as to whether dhania (coriander seeds) are oil-seeds as is understood in common parlance. It is not sufficient that coriander seeds are capable of yielding oil when it is subject to the necessary process or that the oil extracted in that manner can be used for some purposes. The question is whether an ordinary man would understand coriander as an oil-seed or not. This will be determined by the Tribunal.

12. We direct the parties to bear their respective costs.