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Court : Chennai

Decided On : Mar-30-1970

Reported in : (1971)1MLJ162

Appellant : A. Kannu

Respondent : The State of Madras, Represented by the Deputy Commercial Tax Officer

Judgement :

T. Ramaprasada Rao, J.

1. The petitioner claiming himself to be an agriculturist owning lands in Matrapalli village, Tirupathur Taluk, North Arcot District, has filed this writ petition seeking for a writ of prohibition restraining the respondent from taking further proceedings in pursuance of the notice dated 22nd March, 1969, issued by him to the petitioner proposing to levy sales tax on sale of jaggery, admittedly sold by him. The case of the petitioner is that he is an agriculturist and he has raised sugarcane on his lands, and as there were no facilities for transport and as there was no market for sugarcane as such, he had to convert the sugarcane into jaggery and thereafter realise his agricultural income by sale thereof. The petitioner admits that during the years 1967-68 and 1968-69, he effected sales of jaggery to the tune of Rs.

34,381.28. His case, however, is that as jaggery has been notified as an agricultural produce under' Section 2 of the Madras Agricultural Produce Market Act of 1959, and as Section 18(1) thereof authorises the levy of a cess by way of sales tax, it follows that there could be no other levy in the nature of sales tax, may it be under the Madras General Sales Tax Act, 1959, as well. His objection to the levy under, the Madras General Sales Tax Act (herein after called the Act) is that the Madras; Agricultural Produce Act (hereinafter called the Produce Act) forms part and Parcel of the Sales Tax Law, and Section 3 of the Act should therefore be construed as the main charging section for sale of jaggery or agricultural produce, and Section 18 of the Produce Act be interpreted as an exception thereto. His next contention is that under Section 2(r) of the Act, agricultural produce has been explained to be produce other than tea, but not including such produce as has been subjected to any physical chemical or other processes for being made fit for consumption, save mere cleaning, grading sorting or drying. The argument is that this non-inclusion of the produce which has been subject to a process violates the real sense and meaning of the main provision under Section 2(r) of the Act and therefore it has to be struck down or held to be ultra vires of the powers of the local Legislature. The third contention is that the petitioner, in any event, is not a dealer in jaggery and his entire scheme of operations which resulted in the sale of jaggery and the realisation of money or price thereafter is only in the process of his activity to earn income and not as a businessman trading in a commodity for the purposes of trade or commerce as is popularly understood.

2. In so far as the first contention is concerned, Section 18 of the Produce Act affords the clear answer. Section 18 begins with the non abstante clause, 'Notwithstanding anything contained in the Madras General Sales Tax Act, (I of 1959)'. This clause, if made operative, the contention has to fail. It follows from the above paranthe-sis, that notwithstanding the levy under Section 3 of the Act, the Market Committee shall levy a cess by way of sales tax on any notified agricultural produce bought or sold in the notified market area at the prescribed rate. This provision in the Produce Act operates along side with the charging section in the Act. As the learned Government Pleader rightly contends, this point becomes more clear when we peruse Section 6 of the Act which provides that the tax under the Act shall be levied in addition to any tax under any other law for the time being

in force. We are unable to agree with the first contention of the learned Counsel for the petitioner that Section 18 of the Produce Act virtually takes away the right of the Revenue to assess, levy and collect sales tax under the provisions of the Act.

3. The second contention is obviously based on a misconception. The Explanation to Section 2(r) of the Act is merely elucidatory of the expression 'agricultural or horticultural produce' in the relevant clause. The Explanation does not, in our view, delimit or in any way impinge upon the real meaning of the words 'agricultural produce' appearing in the main clause. No doubt, it is fundamental that if an explanation were to run contra or is intended to interfere with the normal course of operation of a principal clause, then it would be ineffective. This, of course, is a normal form of interpretation. The decision cited by the learned Counsel for the petitioner in *Public Prosecutor v. Gladstone* (1963) 2 An.W.R. 388 : (1963) M.L.J. 555, supports this well-established practice. In the instant case, however, the Explanation does not purport to delimit the scope of the main provision, but it merely explains what agricultural produce is in the real sense of the term. Probably this was added as an explanation in order to avoid a more complicated text for the main clause which was attempting to define what a turnover meant. On this ground also, the second contention of the learned Counsel for the petitioner fails. In this view of ours, we are fortified by a judgment of this Court, to which the learned Chief Justice was a party. In that case - W.P. No. 1826 of 1969 the very same contentions were raised and the learned Chief Justice negatived both of them. Regarding the contention, the learned Chief Justice said:

But obviously jaggery by no means can be regarded as an agricultural produce. It is the result of a process, both physical and mechanical and without such processing jaggery cannot be produced.

Thus, we are unable to agree with the learned Counsel for the petitioner in so far as the first two legal contentions are concerned.

4. Regarding the third, which is more factual in scope, there has not been a full enquiry into the matter at all. It is however obvious to us that if an agriculturist involves himself in agricultural operations and ultimately gets from the land produce, then it is clear that such produce, harvested by him and reaped out of

such harvest, is only intended as a substitute for income from the land, and such income, if earned by converting the agricultural produce into another for the purpose of easy marketing, cannot cease to be income. It may be that the agriculturist had to necessarily indulge himself in a sale of the produce which may have a bearing on trade or commerce. But the essence is whether the activity is the commercial activity of a businessman or tradesman but for which the income could not have been earned. It is only the labour, manual or otherwise, of the agriculturist in the initial stages which produced the product. The process, of course, converted the agricultural product into a marketable product. It is that marketable product which was the subject-matter of sale and this sale was not with the object of doing business as is popularly understood but only to realise the money equivalent or substitute for his produce on which the agriculturists' living depends. In fact, Jessel, M.R., whose observations were noticed by the Supreme Court in *The Deputy Commissioner of Agricultural Income-tax, and Sales Tax, Qtdlon v. The Travancore Rubber and Tea Co.* (1968) 1 I.T.J. 103 : (1968) 1 S.C.J. 281 : (1967) 20 S.T.C. 520 , stated as follows:

An owner of property is entitled to earn an income therefrom and merely because he has engaged himself in certain activities which enable him to earn that income, it cannot be said that he has engaged himself in a particular business.

The Supreme Court in that very case held that the onus of proving that the assessee was carrying on business and was therefore a dealer was on the Revenue, and merely because an agricultural produce was converted into another product because of transport and marketing difficulties, it does not matter in so far as the question involved, namely, whether the ultimate activity is a sale. In our view, though the product in question is not strictly agricultural produce, the activity of the agriculturist before us cannot be characterised a sale simpliciter as is understood in mercantile law and can be called upon to subject himself to the levy *wi ly ni ly*. But the contention of the learned Government Pleader is that a full enquiry has not been gone into as to whether the petitioner sold the processed jaggery out of the produce grown from his agricultural land or he mixed it up with other purchases made by him from others so that the ultimate activity may become a trading activity. The learned Counsel for the petitioner concedes that in that light

the facts have not been noticed because he came up to this Court with a petition for a writ of prohibition after the respondent served on him a notice proposing assessment.

5. With the above observations, the rule nisi is discharged. The assessing officer is at liberty to proceed with the assessment, but in the light of the observations made herein. There will be no order as to costs.

6. This case having been posted this day for being mentioned the Court made the following Order - (The Order of the Court was made by Ramaprasada Rao, J.)

7. This case has been posted for being, spoken to at the instance of the Assistant Government Pleader (Tax). He referred us to a decision in Vaidyanatha Iyer v. State of Madras (1954) 5 S.T.C. 94. There, the assessee who grew sugarcane in his fields sold the sugarcane as such in previous years. But in the relevant year the assessee converted the sugarcane into jaggery by a process of manufacture and sold the jaggery. In these circumstances, the Revenue as well as the Appellate Tribunal found, taking into account the organisation behind the sales, including the manufacture, that the assessee satisfied the requirements of the definition of 'dealer' in Section 2(b) of Act (IX of 1939) which is similar to Section 2(g) of the present Act. But it should be noted that the learned Judges in Vaidyanatha Iyer v. State of Madras¹, were persuaded to accept (that the assessee should be deemed to be a 'dealer' because they found that the assessee did not convert sugarcane into jaggery in the previous years, that in fact he sold sugarcane as such, and that there was a market for sugarcane. In the instant case, the allegation is that there was no such market and that there was not even facility for transporting sugarcane from the place where it was grown. This has not been denied in the counter-affidavit. But it is argued by the learned Assistant Government Pleader that, as the petition is for the issue of a writ of prohibition and as the matter is remitted to the assessing authority for re-appraisal of the evidence, the Revenue should be given an opportunity to prove that there was a market for sugarcane in the vicinity and that there were transport facilities available for carrying sugarcane to places outside the place of its growth for being sold as sugarcane. The request appears to be reasonable, as justice should not

fail for want of evidence. Whilst allowing the request made by the learned Counsel for the State, we make it clear that, unless the attitude of the petitioner is indicative of the fact that he -Wanted to convert sugarcane into jaggery not to care (sic) the normal agricultural income but that the prime purpose was to get business income as a trader, then the petitioner would run the risk of being brought into the net of tax. This principle will also be borne in mind by the assessing authority. This addendum will form part of the judgment already delivered.

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