

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.5013 of 1999

Order reserved on: 5-5-2017

Order delivered on: 19-5-2017

M/s. Shiva Traders, Bhilai, through Proprietor Jairamdas, S/o late Shri Balchand, Camp 2, Power House, Bhilai

---- Petitioner

Versus

1. Divisional Dy. Commissioner of Commercial Tax, Durg

2. Assistant Commercial Tax Officer, Durg Circle II, Durg

---- Respondents

AND

Writ Petition No.1296 of 1995

1. M/s. Bharat Enterprises, Gudiyari, Raipur, Through Proprietor Inderlal Gehani, Bhatapara, Raipur, M.P. (now C.G.)

2. M/s. S. Suresh Kumar & Company, Through Partner Shyamlal Krashanani, Gudiyari, Raipur.

---- Petitioners

Versus

1. Commissioner of Sales Tax, Madhya Pradesh, Indore.

2. Divisional Deputy Commissioner of Sales Tax, Raipur.

3. Assistant Commissioner of Sales Tax, Raipur (M.P.) (now C.G.)

4. Sales Tax Officer, Circle-I, Raipur.

---- Respondents

For Petitioners: Mr. Neelabh Dubey, Advocate.
For State/Respondents: Mr. U.N.S. Deo, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Since common question of law and fact is involved in both the writ

petitions, they are being disposed of by this common order.

2. The question posed for consideration in these writ petitions is, whether watery coconut is a fruit covered by Entry 54 of Schedule I of the Chhattisgarh Commercial Tax Act, 1994.
3. The petitioners herein challenge the levy of tax on watery coconut holding it to be the oil seed rejecting the claim of the petitioners that it is exempted from tax, as the same is included in Entry 54 of Schedule I of the Chhattisgarh Commercial Tax Act, which provides for goods exempted from tax. The petitioners are carrying on the business of dealing in dry coconut as well as in watery coconut. They claim exemption from sale of watery coconut as tax free as falling in Schedule I of Entry 54 of the Chhattisgarh Commercial Tax Act, 1994. The petitioners filed quarterly returns and claimed the sale of watery coconut as exempted from the above Entry while paying tax at 4% on dry coconut. In the course of assessment proceedings, the petitioners were called upon to show cause why the watery coconut be not taxed as oil seed as specified in clause (vi) of Section 14 of the Central Sales Tax Act, 1956 taxable at 4% as included in the Commercial Tax Act under Entry 4 of Schedule-II of Part-IV. The petitioners claim was rejected and 4% was charged on watery coconut and penalty was also imposed on which it was taken to revision under Section 62 of the Chhattisgarh Commercial Tax Act which was dismissed by the Divisional Deputy Commissioner against which these writ petitions under Article 226/227 of the Constitution of India have been preferred.
4. Return has been filed by the State/respondents stating inter alia that

watery coconut is an oil seed as specified in clause (vi) of Section 14 of the Central Sales Tax Act, 1956.

5. Mr. Neelabh Dubey, learned counsel appearing for the petitioners, would submit that coconut is divided into three distinct and well recognized sub-classes being Watery Coconut, Tender Coconut and Dry Coconut. He would further submit that watery coconut is a distinct commercial entity exempted from payment of tax under Entry 54 of Schedule-I. He would also submit that tender coconut is taxed separately under Entry 7 of Schedule-II of Part-V. He would contend that Entry 54 being fruits other than dry fruits including *pind khajur* and coconut gives exemption to watery coconuts. He would rely upon the decision of the Supreme Court in the matter of **P.A. Thillai Chidambara Nadar v. Additional Appellate Assistant Commissioner, Madurai, and another**¹ in which it has been held that coconut is a fruit though not a fresh fruit. He would conclude that coconut is a fruit and it is a distinct variety from dry coconut relying upon the decision of the Supreme Court in the matter of **Sri Siddhi Vinayaka Coconut & Co. v. State of Andhra Pradesh**². According to him, Entry 54 of Schedule-I is ambiguous and therefore the benefit of ambiguity should be given to the assessee as such, the orders passed by the two authorities assessing the watery coconut as oil seed and charging tax at the rate of 4%, deserve to be set aside, as coconut is a fruit within the meaning of Entry 54 of Schedule-I of the Chhattisgarh Commercial Tax Act, 1994.

6. Mr. U.N.S. Deo, learned Government Advocate appearing for the

1 (1985) 4 SCC 30

2 (1974) 34 STC 103 (SC)

State/respondents, opposing the submissions of Mr. Neelabh Dubey, would submit that watery coconut has been treated to be an oil seed and it is not fruit and therefore it is chargeable, as an oil seed as per the Entry. Relying upon P.A. Thillai Chidambara Nadar's case (supra) and Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh³, he would further submit that primary object of taxation statute is to raise revenue and resort would not have been to the scientific and technical meaning of the terms or expressions used but their popular meaning has to be considered. Further relying upon the decision of the Supreme Court in the matter of Commissioner of Sales Tax, Madhya Pradesh v. Popular Trading Co.⁴, he would also submit that watery coconut is after-all a coconut and therefore it has rightly been charged as an oil seed. By concluding his submission, he would submit that coconut can never be treated and has never been treated the member of fruit family and therefore it has rightly been charged as an oil seed and 4% tax has been levied which is strictly in accordance with law.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also perused the available record critically and carefully.
8. In order to consider the plea raised at the Bar, it would be appropriate to notice the relevant judgments regarding construction of taxing statutes.
9. A taxing statute is to be construed strictly. The well-established rule in the familiar words of Lord Wensleydale, reaffirmed by Lord

³ (1981) 47 STC 359 (SC)

⁴ (2000) 33 VKN 314

Halsbury and Lord Simonds, means: "The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words". In a classic passage Lord Cairns stated the principle thus: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. (See Principles of Statutory Interpretation by Justice G.P. Singh, 12th Edition 2010, page 815.)

10. In fiscal legislation a transaction cannot be taxed on any doctrine of "the substance of the matter" as distinguished from its legal signification, for a subject is not liable to tax on supposed "spirit of the law" or "by inference or by analogy".
11. The Supreme Court has also enunciated in similar words the principle of interpretation of taxing laws.
12. The Supreme Court speaking through Bhagwati, J, in the matter of **A.V. Fernandez v. State of Kerala**⁵ has held that "In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into

5 AIR 1957 SC 657, p. 661

the intentions of the Legislature and by considering what was the substance of the matter.”

13. Likewise, in the matter of **Sales Tax Commissioner v. Modi Sugar Mills**⁶, the Supreme Court speaking through Shah, J, has held that “In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.”
14. In the matter of **Martand Dairy and Farm v. Union of India**⁷, Justice K. Iyer, J, observed: “Taxation consideration may stem from administrative experience and other factors of life and not artistic visualisation or neat logic and so the literal, though pedestrian interpretation must prevail.”
15. Thus, a focused glance on the principle followed by Their Lordships of the Supreme Court in interpreting the taxing statute, it is quite vivid that before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section. If the words used are ambiguous and reasonably open to two interpretations benefit of interpretation is given to the subject. But equitable considerations are not relevant in construing a taxing statute, and similarly logic or reason cannot be of much avail in interpreting a taxing statute. (See **Azamjha v. Expenditure Tax**

6 AIR 1961 SC 1047, p. 1051

7 AIR 1975 SC 1492, p. 1494 : (1975) 4 SCC 313

Officer, Hyderabad^{8.})

16. In the matter of **Kapil Mohan v. Commr. of Income-tax, Delhi**⁹ it has been held that in the field of taxation, hardship or equity has no role to play in determining eligibility to tax and it is for the legislature to determine the same.
17. Similar principle has been applied to the Sales Tax statute.
18. In **Indo International Industries** (supra), highlighting the object of taxing statute, Their Lordships of the Supreme Court have held that primary object of the Sales Tax Acts and the Excise Tax Acts is to raise revenue and for which purpose they classify diverse products, articles and substances, therefore, resorts should not be had to the scientific and technical meaning of the terms or expressions used but to their popular meaning attached to them. The Supreme Court observed as follows: -

“It is well-settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted.”

19. The principle laid down in **Indo International Industries** (supra) has been followed with approval by the Supreme Court in **P.A. Thillai Chidambara Nadar** (supra) and it has been held as under: -

“If regard be had to this rule of construction, the question

8 (1971) 3 SCC 621

9 (1999) 1 SCC 430

raised will have to be answered against the appellant. On the first aspect of the question it cannot be disputed that a coconut would be a “fruit” in the botanical sense but unless it can be said to be a “fresh fruit” it will not fall within the exemption notification. Similarly a coconut may be available in a vegetable market but because of that it does not become a “vegetable”. It is well-known that the kernel of the coconut is used as an ingredient in the culinary preparations for adding taste to the food but it is hardly used as a substantial article of food on the table. The concerned articles, namely, “fresh fruits” and “vegetables” being household articles of everyday use for the table these will have to be construed in their popular sense meaning the sense in which every householder will understand them. Viewed from this angle, the most apposite test would be the one adopted in the case of *His Majesty the King v. Planters Nut and Chocolate Company Limited*, [1951] CLR (Ex) 122, (which decision was approved by this Court in *Commissioner of Sales Tax v. Jaswant Singh Charan Singh*, [1967] 19 STC 469 (SC) ; [1967] 2 SCR 720). Would a householder when asked to bring home “fresh fruit” and some “vegetable” for the evening meal bring coconut? Obviously, the answer is in the negative.”

20. A Constitution Bench of the Supreme Court in **Sri Siddhi Vinayaka**

Coconut & Co. (supra), has held that “watery coconuts” and “dried coconuts” are two distinct commodities commercially speaking and observed as under: -

“We also accept the contention put forward on behalf of the State of Andhra Pradesh that “watery coconuts” and “dried coconuts” are two distinct commodities commercially speaking. Watery coconuts are put to a variety of uses, e.g., for cooking purposes, for religious and social functions, whereas dried coconuts are used mainly for extracting oil. This court has in a number of cases held that the same commodity at different stages could be treated and taxed as commercially different articles. In *A. Hajee Abdul Shukoor & Co. v. State of Madras*¹⁰, this court held that “hides and skins in the untanned condition are undoubtedly different as articles of merchandise than tanned hides and skins” and pointed out that “the fact that certain articles are mentioned under the same heading in a statute or the Constitution does not mean that they all constitute one commodity”. ...”

21. In the present case, the question is whether watery coconut is a fruit

¹⁰ [1964] 15 S.T.C. 719 (S.C.) : [1964] 8 S.C.R. 217

covered by Entry 54 of Schedule I of the Chhattisgarh Commercial Tax Act, 1994. The Supreme Court in **Popular Trading Co.'s** case (supra) has held that watery coconut is an oil seed and entry tax is payable as per the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 holding that watery coconut in due course becomes dry coconut or copra.

22. Likewise, in the matter of **Ganpatlal Lakhota v. State of Rajasthan**¹¹, the Supreme Court has held that watery coconut is a coconut for all practical purposes and would not fall outside the scope of the entry.
23. In **Popular Trading Co.'s** case (supra), it has been held that watery coconut is an oil seed within the meaning of Schedule II, Entry 5 of the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 and watery coconut in due course becomes dried coconut or copra and, therefore, it cannot be held that water coconuts are outside the scope of the entry. Paragraphs 4 and 5 of the report read as follows: -

“4. In this context, it is necessary for us to refer to the decision of this Court in **Sri Siddhi Vinayaka Coconut & Co. v. State of Andhra Pradesh** (supra), on which strong reliance has been placed by the High Court. In that case this Court was concerned with the entry as contained in the Andhra Pradesh General Sales Tax Act. The entry therein merely contained “coconuts” in the Third Schedule and “tender coconuts” in the Fourth Schedule which are useful only for drinking purposes which was exempt from tax. An explanation was added to the Third Schedule to state that the expression “coconuts” would mean fresh or dried coconuts, shelled or unshelled including copra, but excluding tender coconuts. Again by another amendment another explanation was added to state that the expression “coconuts” in the Schedule would mean dried coconuts, shelled or unshelled,

11 [1997] 104 STC 91

including copra but excluding tender coconuts. Thus this Court was concerned in that case with two sets of entries - one contained in the [Central Sales Tax Act](#), which is similar to the provisions with which we are concerned in the present case, and the other as stated in the Third and Fourth Schedules to the Andhra Pradesh General Sales Tax Act. In that context, this Court had to consider whether a “watery coconut” could be taxed within the permissible restrictions as also “dried coconut” that resulted from the drying of the same watery coconut. It was contended that under the State statute though “watery coconut” and “dried coconut” were treated separate there is a provision for refund when “watery coconut” had suffered tax became “dried coconut”. In that context that decision was rendered and we are concerned with different kind of entry for tax.

5. This Court in [Ganpat Lal Lakhotia v. State of Rajasthan \(supra\)](#) quoted with approval what was stated in *Sri Krishna Coconut Co. v. Commercial Tax Officer*, (1965) 16 STC 511 (AP), wherein it was stated as follows:

"In a tender coconut, the kernel is hardly formed or is only in the initial stages of formation. In a dried coconut the kernel has formed and fully developed and further the water inside the coconut has dried up leading to the drying of the kernel also. But a fully grown coconut with a well-developed kernel which contains water cannot be called either a tender or a dried coconut. This is the well-known variety of coconuts used for culinary purposes and on auspicious occasions and as part of the offerings in temple. I do not think it is correct or reasonable to describe this class of coconuts as either dried or tender."

It was noticed therein that a “watery coconut” in due course becomes “dried coconut” or “copra” and, therefore, it could not be stated that “watery coconuts” are outside the scope of the entry. If for purpose of the benefit arising under [Section 14](#) of the Central Sales Tax Act, which was the subject matter of consideration before this Court, it has taken the view that the ‘watery coconuts’ are not outside the scope of the said provision.”

24. In the present case, the petitioners have made an attempt to persuade this Court to hold that watery coconut is not to be taxed as oil seed specified in clause (vi) of Section 14 of the Central Sales Tax

Act, 1956, but is a fruit within the meaning of Schedule I, Entry 54 of the Chhattisgarh Commercial Tax Act, 1994. The legislature in Schedule I only included the fruits other than dry fruits including *pind khajur* and coconut. Coconut includes dry coconut as well as watery coconut as it has been held by the Supreme Court that watery coconut becomes dried coconut after some point of time. Therefore, the petitioners' contention that watery coconut is a separate class and distinct commodity from coconut in absence of any specific classification by the legislature, cannot be accepted. Thus, it has rightly been held as oil seed by the State authorities which is based upon the decisions of the Supreme Court in **Popular Trading Co.'s** case (supra) and **Ganpatlal Lakhota** (supra).

25. In the light of the discussion made herein-above, it is quite vivid that watery coconut is not a fruit but is an oil seed within the meaning of clause (vi) of Section 14 of the Central Sales Tax Act, 1956, taxable at 4% as specified in item No.(viii) therein. Therefore, the State authorities have acted absolutely within their jurisdiction in holding the coconut to be an oil seed and charging accordingly. I do not find any illegality or perversity in the said finding recorded by the taxing authorities. Both the writ petitions deserve to be and are accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge