IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.Nos. 9402, 9403, 9404, 9405 & 9406 of 2008
and
M.P.No.1 of 2008 (5 nos).

M/s.Cochin Plantations Ltd.,
Rep. by its Dierctor Mr.A.Jacob
Ooppoottil Buildings,
K.K.Road, Kottayam-686 001.
Kerala. .. Petitioner in all WPs

vs

1.The Commercial Tax Officer (DG),
Mettupalayam Road Circle,
Coimbatore-641 018.

2.The Appellate Assistant Commissioner (CT),
Coimbatore.

3.The State of Tamil Nadu,
Rep. by the Deputy Commissioner (CT),
Coimbatore.

4.The Sale Tax Appellate Tribunal,
(Additional Bench)
Rep. by the Secretary,
Dr.Balasundaram Road,
Coimbatore – 641 018. .. Respondents in all WPs

Prayer in WP.No.9402 of 2008: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records on the files of the 4th Respondent herein in STA.No.97/2000 dated 8th January 2008, quashing the proceedings and order of the 4th Respondent.

Prayer in WP.No.9403 of 2008: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the Order of the 4th Respondent herein in STA.No.94/2000 dated 8th January 2008, quashing the said Order of the 4th Respondent.

Prayer in WP.No.9404 of 2008: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the Order of the 4th Respondent herein in STA.No.95/2000 dated 8th January 2008, quashing the said Order of the 4th Respondent.

Prayer in WP.No.9405 of 2008: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the Order of the 4th Respondent herein in STA.No.96/2000 dated 8th January 2008, quashing the said Order of the 4th Respondent.

Prayer in WP.No.9406 of 2008: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the Order of the 4th Respondent herein in STA.No.114/2000 dated 8th January 2008, quashing the said Order of the 4th Respondent.

(In all WPs)

For Petitioner	:	Mr.Joseph Markos, Senior Counsel for Mr.Abraham Markos
For Respondents	:	Mr.Prashanth Kiran (for R1 to R3) Government Advocate
		R4 – Tribunal

COMMON ORDER

(Order of the Court was made by Dr. ANITA SUMANTH.,J)

At request of parties, W.P.No.9404 of 2008 is listed under a special list as it is connected to this batch of writ petitions but has been omitted to be listed today.

2. This common order disposes a challenge to an order of the Tamil Nadu Sales Tax Appellate Tribunal ('STAT/Tribunal') dated 08.01.2008 for the periods 1984-85 to 1988 – 89 (periods in question).

3. The petitioner has an Estate at Kerala where it grows

cardamom. The cardamom from that estate is brought to Coimbatore and sold there. For the period 1981-82, the same issue as arising in these writ petitions had arisen, relating to whether the turnover from sale of cardamom grown in the Kerala estate would be liable to tax in Tamil Nadu under the provision of the Tamil Nadu General Sales Tax Act, 1959 (Act).

4. The petitioner had filed a writ petition challenging the inclusion of the turnover from sale of cardamom in its assessments in Tamil Nadu. A declaration was sought to the effect that the phrase *'within the State'* in Section 2(r) of Act was ultra vires the Constitution of India. The writ petition stood transferred to the file of the Tamil Nadu Taxation Special Tribunal, Chennai.

5. By an order passed on 05.03.1999, the Tribunal held that full exemption was afforded to all agricultural products grown in the State of Tamil Nadu and hence denial of exemption to agricultural products grown outside the State, when sold in Tamil Nadu would amount to discrimination. Hence the phrase *'within the State'* in Section 2(r) of the Act offends Article 301 and 304 of the Constitution, was violative and ultra vires the Constitution and was hence liable to be struck down.

6. As a consequence of their conclusion, the assessment of the turnover from the sale of cardamom brought in from Kerala for sale in Coimbatore was held not to be sustainable. The order of the Special Tribunal dated 05.03.1999 has attained finality and consequence has been given to the same.

7. The identical issue has been raised by the assessing officer for the periods in question. All the assessment orders have been passed prior to the date of the order of the Special Tribunal and hence the assessing authority did not have the benefit of the same. In the orders of assessment, the assessing authority brings to tax the entirety of the turnover related to the sale of cardamom grown in Kerala and no other ground has been raised in support of the taxability.

8. As against the orders of assessment, appeals were filed before the first Appellate Authority, who disposed the same by way of an order passed on 11.10.1999. The Appellate Assistant Commissioner applies the ratio of the decision of the Special Tribunal dated 05.03.1999 and allows the appeal, setting aside the tax as well as the penalty imposed. The operative part of the judgment of the Tribunal as below finds place in the order of the AAC as well:-

> *"Full exemption given to the agricultural products from the State of Tamil Nadu whereas denial of such exemption to similar other agricultural products of other States, when sold in Tamil Nadu, certainly amounts to discrimination against the out-State agricultural products which is prohibited by Articles 301 and 304 of the Constitution. The words 'within the State' occuring in Section 2(r) of the Act certainly is offending the Articles of the Constitution and, therefore, we have no hesitation to hold that the said words 'within the State' is violative and ultra vires the constitution, deserves to be struck down and accordingly it is struck down. In view of the conclusion reached above, the levy of tax on the agricultural produce, namely, cardamom, the subject-matter of dispute, is not sustainable. As regards T.P.No.894/97, the order dt.30.11.1989 is quashed in as much as the revision of assessment made by the Assessing Officer with reference to a turnover allowed in appeal has become final. So, the*

revision by the Assessing Officer is beyond his powers.(115 STC 449)".

9. As against the aforesaid order of the AAC, the State has filed an appeal before the Tribunal. In the grounds of appeal which, incidentally, is styled as a cross-appeal, the assessing authority states that turnover from sale of cardamom is liable to be included, since the cardamom sold was 'cured' prior to such sale. At the outset, we may state that the filing of a cross appeal is itself misconceived as there is no appeal filed by the assessee to which a cross appeal will relate.

10. Be that as it may, and even if we were to hold the same to be a mis-statement, the appeal of the Department contains no effective ground in regard to the ineligibility of the petitioner to the exemption owing to the process of 'curing', except a bald assertion in that regard.

11. The Tribunal has allowed the appeal following the decision of the STAT for the year 1981 – 82 without noticing the position that, that order has been reversed by the Special Tribunal by its decision reported in 114 STC 449. For this one reason, the impugned orders of the Tribunal dated 08.01.2008 are liable to be set aside and we do so.

12. We now address the specific ground raised by learned Government Advocate. Relying on a decision in *Peria Karamalai Tea & Produce Co., Ltd v Tamil Nadu Taxation Special Tribunal and another* [138 STC 186], he would argue that the product in question was not agricultural produce at all and hence would be hit by Explanation 1 to Section 2(r), which states that *'agricultural or horticultural produce shall not include such produce as has been subjected to any physical, chemical*

or other process for being made fit for consumption, save mere cleaning, grading, sorting or drying'. In the present case, there is not an iota of information available on record to establish that the cardamom sold has been subject to any process that would attract the rigour of Explanation 1 to Section 2(r) of the Act.

13. In the case of *Peria Karamalai Tea & Produce Co., Ltd* (supra), the Court went into the import of the word 'drying' set out under Explanation (1) and held that the word 'dry' has to take its colour from other words with which it keeps company. They held that the process of mere cleaning, grading or sorting does not require any specialized or skillful process as that of 'curing' and in that case, there were concurrent findings of the fact to the effect that the activity of curing of agricultural produce of cardamom could not be considered as mere drying, as it involved such other processes which resulted in the preservation, aroma and flavour of the spice, also giving it a shine. Based on the discussion therein, the High Court confirmed the findings of fact that the cardamom sold had not been subjected to the process of 'curing'.

14. In the present case, the records do not indicate any material to support the Department's contention that the cardamom sold by this petitioner has been cured. There has been no inspection at any stage and learned Government Advocate would fairly accede to the position that this issue has not been examined by any of the authorities below. As noticed earlier, the order of assessment proceeds only on the basis that the cardamom was grown in Kerala and sold in Coimbatore.

15. In appeal before the AAC, the Commercial Taxes Department is represented by two Commercial Tax Officers of the Mettupalayam Road Assessment Circle, Coimbatore. The AAC records, after hearing them, that the departmental representatives had *'supported the stand taken by the assessing officer'.* It was open to them at that stage to produce materials in support of the view canvassed now that the cardamom had been cured prior to sale. However, that stand has not been taken by the Department and it is only before the Tribunal that the State takes the stand for the first time. Even there, the ground canvassed is as follows:-

> *"Reference to Deputy Commissioner (Legal), Chennai for information – regarding acceptance or filing of further appeal is still awaited. Meanwhile the time to file cross appeal may get time barred and to avoid this we may file cross appeal stating that the decision of Appellate Assistant Commissioner is not correct in the sense that cardamom without curing cannot be sold and after curing it becomes different from agricultural produce and as there is error on facts. Hence cross appeal filed in this case."*

16. There is no assertion to the effect that this petitioner has in fact, cured the cardamom. The language in which the ground is couched indicates only an academic approach to the issue. In the absence of any facutal particulars to indicate that this petitioner has, in fact, cured the cardamom, or subjected the cardamom to any process, that would attract the application of the Explanation, we are not inclined, at this juncture in time, to direct such verification to be undertaken, particularly since it has not been so undertaken conceived by any of the authorities below. In light of the above discussion, this argument of the State is rejected.

17. The impugned orders of the Tribunal are reversed and these writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [G.A.M., J]
21.10.2024

Index:Yes
Neutral Citation:Yes
ssm

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