COMMISSIONER OF SALES TAX, M.P. A

v.

POPULAR TRADING COMPANY, UJJAIN

APRIL 5, 2000

[S. RAJENDRA BABU AND S.N. PHUKAN, JJ.] B

M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976: Entry 5(viii) Schedule.

Entry Tax—AYs 1978-79 and 1979-80—"Watery coconut"—Taxability of—Held : Expression "Oil seeds, that is to say—(viii) Coconut (i.e. Copra excluding tender coconuts) (Cocos Nucifera)" covers "watery coconut" also—Hence, "watery coconut" is liable to be taxed. C

Words and Phrases :

"That is to say"—Meaning of—In the context of Entry 5(viii) of the Schedule to the M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976. D

"Watery coconut"—Meaning of.

E

Respondent-assessee was a dealer in coconuts and was assessed to entry tax for the Assessment Years 1978-79 and 1979-80 on "watery coconut" under Entry 5(viii) of the Schedule to the M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976. The assessee claimed in the appeal that 'copra' and 'coconut' were commercially two different commodities and 'watery coconut' was not liable to payment to entry tax. However, the appellate authority rejected this claim. The matter was carried in second appeal to the Tribunal unsuccessfully. F

The High Court, on appeal, held that "watery coconut" fell outside the scope of Entry 5(viii) and also stated that every seed or article which could yield oil was not an oil seed and adopted the test as to whether 'coconut' is 'copra'. Inasmuch as 'watery coconut' could not be classified as 'copra' High Court held "watery coconut" was not liable to be taxed under the said entry. Hence this appeal. G

Allowing the appeal, this Court H

A **HELD : 1. The expression 'that is to say' occurring in Entry 5(viii) to the Schedule to the M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 is descriptive, enumerative and exhaustive and circumscribes to a great extent the scope of the said entry. The said entry provides for 'Oil seeds, that is to say coconut', which again says, 'i.e. Copra and coconut including any other commodity'. An oil seed botanically means a seed, which is a flowering plant's unit of reproduction or germ capable of developing into another such plant. Seed, which can yield oil, is an oil seed. If a seed by reason of application of a scientific method produces oil is not necessarily understood to be an 'oil seed' in a common parlance. If a commodity possesses all the qualities of an oil seed it cannot be excluded from the ambit of the expression 'oil seed'. Oil is generally extracted from dry coconuts, but in some parts of India it is extracted even from copra recovered from fresh coconuts. Copra of 'watery coconut' before it dries up may not yield as much oil as dried copra. The oil, which it yields, may also contain some watery substance, which has to be eliminated for the purpose of recovering pure coconut oil. At the same time, it yields sufficient quantity of oil. Thus 'watery coconut' while yielding oil merely because it yields some watery substance does not cease to be an 'oil seed' and, therefore, it falls within the entry. [986-A-D]**

State of T.N. v. *Pyarelal Malhotra,* **(1976) 37 STC 311 and** *Ganpat Lal Lakhotia* v. *State of Rajasthan,* **[1997] 10 SCC 455, relied on.**

Sri Krishna Coconut Co. v. *CTO,* **(1965) 16 STC 511 AP, referred to.**

Sri Siddhi Vinayaka Coconut & Co. v. *State of A.P.,* **[1974] 4 SCC 835, held inapplicable.**

F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9825-9826 of 1996.

From the Judgment and Order dated 21.11.95 of the Madhya Pradesh High Court in M.C.C. Nos. 301 and 302 of 1986.

G

S.K. Agnihotri and Ms. Madhur Dadlani for the Appellant.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. For the assessment periods 1978-79 and H 1979-80 the Sales Tax Officer assessed the respondent under the Madhya

Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976, that is, an Act to levy a tax on the entry of goods into a local area in Madhya Pradesh for consumption, use or sale therein [hereinafter referred to as 'the Act']. The respondent is a dealer in coconuts. Apart from oil he was assessed to entry tax on 'watery coconuts' under the Act. The assessee claimed in the appeal that 'copra' and 'coconut' are commercially two different commodities and 'watery coconut' is not liable to payment to entry tax. However, the appellate authority rejected this claim. The matter was carried in second appeal to the Tribunal unsuccessfully. Thereafter, the respondent questioned the correctness of the orders of the Tribunal and the other authorities before the High Court. The High Court considered the Entry at item No. 5 which reads as "Oilseeds, that is to say - (viii) Coconut (i.e.Copra excluding tender coconuts)(Cocos Nucifera)". The High Court took the view that 'tender coconut' is not subject to tax and falls outside the scope of entry referred to above and does not specifically contain 'watery coconut'; that the word 'copra' clarifies that 'watery coconut' is not shown to be a taxable item. The High Court relied upon a decision of this Court in *Sri Siddhi Vinayaka Coconut & Co. & Ors.* v. *State of Andhra Pradesh & Ors.*, [1974] 4 SCC 835, to hold that 'watery coconut' and 'dry coconuts' are two distinct commodities. The High Court also stated that every seed or article which can yield oil is not an oil seed and adopted the test as to whether 'coconut' is 'copra'. Inasmuch as 'watery coconut' cannot be classified as 'copra', the High Court took the view that it is not sufficient to show that 'watery coconut' is liable to be taxed but the Department was liable to show that 'watery coconut' was in reality 'copra' and, therefore, liable to tax. The Tribunal was not justified in holding that 'watery coconut' was not exempt from payment of entry tax in terms of the aforesaid entry.

The learned counsel for the appellant very strenuously contended that the High Court had overlooked the essence of the matter, namely, what is brought to tax under Entry 5 is an 'oil seed' and 'coconut' of all descriptions except those which are not covered therein. The learned counsel submitted that 'watery coconut' undergoes a natural process of ripening to a coconut and thereafter it ceases to be a 'tender coconut' and so includes both dehusked coconut or coconut without husk and while dehusked coconut is known as 'copra', coconut with husk is known as 'watery coconut'. She, therefore, submitted that 'watery coconut' falls within the scope of Entry 5 to attract tax.

The view taken by the High Court in this case has lost sight of the

A expression in the opening clause of the entry 'Oilseeds, that is to say'. The phrase 'that is to say' has been the subject matter of interpretation by this Court in *State of Tamil Nadu* v. *Pyarelal Malhotra*, (1976) 37 STC 311. The expression 'that is to say' is descriptive, enumerative and exhaustive and circumscribes to a great extent the scope of the entry. The entry provides for
B 'Oil seeds, that is to say coconut', which again says, 'i.e. Copra and coconut including any other commodity.' An oil seed botanically means a seed which is a flowering plants' unit of reproduction or germ capable of developing into another such plant. Seed which can yield oil is an oil seed. If a seed by reason of application of a scientific method produces oil is not necessarily understood to be an 'oil seed' in a common parlance. If a commodity possesses all the
C qualities of an oil seed it cannot be excluded from the ambit of the expression 'oil seed'. Oil is generally extracted from dry coconuts, but in some parts of India it is extracted even from copra recovered from fresh coconuts. Copra of watery coconut before it dries up may not yield as much oil as dried copra. The oil which it yields may also contain some watery substance which have
D to be eliminated for the purpose of recovering pure coconut oil. At the same time, it yields sufficient quantity of oil. Thus 'watery coconut' while yielding oil merely because it yields some watery substance does not cease to be an 'oil seed' and, therefore, it falls within the entry.

In this context, it is necessary for us to refer to the decision of this Court
E in *Sri Siddhi Vinayaka Coconut & Co. & Ors.* v. *State of Andhra Pradesh & Ors.* (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
F useful only for drying 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, including copra but excluding tender
G 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 Schedule to the Andhra Pradesh General Sales Tax Act. In that context, this Court had to consider whether a 'watery coconut' could
H 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 separately 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.

This Court in *Ganpat Lal Lakhotia* v. *State of Rajasthan & Ors.*, [1997] 10 SCC 455, quoted with approval what was stated in *Sri Krishna Coconut Co.* v. *CTO*, (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.

There is no reason to state that the 'watery coconuts' in the present cases fall outside the scope of the Act. In the light of this analysis, we are of the view that the High Court was not justified in holding that 'watery coconut' is not taxable under the relevant entry of the Act. In the result, we set aside the order made by the High Court and restore that of the Tribunal. However, in the circumstances of the case, there shall be no orders as to costs.

The appeals are allowed accordingly.

V.S.S. Appeals allowed.