Commissioner of Sales Tax, Madhya Pradesh

Vs

Jaswant Singh Charan Singh

Civil Appeal No. 2011 of 1966

(G. K. Mitter, J. M. Shelat JJ)

23.02.1967

JUDGMENT

SHELAT, J. –

The appellant has been carrying on business and is a dealer in firewood and charcoal. For the period from 29th March, 1962 to 29th April, 1962, he was assessed to sales tax under section 18(6) of the Madhya Pradesh General Sales Tax Act, 1958 as he did not have any registration certificate in respect of this period. The Additional Sales Tax Officer, Ujjain, and the Additional Appellate Assistant Commissioner, Indore, both held that charcoal in which the appellant was dealing was not covered by Entry I of Part III of Schedule II to the Act, but that it fell under the residuary Entry I Part VI of that Schedule; and consequently was liable to be assessed at the rate of 4 per cent. of the price of charcoal. In a further appeal before the Board of Revenue, the Board, relying on the dictionary meaning of the word 'coal' as given in Blackies' Concise Dictionary, held that charcoal would be included in the term 'coal', and, therefore, Entry I in Part III of Schedule II would apply and the tax chargeable would be at 2 per cent. only. At the instance of the Commissioner of Sales Tax, the Board referred the following question to the High Court :-

> "Whether charcoal is covered under Entry I of Part III of Schedule II to the M.P. General Sales Tax Act, 1958, and is taxable at the rate of 2 per cent. or will be taxable at the rate of 4 per cent. under Entry I of Part VI of Schedule II to the M.P. General Sales Tax Act, 1958 ?"

The High Court held that while construing entries in a statute like the Sales Tax Acts, the Court should prefer the popular meaning of the terms used in such entries and not their dictionary meanings and that so construed charcoal would be included in the word 'coal'. Consequently, it answered the question in favour of the respondent. According to the High Court, charcoal would be covered by Entry I of Part III of Schedule II and was taxable at 2 per cent. Hence this appeal by special leave.

Entry I of Part III of Schedule II reads as follows :-

> "1. Coal, including coke in all its forms..... 2 per cent".

Entry I of Part VI of the said Schedule reads as follows :-

> "1. All other goods not included in Schedule I or any other part of this Schedule.. 4 per cent".

We may also reproduce Entry 8 of Part III of Schedule II which is :-

> "8. Firewood .. .. 2 per cent".

The meaning given to the word 'Coal' in Blackies' Concise Dictionary, New Edition, page 134 relied on by the Board reads as follows :-

> "Coal : Kol : A piece of wood or other combustible substance burning or charred; charcoal; a cinder; now, usually a solid black substance found in the earth, largely employed as fuel, and formed from vast masses of vegetable matter deposited through the luxurious growth of plants in former epochs of the earth's history".

The Shorter Oxford English Dictionary at pages 330 and 331 gives the meaning of coal as follows :-

> "1. A piece of carbon glowing without a flame. 2. A piece of burnt woods, etc. that is still capable of combustion without flame, cinder, ashes, 3. Charcoal. 4. A mineral, solid hard, opaque black or blackish, found in seams in the earth, and largely used as fuel; it consists of carbonized vegetable matter".

At page 293, the said Dictionary gives the meaning of charcoal as follows :-

> "The suggestion that Char=Chare v. or sb. as if turn-coal, i.e., wood turned into coal, lacks support. 1. The black porous residue, consisting (when pure) wholly of carbon, obtained from partly burnt wood, bones, etc. Hence specified as wood, vegetable, animal etc."

The Webster's New International Dictionary gives the following meaning of charcoal at page 452 :-

> "(Char to burn, reduce to coal; Coal);
>
> 1. A dark coloured or black porous form of carbon prepared from vegetable or animal substance, as that made by charging wood in a kiln, retort, etc., from which air is excluded".

According to these Dictionaries 'coal' would appear to include 'charcoal'. The contention of the respondent was that charcoal is one of the species of coal, and, therefore, would be covered by Entry I of Part III, and, therefore, the answer given by the High Court is correct. Counsel for the State, however, raised three contentions; (1) that coal and charcoal are different products, one being a mineral product and the other prepared from wood and other articles by human agency, and, therefore, the term 'coal' would not cover charcoal; (2) that while construing such entries, the dictionary meaning should not be preferred to the popular meaning or the meaning in the commercial sense; and (3) that the Legislative policy in reference to the term 'coal' shows that it is not used by the Legislature in India so as to include charcoal.

Now, there can be no dispute that while coal is technically understood as a mineral product, charcoal is manufactured by human agency from products like wood and other things. But it is now well-settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense. In Ramavatar Budhaiprasad, etc. v. Assistant Sales Tax Officer, Akola, ([1962] 1 S.C.R. 279) the petitioners who

were dealers in betel leaves were assessed to sales tax under the C.P. and Berar Sales Tax Act, 1947. They contended that under section 6 read with the Second Schedule of the Act betel leaves were not taxable. Section 6 provided that articles mentioned in that Schedule were exempt from sales tax and articles not mentioned were taxable. There were two items in the Schedule, namely, Item 6, "vegetables", and item 36, "betel leaves", but subsequently item No. 36 was deleted by an amendment of the Act. This Court held that the use of two distinct and different items i.e., 'vegetables' and 'betel leaves' and the subsequent removal of betel leaves from the Schedule were indicative of the Legislature's intention of not exempting betel leaves from taxation. The Court laid down that the word 'vegetable' must be interpreted not in a technical sense but in its popular sense as understood in common language i.e., denoting a class of vegetables which are grown in a kitchen garden or on a farm and are used for the table. The same principle was also laid down in His Majesty the King v. Planters Nut and Chocolate Company Limited. ([1951] C.L.R. 122) The question there was whether salted peanuts and cashew nuts fell within the category of either fruits or vegetables. A considerable expert opinion was led in that case, but the Court ultimately found that the Parliament in enacting the Excise Tax Act, 1927, Part XIII and Schedule III was not using words which were applied to any particular science or art and, therefore, the words used are to be construed as they are understood in common language. It also held that what constitutes a 'fruit' or 'vegetable' within the meaning of the Excise Tax Act is what would ordinarily in matters of commerce in Canada be included therein and not what would be a botanist's conception of the subject matter. If a statute uses the ordinary words in every days use, such words should be construed according to their popular sense. At page 128 of the Report Cameron, J., observed, "The object of the Excise Tax Act is to raise revenue, and for this purpose to class substance according to the general usage and known denominations of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a 'fruit' or 'vegetable' which must govern the interpretation to be placed on the words, but rather what would ordinarily in matters of commerce in Canada be included therein. Botanically, oranges and lemons are berries, but otherwise no one would consider them as such". This rule was stated as early as 1831 by Lord Tenterdan in Attorney-General v. Winstanley ([1831] 2 D & Cl. 302). Similarly, in Grenfell v. Inland Revenue Commissioner ([1876] I Ex-D. 242, 248), Pollock, B., observed, "that if a statute contains language which is capable of being construed in a popular sense such statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words 'popular sense', that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". But, "if a word in its popular sense and read in an ordinary way is capable of two constructions, it is wise to adopt such a construction as is based on the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act and not to give any unnecessary powers. In other words, the construction of the words is to be adopted to the fitness of the matter of the statute". On the other hand, as Fry, J., said in Holt & Co. v. Collyer ([1881] 16 Ch. D. 718, 720), "If it is a word which is of a technical or scientific character then it must be construed according to that which is its primary meaning, namely, its technical or scientific meaning".

Our attention was drawn to the decision in K. V. Varkey v. Agricultural Income-tax and Rural Sales Tax Officer, Peelmedu and others ([1954] 5 S.T.C. 384), where green leaves plucked from tea bushes were held to fall under the word 'tea'. But this decision turned on the definitions of turnover in section 3 of the Travancore General Sales Tax Act, XVIII of 1124 which while including sales of agricultural or horticultural produce included 'tea, coffee, rubber' etc., in the turnover. The Court held there that 'tea' was not used in the statute in the sense in which it is used in commerce but in the sense of a product of plant life, and, therefore, green leaves plucked from tea plants were covered by

the term 'tea'.

The result emerging from these decisions is that while construing the word 'coal' in Entry I of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute is 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 a 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'. It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal; otherwise, both of them would in ordinary parlance as also in their commercial sense be spoken as coal.

There is another aspect also from which Entry I of Part III may be considered. Section 14 of the Central Sales Tax Act, 1956 declares certain goods as goods of special importance in inter-State trade or commerce. One of these is 'coal including coke in all its forms'. Section 15 of that Act provides that the State Legislatures in their respective sales tax laws can impose only 2 per cent. tax on these goods. That is why in Entry I of Part III 'coal' is stated to include 'coke in all its forms', and coal including coke in all forms is charged at 2 per cent. tax. The State Legislature, however, knew or must be presumed to know that firewood is also used by the people as fuel, but would not fall within that Entry, and, therefore, provided 2 per cent. tax on it by a separate entry, namely, Entry 8 in Part III. Having taxed coal and firewood at 2 per cent., it does not appear to be possible that the Legislature deliberately left out charcoal from the connotation of the word 'coal' and left if to be charged at 4 per cent. under the residuary Entry I in Part VI. The object of the Legislature clearly was to tax coal and firewood as articles used as fuel and did not make a separate entry in regard to charcoal as it must be aware that coal is understood in ordinary and commercial sense would include charcoal. Had that not been so, instead of leaving it to be dealt with under the residuary item, it would have enacted a separate entry just as it did in the case of firewood which it knew would not in its ordinary meaning fall under the term 'coal'. In this view, the contention of Counsel for the State must be rejected.

Counsel then relied upon section 5 of the Colliery Control Order, 1945, in order to show that the Legislature there had dealt with coal in its strict and technical meaning. He also relied upon certain other statutory provisions with a view to show that the Legislature has all along been using the word 'coal' as a mineral product only. The Colliery Control Order deals with collieries and obviously, therefore, the term 'coal' there is used as mineral product. It is a well-settled principle that in construing a word in an Act caution is necessary in adopting a meaning ascribed to that word in other statutes. As Lord Loreburn stated in Macbeth v. Chislett ([1910] A.C. 220, 224), "it would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone'. The strict sense in which such a word is to be found in another statute may mean the etymological or scientific sense and would not in the context of another statute be applicable. From the Colliery Control Order, 1945 or the other provisions to which our attention was drawn, it would neither be possible nor safe to adopt the meaning of the word 'coal' given in those provisions for the purposes of the Act under construction. Nor can we infer that there is a Legislative policy consistently followed by the Legislature merely because the word 'coal' has been used as meaning a mineral product in the context of these statues. It would not, therefore, be possible to discard the meaning of the word 'coal' in this statute as understood in its commercial or popular sense and to adopt its connotation from other statutes passed for different

purposes or in context of different objects.

We agree with the meaning of the word 'coal' given by the High Court and hold that charcoal would be taxable at the rate of 2 per cent. only.

The appeal is consequently dismissed with costs.

Appeal dismissed.

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