

The Deputy Commissioner of Agricultural Income-Tax

Vs

Messrs. Palampadam Plantations Ltd. Kottayam

Civil Appeal No. 1058 of 1967

(J.C. Shah, A.N. Grover, V.Ramaswami - I JJ)

12.02.1969

JUDGMENT

GROVER, J. -

1. This is an appeal by special level from a judgment of the Kerala High Court dismissing in limine a revision petition directed against the order of the Sales Tax Appellate Tribunal, dated April 15, 1966, by which it was held that the respondent company was not a "dealer" within the meaning of Section 2 (viii) of the Kerala General Sales Tax Act, 1963, (Act 15 of 1963), hereinafter called the "Act".

2. The respondent sold trees of spontaneous growth in its estate for Rs. 50,000/- during the assessment year 1963-64. The assessing authority levied sales tax by treating the aforesaid amount as taxable turnover under the Act. In appeal the Appellate Assistant Commissioner confirmed that order. Before the Appellate Tribunal it was common ground that the trees sold were of spontaneous growth. The Tribunal did not accede to the contention of the State representative that under the contract, by the process of uprooting the trees, the respondent produced timber and would be covered by the definition of a "dealer" contained in Section 2(viii) of the Act. It was held that uprooting of the trees was not being done by the respondent and no process had been employed by which it could be said that timber had been produced by it. The appellant herein filed a petition before the High Court raising the following questions of law :

"(1) Whether on the facts and in the circumstances of this case, a person owning and maintaining private forest and selling trees of spontaneous growth therein, is a "dealer" within the meaning of Section 2(viii) of the Kerala General Sales Tax, 1963 ?

(2) Whether, such a person is liable to the levy of sales-tax in respect of sales of his timber, under the said Act ?"

As mentioned before the High Court rejected the petition for revision at the preliminary hearing.

3. The sole question is whether on the findings given by the Appellate Tribunal the respondent can be regarded as a "dealer" within the definition given in Section 2(viii). According to that definition "dealer" means any person who carried on the business of buying, selling, supplying or distributing goods directly or otherwise whether for cash or for deferred payment or for commission, remuneration or other value consideration and includes ..... (e) a person who sells goods produced by him by manufacture, agriculture, horticulture or otherwise.

4. It has been contended before us by learned counsel for the appellant that the Appellate Tribunal erred in assuming that any agricultural, horticultural or other process was involved in producing the timber sold. The basic question it is said was whether maintenance of a private forest with a view to producing and selling valuable timber with the usual attributes of business present in the said activity, namely, periodicity, continuity and profit motive would amount to such process. The other question was whether the said activity i.e., forestry would not come within the scope of "agriculture, horticulture or otherwise" particularly when the respondent owns substantial area of forest land and timber from the trees of spontaneous growth is sold year after year with the object of earning profit.

5. Now in order to fall within the definition of "dealer" a person must sell goods produced by him by manufacture, agriculture, horticulture or otherwise. Such trees which have grown spontaneously and without any plantation by that person cannot possibly be regarded as having been produced by him by agriculture or horticulture. The word "otherwise" also cannot over trees of spontaneous growth since the element of production must be present. The context in which the word "produced" appear in the definition can only mean "to bring forth, bring into being or existence - to bring (a thing) into existence from its raw materials or elements" : (See the meaning of the word "produce" in the Shorter Oxford English Dictionary). According to Webster's International English Dictionary the verb "produce" means to bring forward, beget etc. The juxtaposition of the word "manufacture" with "agriculture" and "horticulture" is significant and cannot be lost sight of. The intention in employing the word "produced" obviously was to introduce an element of volition and effect involving the employment of some process for bring into existence the goods. The respondent in the present case has not been found to have done anything towards the production of the trees and even the cutting has been done by the contractor. The respondent therefore cannot possibly be regarded as a person who sells goods produced by him by agriculture, horticulture or otherwise.

6. On the above view of the matter the appeal fails and is dismissed. As there is no appearance on behalf of the respondent there will be no order as to costs in this court.

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