

M/S. Mukesh Kumar Aggarwal & Co.

Vs

State of Madhya Pradesh and Others

Civil Appeal Nos. 4026-27 of 1987

(S. Natarajan, M. N. Vankatachaliah JJ)

18.12.1987

JUDGMENT

VENKATACHALIAH, J. -

1. In these petitions under Article 136 of the Constitution of India, petitioners seek special leave to appeal from the judgment and order dated, September 10, 1986 of the Madhya Pradesh High Court in Misc. Petition 2919 of 1985 and Misc. Petition No. 413 of 1985 respectively.

2. The appeals raise a short and interesting question whether stacks of 'eucalyptus wood' sold by the forest department after separating the "ballies" and "poles" constitute and answer the description of 'Timber' under entry 32-A of Part II of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958 (the 'Act'). The High Court, rejecting the appellant's contention that what was sold, being left-overs after the extraction of "poles" and "ballies" of Eucalyptus (Nilgiri) Trees, was merely 'firewood' within the meaning of and attracting entry 12 of Part V of Schedule II of the Act, held that the goods were 'Timber' under the said entry 32-A. It was, accordingly, held that appellants were liable to pay sales tax at the rate of 16 per cent ad-valorem.

3. Special leave is granted in both the cases. The appeals are taken up for final hearing, heard and disposed of by this common judgment. We have heard Shri G. L. Sanghi, Senior Counsel and Shri A. K. Sanghi for the appellants and Shri T. C. Sharma for the respondents.

4. Though, the notifications inviting tenders and certain other documents appear to describe the goods variously as "eucalyptus firewood stacks", "euclyptus wood stacks", 'Nilgiri fuel wood' etc., the nomenclature is not determinative or conclusive of the nature of the "goods" which will have to be determined by the application of certain well settled principles, guiding the matter.

5. Three entries as they then stood in the Schedule to the 'Act' were pointed out by learned counsel as the possible alternatives :

SCHEDULE II Part II Entry 32-A : Timber 16 per cent PART V Entry 12 :
Firewood and charcoal 3 per cent PART VI Entry 1 : All other goods not
included in Schedule I or any other part of the Schedule 10 per cent##

Appellant's contention urged before the High Court - and reiterated before us - was that what was sold were the left-overs and remnants of eucalyptus trees after the extraction of the substantial timber in the form of "poles" and "ballies" and that even on the basis of what the forest department itself described the goods to be while putting the 'goods' to tender, the goods were 'firewood heaps'.

It was urged that having regard to the well known concept of what constitutes 'Timber' the wood stacks sold could, by no stretch of imagination, be held to answer the description of 'Timber'. The wood sold, was it was said "firewood" or at all events, plain 'wood' not amounting to 'Timber' or 'firewood' in which case the goods fall within the residuary entry. This contention did not find favour with the High Court.

6. In a taxing statute words which are not technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance i.e. "that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it". Such words must be understood in their 'popular sense'. The particular terms used by the legislature in the denomination of articles are to be understood according to the common, commercial understanding of those terms used and not in their scientific and technical sense "for the legislature does not suppose our merchants to be naturalists or geologists or botanists".

7. The expression 'Timber', it seems to us, has an accepted and well-recognised legal connotation and is nomen juris. It has also a popular meaning as a word of everyday use. In this case, the two meanings of 'Timber' the legal and the popular, coalesce and are broadly subsumed in each other.

8. In *Honeywood v. Honeywood* ((1874) LR 18 Eq. 306, 309), Sir George Jessel referred to what distinguishes and is "Timber" :

The question of what timber is depends, first on general law, that is, the law of England; and secondly, on the special custom of a locality. By the general rule of England, oak, ash and elm are timber, provided they are of the age of 20 years and upwards, provided also they are not so old as not to have a reasonable quantity of usable wood in them, sufficient To make a good post. Timber, that is, the kind of tree which may be called timber, may be varied by local custom. There is what is called the custom of the country, that is, of a particular country or division of a country, and it varies in two ways. First of all, you may have trees called timber by the custom of the country, beech in some counties, hornbeam in others, and even whitethorn and blackthorn, and many other trees, are considered timber in peculiar localities - in addition to the ordinary timber trees. Then again, in certain localities, arising probably from the nature of the soil, the trees of even 20 years old are not necessarily timber, but may go to 24 years, or even to a later period, I suppose, if necessary; and in other places the test of when a tree becomes timber is not its age but its girth.

9. In *Shantabi v. State of Bombay* (1959 SCR 265 : AIR 1958 SC 532), this Court, referring to the distinctions between 'standing timber' and 'tree' referred to the following lexicographic meaning of 'timber' :

(30) Timber is well enough known to be - "wood suitable for building houses, bridges, ships etc., whether on the tree or cut and seasoned". (Webster's Collegiate Dictionary).

It was, accordingly, held :

Therefore, "standing timber" must be tree that is in a state fit for these purposes and, further a tree that is meant to be to be converted into timber so shortly that it can

already be looked upon as timber for all practical purposes even though it is still standing.

10. Legal Glossary, (published by the Ministry of Company Affairs Law and Justice) gives this meaning of "Timber" :

wood meant for building or such like use.

11. In the Chambers 20th Century Dictionary, the meaning of the word 'Timber' is this :

wood suitable for building or carpentry, whether growing or cut : standing trees of oak, ash, elm, or (locally by custom) other kinds etc.

In Words and Phrases by John B. Saunders (Vol. 5) 'Timber is said to be :

Trees less than six inches in diameter have been said not to be timber.

12. In its popular sense, 'timber' is understood to be 'Imarathi Lakdi.' In a popular sense 'Timber' has certain association of ideas : as to its size, stability, utility, durability, the unit or measure of quantity and of valuation etc. The question is whether by the standards of these popular connotations, the 'wood stacks' or 'wood heaps' sold to, and purchased by, the appellants can be held to answer the popular notions of "Timber". When 'standing timber' is sold as uncut tree different considerations may arise.

13. The nature of the "wood" sold is described in the letter, dated, May 30, 1985, addressed by the Divisional Forest Officer. The subject matter of the sale has been referred to as 'Nilgiri fuel wood'. The wood was offered for sale in stacks of the size of 1 x 1.25 x 2 mts. with each piece of a length of 1.25 meters and a girth, at the thinner end, of not less than 10 cms. They were sold not by volume or by the number of pieces. The wood was offered with a particular kind of user in mind, viz., as a source of industrial raw material for 'pulp' in the manufacture of synthetic fibre. As pointed out by the High Court, in the returns filed by the respondents, it was mentioned that eucalyptus plantation was a recent development and promoted with the specific purpose for use specifically in the preparation of pulp and sold throughout the State with this specific object.

14. Respondents in their endeavor to controvert appellant's contention that the wood sold was "firewood" went on to say that while stacks of firewood of similar sizes fetch prices between Rs. 20 to Rs. 80 each, the stacks of the eucalyptus wood on the other hand, fetch Rs. 300 to Rs. 600 per stack and that, therefore, nobody uses eucalyptus as "firewood". The High Court, felt persuaded to the view that the 'wood' sold did not admit of being described as "firewood". It reasoned :

Firewood in common commercial parlance and as understood by the trade as well as by the consuming public, is not just any wood that can be used as logs of fuel. Every kind of wood is potential firewood, for you can start a fire with any wood. But this is not the test. Firewood is wood of a kind which has attained notoriety as fuel. Nobody who sells firewood debarks the wood before sale. Nobody who buys firewood requires them to be shaved and debarked. Purchasers may desire the wood to be cut to size. But that is all. There may be eccentric sellers and eccentric buyers who may indulge their fancies in specialities in firewood. But that, again, is not the test. Where the wood is not, in the normally accepted commercial practice, firewood, and more especially, where the wood is sold and purchased subject to specifications which

conduce the wood to particular purposes other than fuel, which is the case in the present two revisions, the goods sold cannot be regarded as firewood.

While something, perhaps, could be argued in support of this reasoning, what however, emerges is that the finding that the goods was 'Timber' appears to have been reached as a necessary consequence and logical corollary of the goods not being 'firewood' : If the wood is not 'firewood', it need not necessarily and for that reason alone be 'Timber'. All wood is not timber as, indeed, all wood is not 'firewood' either though perhaps it may not be incorrect to say that both 'firewood' and 'Timber' and 'wood in its generic sense.

15. The High Court further reasoned :

It has also been mentioned that timber is obtained by cutting standing trees. It may be hard wood timber or soft wood timber. Eucalyptus trees are covered by soft wood timber

The petitioners offered to purchase the goods which could be used for manufacture of woodware, furniture, etc. as well as manufacture of pulp. The petitioners deal in timber

Here again, pushed to its logical conclusions, the reasoning incurs the criticism of proceedings to determine the nature of the 'goods' by the test of the use to which they are capable of being put. The 'user test' is logical; but is, again, inconclusive. The particular use to which an article can be applied in the hands of a special consumer is not determinative of the nature of the goods. Even as the description of the goods by the authorities of the forest department who called them varyingly as 'eucalyptus fuelwood' 'eucalyptus wood heap' etc. is not determinative, the fact that the purchasers were dealers in timber is also not conclusive.

16. The High Court also observed :

The length of the pieces is not relevant criteria to determine whether the wood is timber or not. The goods offered for sale were eucalyptus wood stacks ...

Length is, no doubt a relevant consideration, but it is a relative concept and associated with the idea of utility. A piece of rope, it is said, is itself a rope, provided it serves the purpose of one.

17. The question is not really whether "Eucalyptus (Nilgiri) tree is or is not a 'Timber' tree. By every reckoning it is. Eucalyptus is a large, rapid growing, evergreen tree of the myrtle family, originally a native of Australia, Tasmania and Malaysia. There are a large number of its species. The ideal species under ideal conditions, it would appear, reaches a height of 370 ft. with a girth of nearly 25 ft. Apart from its utility as a source of gum and medicinal oils, the slow-growing species are especially known for the quality of its timber marked for strength, size and durability (See : Encyclopaedia Britannica, 1968, Vol. 8, pages 806, 807; Encyclopaedia American, Vol. 10, pages 648, 649). But the question is whether the subsidiary parts of the tree sold in heaps after the 'ballies' and 'poles' are separated, can be called 'Imarathi Lakdi' or 'Timber'. We think, it would be somewhat of a strain on the popular meaning of the expression 'Timber' with the sense size and utility implicit in the idea, to call these wood heaps 'Timber', meant or fit for building purposes. Persons conversant with the subject matter will not call these wood heaps 'Timber' whatever else the goods might, otherwise, be. It would appear that at one stage the forest department itself opined that 'goods' were not timber; but only "firewood". We must, however, add that no tests of general validity applicable to or governing all cases can at all be laid down. The point to note and emphasise is that all parts or

portions of even a timber tree need not necessarily be 'Timber'. Some parts are timber, some parts merely "firewood" and yet others merely 'wood'. Having regard to the nature and description of the wood in the present case, we think, the 'wood heaps' are not susceptible to be or admit of being called 'Timber' with all the concomitants and associations of that idea. Perhaps, different considerations might apply if, say, the pieces of eucalyptus wood are of a longer length or of a higher girth. Differences of degree can bring about differences of kind.

18. What emerges therefore, is that the goods in question are not 'Timber' within the meaning and for purposes of entry 32-A of the Act.

19. In regard to the question as to what other description the goods answer and which other entry they fall under, learned counsel on both sides submitted that, if we hold that entry 32-A is not the appropriate one, the matter be remitted to the High Court for a fresh consideration of the matter in the light of such other of further material the parties may place before the High Court. We accept this submission.

20. In the result, these appeals are allowed in part and the finding of the High Court that the goods in question fall within and attract entry 32-A of Part II of Schedule II of the 'Act' is set aside and the matter is remitted to the High Court for an appropriate decision as to which other entry the goods in question attract. The appeals are disposed of accordingly.

21. We might advert to yet another submission of Sri Sanghi. He submitted that consistent with the finding that the 'goods' do not attract tax at 16 per cent under the said entry 32-A respondents cannot retain the tax already collected at 16 per cent. Learned counsel submitted that even if the goods are said to fall under the residuary entry, the rate of tax would only be 10 per cent and that respondents, accordingly, should be directed to refund to the appellants sums equivalent to 6 per cent of the tax, wherever tax at 16 per cent has been collected, without waiting for a decision on remand as indeed, there would be no prospect of the goods attracting tax at a rate higher than 10 per cent - now that entry 32-A is held inapplicable. This, in our opinion is a reasonable request and requires to be accepted. The concerned respondents are directed to refund to the appellants' sums equivalent to 6 per cent wherever the taxes re already recovered at 16 per cent.

22. In the circumstances, there will be no order as to costs.

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