M/s. Mahalakshmi Oil Mills

Vs

State of Andhra Pradesh

Civil Appeals Nos. 259 to 261 (Nt) of 1977

M/s. Mahalakshmi Traders

Vs

Commercial Tax Officer

Writ Petition No. 292 of 1979

Sri Ramalingeswara Oil Mill

Vs

Commercial Tax Officer

Writ Petition No. 301 of 1979

M/s. Jaya Krishna Oil Mills

Vs

State of A. P. and Others

Civil Appeal No. 2106 of 1987

(Sabyasachi Mukharji S. Ranganathan JJ )

14.09.1988

Judgment

RANGANATHAN, J. –

1. A common question is involved in all these matters which are, therefore, being disposed of by this common judgment. The question is whether tobacco seed oil and tobacco seed cake are entitled to exemption under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as 'the Act'). The question arises in the following circumstances.

2. Section 8 of the Act confers an exemption from sales tax in respect of certain goods. It provides that :

> Subject to such restrictions and conditions as may be prescribed including conditions as to licences and licence fees, a dealer who deals in the goods specified in the Fourth

> Schedule shall be exempt from tax under this Act in respect of such goods.
>
> Entry 7 in the Fourth Schedule was 'tobacco and all its products'.

3. The Andhra Pradesh High Court in Amara Purushotham Mamidi Obaiah & Co. v. State of A. P., was called upon to consider whether tobacco seed, tobacco seed oil and tobacco seed cake were exempt from sales tax under the above provision. The Bench held that tobacco seed could be said to be tobacco only so long as they remain attached to the plant. They, however, ceased to be tobacco the moment they are removed from the plant. Thereafter, they may be considered to be a product of tobacco. But they constitute a separate and a distinct class of goods with independent properties and potentialities not the same as those of parent plant. Products manufactured out of tobacco seed could not be said to be products of tobacco. The Court, in this context, referred to the analogy cotton seeds, which have been considered to be distinct from cotton. The above Bench decision was rendered in spite of the wide words of the exemption, which covered not only tobacco in its comprehensive sense but also all products of tobacco.

4. The Act was amended by Amendment Act 9 of 1970. There was a slight amendment, which is not material for our present purpose, in Section 8 which substituted the words "licences and licence fees" in place of words "licence fees" alone which had been mentioned in the section previously. Tobacco continued to be the item in entry 7 of the Fourth Schedule but this entry now referred only to "tobacco". The words "and all its products", which had been used earlier, were omitted. An explanation was added to the Fourth Schedule to the following effect :

> Explanation - Expressions in items 5, 6 and 7 have the same meanings assigned to them in the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Central Act 58 of 1957).

5. The new explanation to the Fourth Schedule makes it necessary for us to consider the provisions of Central Act 58 of 1957. This is an Act which provides for the levy and collection of additional duties of excise in respect of certain goods, over and above the duties of excise levied and collected in respect of such goods under the Central Excises and Salt Act, 1944 (hereinafter referred to as the '1944 Act'). The Statement of Objects and Reasons of Act 58 of 1957 has been referred to before us and its short contents may be extracted here :

> The object of the Bill is to impose additional duties of excise in replacement of the sales taxes levied by the Union and States on sugar, tobacco and millmade textiles and to distribute the net proceeds of these taxes, except the proceeds attributable to Union territories, to the States. The distribution of proceeds of the additional duties broadly follows the pattern recommended by the Second Finance Commission. Provision has been made that the States which levy a tax on the sale or purchase of these commodities after April 1, 1958 do not participate in the distribution of the next proceeds. Provision is also being made in the Bill for including these three goods in the category of goods declared to be of special importance in inter-State trade or commerce so that, following the imposition of uniform duties of excise on them, the rates of sales tax, if levied by any State are subject from April 1, 1958 to the restrictions in Section 15 of the Central Sales Tax Act, 1956.

In short, the object of the Act was to substitute additional duties of excise in place of sales tax so far as these goods were concerned. Since the State legislatures were at liberty, if they wished, to levy

taxes on the sale or purchase of these commodities, the Act provided that the additional excise duties will be distributed only among such States as did not levy a tax on the sale or purchase of these commodities. Also, by including these goods in the category of goods declared to be of special importance in inter-State trade or commerce, the legislation ensured that, if any State levied sales tax in respect of these commodities, such levy was subject to the restrictions contained in the Central Sales Tax Act, 1956.

6. Apparently, the intention of the Andhra State legislature when the Amendment Act of 1970 was introduced was to exempt certain goods from the purview of sales tax because they also came within the purview of the levy of additional duties of excise under Act 58 of 1957. This is the reason why the Explanation to the entries in the Fourth Schedule to the Act incorporated the definition of these goods as contained in Act 58 of 1957.

7. Turning then to Act 58 of 1957, Section 2(c) of that Act provides that the words and expressions "sugar", "tobacco", "cotton fabrics" and "woollen fabrics" - to mention only four of the items referred to in the definition section - shall have the same meanings respectively as have been assigned to them in items 1, 4, 19 and 21 of the First Schedule to the 1944 Act.

8. The above definition takes us to the 1944 Act. There the definition of the word 'tobacco' is contained in item 4 of the First Schedule. The definition reads :

> Tobacco means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth.

The Schedule thereafter proceeds to set out two broad categories, namely, unmanufactured tobacco and manufactured tobacco. The former is divided into eight sub-categories in respect of each of which a separate duty of excise is prescribed. There of the entries mentioned are :

> (3) if flue-cured and not otherwise specified,
>
> (6) if other than flue-cured and not otherwise specified,
>
> (8) stalks.

The second category of manufactured tobacco is classified into various items like cigars and cheroots, cigarettes, biris, smoking mixtures for pipes and cigarettes and chewing tobacco of various kinds, snuff and hookah tobacco.

9. The question whether tobacco seed oil and tobacco cake fall within entry 7 of the Fourth Schedule to the Act, as amended, came up for consideration before a Division Bench of the same High Court Sikakollu Subbarao & Co. v. State of A. P. ((1977) 40 STC 572 (AP)). This Bench agreed with the conclusion of the earlier Division Bench, though not with its line of reasoning. It was of the view that the definition clause, properly interpreted in the light of the decision of the House of Lords in Dilworth v. Commissioner of Stamps (1899 AC 99 : 15 TLR 61 : 79 LT 473) and CIT v. Taj Mahal Hotel ((1971) 3 SCC 550 : (1971) 82 ITR 44) justified the inference that "tobacco seed" was not "tobacco" and that only leaf, stalks and stems of the tobacco plant could be said to be "tobacco" within the meaning of the definition in item 4 of the Schedule to the 1944 Act. The Bench concluded : (STC p. 583)

Under these circumstances, it is obvious that the definition of the word "tobacco", according to item 4 of the First Schedule to the Central Excises and Salt Act of 1944, does not bring "tobacco seed" within its purview, and, therefore, tobacco seed is not exempted from the levy of sales tax under the A.P. General Sales Tax Act, since tobacco seed does not fall within the meaning of the word "tobacco" as defined in the Fourth Schedule to the A.P. General Sales Tax Act.

It is clear in view of this conclusion of ours that since tobacco seed is not "tobacco" for purposes of exemption under Section 8 of the Act, much less can tobacco seed oil or tobacco seed oil-cake or tobacco seed cake can be said to be tobacco for the purposes of this exemption.

The Bench, therefore, denied the exemption to the appellants/petitioners before us and hence these petitions/appeals.

10. Before us, it is urged on behalf of the assessees that the word "tobacco", in its ordinary connotation, takes in the tobacco plant and every part of it, including the seed. The definition also makes it clear that it takes in every form of tobacco, manufactured or unmanufactured. Thus tobacco seeds, not only when they are in their raw unmanufactured state but also when, on manufacture, they manifest themselves in the form of tobacco seed oil or tobacco seed cake will fall within the definition. On the other hand, on behalf of the State it is submitted that the definition, which covers both what the expression means as well as what it includes, is exhaustive. Tobacco seed does not come within the first part of the definition, for the expression "tobacco, cured or uncured, manufactured or unmanufactured" has to be read as a whole and will not take in tobacco seed. It will not come under the second part because it specifically mentions leaves, stalks and stems but leaves out seeds. Since tobacco seeds do not fall within the definition, the oil and cake produced by the crushing of the seeds will not also be covered by the definition or eligible for the consequent exemption.

11. We are inclined to accept the contention urged on behalf of the State that the definition under consideration which consists of two separate parts which specify what the expression means and also what it includes is obviously meant to be exhaustive. As Lord Watson observed in Dilworth v. Commissioner of Stamps (1899 AC 99 : 15 TLR 61 : 79 LT 473) the joint use of the words "mean and include" can have this effect. He said, in a passage quoted with approval in earlier decisions of this Court : (AC pp. 105-06)

Section 2 is, beyond all question, an interpretation clause, and must have been intended by the legislature to be taken into account in construing the expression "charitable devise or bequest," as it occurs in Section 3. It is not said in terms that "charitable bequest" shall mean one or other of the things which are enumerated, but that it shall "include" them. The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that if was not merely employed for the purpose of adding to the nature significance of the words or expressions defined. It may be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purpose of the Act, must invariably be attached to these words or expressions.

12. Looking, therefore, at the terms of the definition more closely, it is quite clear that tobacco seeds

do not fall within the second or inclusive part of the definition. This part of the definition is important. It specifically excludes from the definition any part of the tobacco plant so long as it is still attached to the earth. It makes mention only of parts of the plant after it is served from the earth. It is common knowledge that when a plant is served from the earth, its parts will comprise of not only the leaves, stalks and stems but also the seeds. Yet the inclusive part of the definition enumerates only the leaves, stalks and stems and, deliberately one should think, avoids mention of seeds.

13. Can then the words 'tobacco' and 'any form of tobacco' in the first part of the definition be given a wider meaning and read as including the seeds also, particularly as it talks of tobacco in any form, cured or uncured, manufactured or unmanufactured ? We do not think they can be for several reasons. In the first place, tobacco seeds hardly answer to the description of either the expression 'manufactured tobacco' or the expression 'unmanufactured tobacco' in their ordinary connotation; and the expression 'cured or uncured' cannot also be associated with tobacco seeds. The expression used in the first part of the definition, though every wide, is, therefore, singularly inappropriate to take within its purview tobacco seeds as well. Secondly, the definition occurs in a statue levying excise duty which is concerned not with the parts of a plant grown on the field but with the use to which those parts are put or can be put after severance. The legislature could not but have been aware that if the leaves, stalks tobacco, biris, cigarettes and so on, the seed is also used to produce oil and cake. It takes care to mention the first three items which are used in the manufacture of some forms of tobacco consumption which are also enumerated but refrains from referring to seeds which it would have done had it been intended to include the oil and cake also for purposes of the levy. The categories of unmanufactured tobacco enumerated in the entry in the Schedule include 'stalks' but not 'seeds'. This also indicates that seeds are not intended to be included. In other words, the omission of the word 'seeds' from the second part of the definition casts its shadow on the first part as well. Indeed it rather looks as if the second part of the definition is intended to restrict rather than expand the scope of the first part. Thirdly it is to be noticed that the first part of definition is somewhat restrictively worded. It could have said, for instance, that 'tobacco' means any part of the tobacco plant and includes its leaves, stalks and stems after the plant is served from the earth. What it does say is, however, different. The present definition, when it says that tobacco means any form of tobacco lays emphasis that the item under consideration should be tobacco in form. The leaves, stalks and stems, even after drying, curing and other processes and even 'manufacture' retain the form of tobacco, as understood in common parlance. But it is otherwise with the seeds. They are not tobacco in form. They do not have the properties of tobacco. They are not used to exploit the narcotic qualities of tobacco. Apart from their use for seeding purposes, the seeds are only used for the manufacture of oil and cake. We are told that the oil is used as an ingredient in the manufacture of scents and the cake as manure. Having regard to all this, we agree with the High Court that tobacco seed once it is separated from the plant, is an item entirely different from tobacco and does not fall within the expression 'tobacco or any form of tobacco'.

14. We would like to add that, even if by stretching the language somewhat, tobacco seeds can be brought within the first part of the definition, the oil and cake we are concerned with here cannot. This again, we say, for two reasons. In the first place, as discussed earlier, tobacco seed oil or cake can hardly be said to be a form of the tobacco seed. It is true that one can say that it is the contents of the seed that have manifested themselves, on being crushed, into two forms - the oil and the cake. But this is not enough. The definition requires that the item in question should be a form of the tobacco seed that is manufactured. While, as already pointed out, the leaves, stalks and stems even after manufacture retain the form of tobacco, the complete metamorphosis of the seed on its manufacture renders it impossible to describe the oil and cake as a form of the tobacco seed.

Secondly, in our view, we should take note of the circumstance that earlier the item in the Fourth Schedule covered not only tobacco but all its products. Nevertheless, it was held not to include the oil and cake. The legislature has subsequently amended the provision by deleting the reference to "all products of tobacco". In this context of an abridgment of the definition, it will not be correct, in our view, to construe the item so as to bring tobacco seed oil and cake within the scope of the exemption.

15. Shri Choudhary points out that, if the contention of the assessees were accepted, they would be only jumping, as it were, from the frying pan into the fire. Since the item of exemption under the Act is worded identically with the item of the levy under the 1944 and 1957 Acts, the effect of accepting the assessees' claim for exemption would be to automatically catapult them into the levy of excise and additional excise duties as well as into the rigours of the restrictions and regulations prescribed under those enactments. True, the consideration that if the oil and cake fall under item 7, such consequences as have been mentioned will follow cannot really guide or deter us in construing the definition. However the fact that the oil and cake have not been considered to be excisable commodities for the past several years is an indication as to how the legislature and the administration have understood and applied these provisions all along.

16. Certain other judicial decisions were cited by both parties but we are not discussing them. They neither directly deal with the point before us nor do they deal with definitions or situations which furnish a useful analogy for comparison.

17. For the reasons discussed above, we affirm the view taken by the High Court and dismiss these appeals and petitions. We, however, make no orders as to costs.

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