

Shri Bharuch Coconut Trading Co. and Others

Vs

Municipal Corporation of the City of Ahmedabad and Others

C.A. No.2433 of 1977

(Kuldip Singh, K. Ramaswamy JJ)

27.11.1990

JUDGMENT

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K. RAMASWAMY J

1. This appeal under Art. 136 is against the judgment in S.C.A. No. 655 of 1975 of the Gujarat High Court dated January 24, 1977 wherein the appellants questioned the power to levy octroi on brown coconut (watery coconut) and the High Court dismissed the writ petition holding that the brown coconut is not an exempted green fruit but would attract general item No. 55 of R. 14 of the Ahmedabad Municipal Corporation Octroi Rules (for short 'the Rules'). The admitted facts are that the appellants import and sell the brown coconut, in the city of Ahmedabad as their trading activity. The respondent levied octroi on brown coconuts at the rate of Rs. 1 / - per 100 kilograms at the point of import into the octroi limits of the respondent corporation. By an amendment to the rules, with effect from April 16, 1975 the rate of levy was increased to Rs. 5/- per 100 kilograms. The appellants challenged its legality contending that the brown coconuts are green fruits within the meaning of item 10 of R. 4 of the rules and, therefore, they are exempted articles. It is, thereby, not exigible to octroi. The contention was negated and the writ petition was dismissed as against which this appeal has been filed.

2. Admittedly the appellants, as a part of their trading activity, import brown coconuts (watery coconuts) from Andhra Pradesh, Kerala, Karnataka and Tamil Nadu through rail and road to Ahmedabad. Under the rules, whenever goods are carried into or out of the octroi limits of the Municipal Corporation, the articles specified under the rules are liable to octroi, except of course those exempted under Item 10 of R. 4. R. 4 contains the list of articles which are exempted from octroi. Item 10 in R. 4 reads thus:

"(10) Green fruits of all kinds, sugar cane, fennel (green Variali), Pan and Vegetables". Rule 14 provides that octroi shall be levied at the rates and in the manner stated in schedule 'A'. Item 11 of the schedule specify dry fruits thus:

"11. Dried fruits and their cakes, dry shingodas, dry cashew nuts and dried grapes. 1-00 ps. Advl.

13(b). Dried Kernel of coconut. 0-75 ps. Advl.

55. All articles and goods not specified elsewhere in the schedule or in the list of

exempted articles and goods 1-00, 100 kg."

3. The question is whether brown coconut (watery coconut) is a green fruit or not? In *Ramavtar Budhaiprasad v. Asstt. Sales-tax Officer, Akola*, 1961 (12) STC 287 and *Commissioner of Sales-tax, U. P. v. S. N. Brothers*, 1973 (31) STC 302 : (AIR 1973 SC 78), this court held that the expression occurring in schedules to the sales tax Acts have to be considered with reference to their meaning in ordinary commercial parlance and should not be considered according to the strict scientific meaning. In *Ramavtar Budhaiprasad's* case, this Court held that betel leaves, though vegetable leaves in the strict scientific sense, cannot be considered to be vegetables. In ordinary commercial language in the common parlance, betel leaves cannot be considered as vegetables. Coconut in the ordinary commercial sense is understood in several forms as tender coconut, watery coconut, dried coconut and copra and all these come under the expression coconut. Tender coconut contains juicy water and the kernel is at the tender stage. The tender coconuts are used generally during summer (autumn) season to drink the watery juice therein after cutting it. A watery coconut is a ripend coconut and enters the market after the removal of the outer cover of its fibre. It is called coconut or watery coconut. For the purpose of the case it is called brown coconut. The water is used as a drink and the kernel for culinary purposes. After the coconut is fully grown it is plucked from the trees and after removing the outer fibre (to reduce weight), it is sent to the market for commercial purposes. As stated earlier it is called coconut or watery coconut (brown coconut). The question, therefore, is whether the brown coconut (watery coconut) is a green fruit. The word green is defined in *Chambers, Dictionary* at page 463 as adjective of the colour usually in leaves between blue and yellow in spectrum unripe, fresh, undried, raw or colour of green. things.

4. In *Webster Comprehensive Dictionary, International Edition* at p. 509, the word 'fruit' has been defined, the edible, pulpy mass. covering the seeds of various plants and trees. They are classified as fleshy, as gourds, melons, oranges, apples, pears, berries, etc.. drupaceous as cherries, peaches, plums, apricots, and others containing stones; dry as nuts, capsuls, ashenia, follicles, legumes, etc. In flowering plants, the mature seed vessel and its contents, together with such accessory or external parts of the inflorescence are seemed to be integral with them. Any vegetable product used as food or otherwise serviceable to man, as grain, cotton, or flax; also such products, collectively; the fruits of the earth. Therefore, in the context of the octroi it could be legitimate to conclude that all kinds of fresh fruits are exempted articles.

5. In *P.A. Thillai Chidambara Nadar v. Addi. Appellate Asstt. Commissioner, Madurai* and another 1985 (60) STC 80 : (AIR 1985 SC 1644), this Court was to consider whether ripend coconut which is none other than watery coconut is an exempted article as vegetable under the Tamil Nadu General Sales Tax Act (1 of 1959). This Court held that fresh fruits and vegetables being household articles of everyday use for the table, these will have to be construed in the popular sense meaning the sense in which every householder will understand them. Viewed from this angle, the most apposite test would be an answer to a simple question : Would a householder when asked to bring home some fresh fruits and some vegetables for the evening meal, bring coconut too? Obviously the answer is in the negative. Accordingly this Court held that ripend coconut is neither a fresh fruit nor vegetable. The watery coconut is no doubt a ripend coconut used for several purposes like offerings to a deity in a Hindu temple being broken or used on auspicious occasions or used in preparation of the daily table food or in confectionery like biscuits or in the extraction of oil when it is fresh or dried kernel. When a person in the commercial market goes and asks for coconut no one will consider brown coconut to be vegetable or fresh fruit, much less a green fruit. No householder would purchase it as a fruit, No doubt in some English Dictionary, coconut is called a fruit or nut but it is to be understood in its ordinary commercial parlance. In *Sri Krishna Coconut Co. v.*

Commercial Tax Officer, Amalapuram, 1965 (16) STC 511 : (AIR 1966 AP 128) the Andhra Pradesh High Court was to consider whether fully grown coconut with well developed kernel containing water i.e. watery coconut could be called tender or dried coconut. In that context considering the scope of an explanation to Schedule 111 of the A.P. General Sales Tax Act, 1957 which exempted tender coconut from the sales tax under the Act, it was held that 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 well known that coconut is used for culinary purposes and on auspicious occasions and as part of the offerings in temples. It was held in that case that the watery coconuts are fully developed coconuts and they are exigible to sales tax. In *Kunchi Rajeshwara Sastry & Sons v. Asstt. Commr. of Commercial Taxes, Kakinada*, 1976 (37) STC 399: (1976 Tax LR 1786 (AP) the Division Bench of the Andhra Pradesh High Court was to consider whether Copra is an oil-seed within the meaning of item (vi) of the list of declared goods mentioned in S. 14 of the Central Sales Tax Act, 1956, and whether it is exigible to sales tax under the Andhra Pradesh Sales Tax Act, 1957. In that context it was held that Copra is an oil-seed and it is a declared goods within the meaning of Central Sales Tax Act, 1956. The watery coconuts are made liable to tax at the point of last purchase and that, therefore, Copra would be taxed till that period at the point of last purchase and the coconut of all varieties would include Copra also. Therefore, it is a declared goods. The Division Bench while considering whether Copra is an oil-seed held thus :

"Coconut is understood in several forms, namely, tender coconut, watery coconut, dried coconut and Copra, and all these come under the expression coconut. Except in the case of tender coconut from which oil cannot be extracted, in all other cases, oil can be extracted and all of them are regarded in common parlance as oil-seeds".

In *Sri Lakshmi Coconut Industries v. The State of Karnataka*, 1980 (46) STC 404, the Division Bench of the Karnataka High Court was to consider whether desiccated coconut falls within the entry coconut, which is one of the declared goods u/S. 14 of the Central Sales Tax Act, 1956 and is also included at entry 5 of the Fourth Schedule to the Karnataka Sales Tax Act, 1957. In that context the meaning of the word oil-seeds was extensively examined by the Division Bench and held that desiccated coconut is a coconut and a declared goods u/ S. 14 of the Central Sales Tax Act, 1956. In *Deputy Commr. of Agrl. Income-tax and sales-tax, Kerala v. A.P. Raman*, 1960 (11) STC 263 the Kerala High Court also took the same view. In *Commr. of Sales-tax v. Ram Kumar Nand Kumar*, 1973 (31) STC 321 : (1973 Tax LR 2165), the Allahabad High Court also held that coconut is an oil-seed within the definition of S. 3-AA(1)(vi) of the U.P. Sales-tax Act, 1948.

6. In the light of the above discussion we conclude that the watery coconut (brown coconut) is not a green fruit but is a separate entity by itself. It cannot also be considered to be a dry fruit within the meaning of entry 11 of R. 4. Dried fruit is distinct from the coconut. Therefore, the watery coconut (brown coconut) does not fall within the meaning of item 13B of R. 4 of the Rules also. All articles or goods which are not specified elsewhere in the schedule or in the list of exempted articles or goods would fall under item 55 of R. 14. Brown coconut is not an exempted article among the list of articles in item 10 of R. 4, namely, green fruit brown coconut (watery coconut) would fall within item 55 of R. 14 of the Rules and is exigible to octroi.

7. Shri Krishan Kumar, learned counsel for the appellant repeatedly asked this Court to make a reference to the larger bench on the ground that the similar question would frequently arise in various High Courts under the respective sales-tax Acts, the Central Sales-tax Act and the Octroi Rules of the respective states and after the issue of the notice to all the learned Advocate Generals of the States and the Attorney General and the law may be authoritatively laid by a larger bench. In view of the settled legal position, we find no such necessity to make a reference to the larger bench. Thereby we have no hesitation to hold that the High Court is well justified in coming to its conclusion that watery coconut (brown coconut) is exigible to octroi only under item 55 of R. 14 of the Rules. Accordingly we dismiss the appeal with costs quantified at Rs. 10,000/-.

Appeal dismissed.

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