

SUPREME COURT OF INDIA

Ganpat Lal Lakhotia

Vs.

State of Rajasthan

(S Bharucha and K Venkataswami JJ.)

18.09.1996

ORDER

1. The appeal is concerned with a notification issued by the respondent-State of Rajasthan on 9th March, 1970, in exercise of the powers conferred by Section 5 of the Rajasthan Sales Tax Act, 1954, levying sales tax at the rate of 7 per cent on "watery coconuts". The notification was challenged on the ground that watery coconuts fell within the purview of Section 14 of the Central Sales Tax Act, 1956, and that, therefore, the levy at the rate of 7 per cent was bad. The notification was upheld by a learned single Judge and, in the order appealed against, by a Division Bench of the High Court, reliance being placed upon the judgment of this Court in Sri Siddhi Vinayaka Coconut & Co. v. State of Andhra Pradesh [1974] 34 STC 103.

2. In Section 14 of the Central Sales Tax Act certain goods are specified which are of "special importance in inter-State trade or commerce". They include :

(vi) Oilseeds, that is to say,-

(viii) Coconut (i.e., copra excluding tender coconuts) (Coconut nuciferd).

3. To these goods the restrictions contained in Section 15 apply. It is not in dispute that if watery coconuts fall within the purview of Section 14, the notification levying sales tax thereon at the rate of 7 per cent would be bad in law.

4. The principal question, therefore, is : what are watery coconuts ? We find that the Andhra Pradesh High Court in Sri Krishna Coconut Co. v. Commercial Tax Officer [1965] 16 STC 511, has squarely dealt with the question. The court said :

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 the well-known variety of coconuts used for culinary purposes and on auspicious occasions and as part of the offerings in temples. I do not think it is correct or reasonable to describe this class of coconuts as either dried or tender.

5. The distinction is also indicated in the judgment of this Court in Sri Siddhi Vinayaka Coconut & Co. [1974] 34 STC 103, which was relied upon by the High Court, where it was said, "undoubtedly it is the watery coconut that in due course becomes dried coconut or copra". There is no material placed upon the record by the respondent-State to show that "watery coconuts" are outside the scope of Section 14(vi)(viii).

6. It may be mentioned that the judgment in the case of Sri Siddhi Vinayaka Coconut & Co. [1974] 34 STC 103 did not deal with the question that is before us. What was under consideration was whether a watery coconut could be taxed within the permissible restrictions as also the dried coconut that resulted from the drying of the same watery coconut, and it was pointed out that under the State statute that the court was concerned with, though the watery coconut and the dried coconut were treated separately, there was a provision for refund when the watery coconut that had suffered tax became a dried coconut.

7. Watery coconuts, therefore, can only be taxed within the restrictions imposed by Section 15 of the Central Sales Tax Act. The notification, in so far as it seeks to tax watery coconuts at the rate of 7 per cent, must therefore, be struck down.

8. The appeal is allowed. The judgment and order under appeal is set aside. The notification dated 9th March, 1970, issued by the respondent-State is quashed. Any payment in excess of the tax

permissible under Section 15 of the Central Sales Tax Act made by the appellants pursuant to the said notification shall be refunded.

9. No order as to costs.