SUPREME COURT OF INDIA

M/s. Falcon Tyres Limited

Vs

State of Karnataka and Others

Appeal (Civil) 4408 of 2001

(Ashok Bhan and Markandeya Katju, JJ)

20.07.2006

JUDGMENT

ASHOK BHAN, J.

The appellant is a public limited company and a dealer registered under the Karnataka Tax on Entry of Goods Act, 1979 (hereinafter referred to as "the Entry Tax Act"). It is engaged in the manufacture of tyres of two wheeler motor vehicles. Appellant is located in Metagalli in Mysore and Metagalli is a local area within the definition of 'Local area' in Section 2 (A) (5) of the Entry Tax Act. The main input in the manufacture of tyres is rubber which the appellant procures from the neighbouring State of Kerala.

Sub-section (1) of section 3 of Entry Tax Act prescribes that there shall be levied and collected tax on entry of any goods specified in the First Schedule into a local area for consumption, use or sale therein, at such rates not exceeding 5% of the value of the goods, as may be specified retrospectively or prospectively, by the State Government by issuance of Notifications.

Section 2 of the Entry Tax Act defines the various expressions used in the Act. The expression 'Agriculture produce or horticulture produce' is defined in section 2 (A) (1). In substance, it includes all agriculture or horticulture produce excluding tea, coffee, rubber, cashew, cardamom, pepper and cotton and such agricultural or horticultural produce which has been subjected to any physical,

chemical or other process for being made fit for consumption except merely cleaning, grading, sorting or drying.

Sub-section (6) of Section 3 provides for total exemption from entry tax on the goods specified in the Second Schedule to the Entry Tax Act. The exemption Schedule, i.e., Second Schedule in Sl. No. 2, specifies agricultural produce including tea, coffee and cotton (whether ginned or unginned) as exempt from the Entry Tax.

Appellant claimed exemption from entry tax before the assessing authority on the value of rubber brought into the local area for the assessment year 1996-97 in terms of the definition of agricultural produce or horticultural produce read with Sl. No. 2 of the Second Schedule to the Entry Tax Act. The assessing authority held that rubber is not one of the agricultural produce included in Sl. No. 2 in the Second Schedule and consequently, disallowed the claim. Appellant contested the assessment order before the first appellate authority, i.e., Joint Commissioner of Commercial Taxes (Appeals) Bangalore City Division. The first appellate authority held that rubber purchased by the appellant from outside the State of Karnataka was subjected to treatment by sulphuric acide and smoke to make it into sheets and therefore such rubber sheets do not fit the definition of agricultural produce under Section 2(A)(1) of the Entry Tax Act. The first appellate authority held that Sl. No. 2 of Second Schedule to the Act also clearly excluded rubber from the purview of agricultural produce. Consequently, the appeal was dismissed.

The appellant being aggrieved carried the matter in second appeal before the Karnataka Appellate Tribunal (for short "the Tribunal"). The Tribunal applied the judgment of this Court in the case of M/s Karnataka Forest Development Corporation Ltd., Vs. Cantreads Pvt. Ltd. , , and allowing the appeal held, that latex is a modern name for caoutchouc. It is nothing but natural rubber. Caoutchouc or latex means not only the milky substance obtained from the trees but it included all milk substance processed, till it is made marketable. Since the processing does not result in bringing out a new commodity but it preserves the same and renders it fit for being marketed, it does not change its character. It continues to be caoutchouc or latex when it is treated by sulphuric acide and continued to be so even after it is dried with smoke to obtain the shape of sheets.

State of Karnataka being aggrieved by the judgment of the Tribunal filed statutory civil revision petition in the High Court of Karnataka. By the impugned judgment the High Court has allowed the civil revision petition and quashed and set aside the judgment of the Tribunal. The High Court conceded that raw rubber is an agricultural produce but held that in view of the definition of 'agricultural produce or horticultural produce' in section 2(A)(1) of the Entry Tax Act, which clearly excludes rubber, rubber brought in the local area by the appellant could not be considered as agricultural produce for the purposes of the Entry Tax Act. That Sl. No. 2 of the Second Schedule specified agricultural produce, does not exempt rubber from payment of entry tax and therefore when the definition of agriculture produce in Section 2(A)(1) and enumeration of agriculture produce in Sl. No. 2 of the Second Schedule are taken together and construed, there could be no ambiguity that raw rubber is not an agriculture produce for the purposes of the Act. In repelling this contention, the High Court held that it will have to be guided by the provisions of the definition under Section 2(A)(1) which clearly excludes rubber and not by the enumeration in Sl. No. 2 of the Second Schedule.

Aggrieved against the aforesaid order the present appeal has been filed. Shri Dhruv Mehta, learned counsel appearing for the appellant strenuously contended that the High Court erred in construing the definition of 'agricultural produce or horticultural produce' in Section 2 (A) (1) of the Entry Tax Act as excluding rubber, whereas the definition properly construed makes it clear that what is excluded is only such tea, coffee, rubber etc. which are subjected to any physical, chemical or other process for making them fit for consumption. It is submitted that the semicolon after the word cotton does not mean that the first part of the Section is disjunctive from 'such produce' as has been subjected to any physical, chemical or other process. It is further submitted that punctuation is not a safe tool in construction of statute and if the first part of the Section is read as disjunctive from the other part it conflicts with Sl. No. 2 in the Second Schedule. It is also submitted that definition Section which is the interpretation clause to the statute begins with the expression "unless the context otherwise requires". That reading of Section 3 (6) read with Sl. No. 2 in the Second Schedule before and after the amendment in 1992 would lead to the conclusion that rubber which is an agricultural produce is exempt from Entry Tax. Assuming for the sake of argument that agricultural produce excludes rubber which is not subjected to any chemical process, does not necessarily mean that it is not an agricultural produce if the context requires otherwise.

As against this Shri Sanjay Hegde, counsel appearing for the State of Karnataka submitted that the clear cut decision as emerges in Section 2(A)(1) of the Entry Tax Act unequivocally excludes rubber from all other items that come under the head of 'agriculture produce' along with a few of the others that are enumerated therein. It is his submission that for all intent and purposes as far as the present Act is concerned, it is this definition that will govern the expression 'agriculture produce'. He, therefore, contends that while reading Entry No. 2 of the Second Schedule to the Entry Tax Act there is absolutely no scope to include in the entry 'rubber' which has been specifically excluded in the defining section. That the Tribunal appears to have been influenced by some of the earlier judicial decisions which relate to the definition of 'agriculture produce' under the Karnataka Sales Tax Act. It was pointed out by him that as far as the present Act is concerned, the Legislature has deliberately included and excluded certain items and therefore while interpreting the provisions of the present Act, the legislative intention will have to be given effect to inconsonance with the definition as contained in the statute.

Definition of the expression 'agricultural produce or horticultural produce' in Section 2(A)(1), sub-section (6) of Section 3 providing for exemption in respect of goods specified in the Second Schedule and Sl. No. 2 of Second Schedule specifying "Agricultural produce including tea, coffee and cotton (whether ginned or unginned)" as relevant are extracted below:

Section 2(A)(1):

"'Agricultural produce or horticultural produce' shall not include tea, coffee, rubber, cashew, cardamom, pepper and cotton; and such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or drying."

Sub-section (6) of Section 3:

"6). No tax shall be levied under this Act on any goods specified in the Second Schedule on its entry into a local area for consumption, use or sale therein."

Sl. No. 2 of Second Schedule:

"2. Agriculture produce including tea, coffee and cotton (whether ginned or un-ginned).

We would have readily accepted the submissions advanced by the learned counsel for the appellant without any difficulty under normal circumstances but for the fact that in the present Act as indicated by us earlier, term 'agricultural produce' as defined by the legislature specifically excludes rubber from agricultural produce. Under the law governing the principles of interpretation of a statute, this Court is necessarily restricted while construing the expression 'agricultural produce' in relation to the present Act by the definition that is incorporated in the Act itself. Under these circumstances it is not possible to accept the submission of the learned counsel for the appellant. The expression 'agricultural produce' as it appears in the Second Schedule has to given its normal and ordinary interpretation. Sl. No. 2 of the Second Schedule which reads "Agricultural produce including tea, coffee and cotton is an inclusive definition and not an exhaustive definition. What is excluded from the definition of the 'agricultural produce' in the Act cannot be held to be an agricultural produce unless the same find mentions in the Second Schedule. Since the legislature provided tea, coffee and cotton in Sl. No. 2 of the Second Schedule and not the rubber, rubber cannot be taken to be agricultural produce within the meaning of 'agricultural produce' as defined under the Act.

We do not find any substance in the submission of the learned counsel for the appellant that the semicolon after the word cotton does not mean that the first part of the Section is disjunctive from 'such produce' as has been subjected to any physical, chemical or other process. Section 2 (A) (1) is in two parts, it excludes two types of food from agricultural produce. According to us, the definition of the agriculture and horticulture produce does not say as to what would be included in the agriculture or horticulture produce, in substance it includes all agriculture or horticulture produce but excludes, (1) tea, coffee, rubber, cashew, cardamom, pepper and cotton from the definition of the agriculture or horticulture produce though all these products as per dictionary meaning or in common parlance would be understood as agricultural produce and (2) "such produce as has been subject to any physical, chemical or other process for being made fit for consumption", meaning thereby that the agricultural produce other than what has been excluded, which has been subjected to any physical, chemical or other process for making it fit for consumption would also be excluded from the definition of the agriculture or horticulture produce except where such agricultural produce is merely cleaned, graded, sorted or dried. For example, if the potatoes are cleaned, graded, sorted or dried, they will remain agricultural produce but in case raw potato is subjected to a process and converted into chips for human consumption it would cease to be agricultural produce for the purposes of the Entry Tax Act. The words "such produce" in the second part does not refer to the produce which has already been excluded from the agricultural or horticulture produce but refers to such other agricultural produce which has been subjected to any physical, chemical or other process for being made fit for human consumption.

We do not agree with the submission of the learned counsel for the appellant that what is excluded is only such tea, coffee, rubber etc., which are subjected to any physical, chemical or other process for making them fit for consumption. In our opinion, the definition of the agriculture and horticulture produce does not say as to what would be included in the agriculture or horticulture produce, in substance it includes all agriculture or horticulture produce but excludes tea, coffee, rubber, cashew, cardamom, pepper and cotton from the definition of the agriculture or horticulture produce though all these products as per dictionary meaning or in common parlance would be understood as agricultural produce.

From the reading of the definition under Section 2 (A) (1), it unequivocally emerges that rubber and few other items enumerated therein are excluded from being agricultural produce or horticulture produce. For all intent and purposes as far as the present Act is concerned, it is the definition given in the Act which will govern the expression 'agricultural produce'. While reading Entry 2 in the Second Schedule to the Act there is no scope to include rubber from being exempt from payment of entry tax. Entry 2 of Second Schedule creates exceptions regarding few of the excluded items from payment of Entry Tax but not all excluded items. The items for which an exception has been created in Entry 2 of the Second Schedule would only be exempt from payment of entry tax and not all the items, which have been excluded from being agricultural produce in the definition clause. While interpreting the provisions of present Act the legislative intention will have to be given effect to inconsonance with the definition as contained in the statute.

In the definition clause of Section 2 (A) (1) rubber is excluded form the agricultural produce, sub-section (6) of Section 3 provides for exemption in respect of goods specified in the Second Schedule. At Sl. No. 2 of the Second Schedule, only tea, coffee and cotton (whether ginned or un-ginned) have been given exemption from payment of Entry Tax and not other items such as rubber, cashew, cardamom and pepper and such other agricultural produce which has been subjected to any process for making it fit for human consumption. Intention of the legislature is that though tea, coffee and cotton have been excluded in the definition clause from the agricultural produce but for the purposes of the Entry Tax Act tea, coffee and cotton are exempted from payment of Entry Tax. This is an exception created by the legislature. If the legislature intended to create exception for rubber also it could have done it but it chose not to do it. Simply because the legislature has included tea, coffee and cotton in the Second Schedule exempting it from payment of Entry Tax does not mean that all other agricultural produce items which have been excluded from the definition of the agricultural produce would stand included in the Second Schedule to the Act exempting them from payment of Entry Tax. This would be doing violation to the Act as well as acting contrary to the intent of the legislature.

Learned counsel for the appellant relied upon Karnataka Forest Development Corporation Ltd. Vs. Cantreads Private Limited and Others, , to contend that rubber is an agricultural produce. This was a case under the Karnataka Forest Act, 1963 for the purposes of levy of the Forest Development Tax. The meaning assigned to the agricultural produce in the present Act is different from what was assigned to it in the Karnataka Forest Act, 1963. The same is not relevant. Similarly, he cited two other judgments which are not germane to the point and need not even be noticed.

The Legislature has deliberately excluded certain items from being agricultural produce and

therefore while interpreting the provisions of the present Act, the legislative intention will have to be given effect to in consonance with the definition as contained in the statute.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same with costs.