ANDHRA PRADESH HIGH COURT

Sri Krishna Coconut and Co

Vs.

Commercial Tax Officer

W.P. Nos. 245, 246 and 1304 of 1964

(Gopalakrishnan Nair, J.)

07.11.1964

ORDER

Gopalakrishnan Nair, J.

1. These writ petitions raise a common question and have therefore been heard together as desired by the learned counsel appearing in them.

2. The petitioner in W. P. Nos. 245 and 1304 of 1964 is the same individual. He as well as the petitioner in W. P. No. 246 of 1964 are dealers in coconuts. They filed, as required by the provisions of the Andhra Pradesh General Sales Tax Act (hereinafter referred to as the Act), monthly returns that they are liable to be taxed only in respect of purchases of "dried" coconuts. They stated that the purchases made by them were not of dried coconuts but of fresh or "water coconuts" which fell outside the purview of Section 6 read with schedule 3 of the Act. This claim was not accepted by the Commercial Tax Officer who consequently made provisional assessments on the petitioners on the tooting that they were liable to be taxed on their purchases of all coconuts other than tender coconuts. These orders of assessment were later followed by demand notices in form B. 2. These notices warned the petitioners that in case they did not pay the tax assessed, it will be recovered from them as arrear of land revenue and further that they will run the risk of being subjected to penalty under Section 16 of the Act. In view of this threat of collection of sales tax and imposition of penalty, the petitioners have filed these writ petitions under Article 226 asking that the orders of provisional assessments be quashed by certiorari.

3. Writ Petition 245 of 1964 relates to turnover for the period August to November 1963. Writ Petition 246 of 1964 relates to the turnover in respect of the period September to December 1963 and Writ Petition 1304 of 1964 is concerned with the turnover for the period January to March 1964. The orders of provisional assessments sought to be quashed in W. P. Nos. 245 and 246 of 1964 were passed by the respondent on 9-2-1964 and that in W. P. 1304 was made by him on 30-6-1964. The disputed turnover in W. P. 245/64 is Rs. 2,72,522-33; in W. P. 1304/64 it is Rs. 2,72,455-78 and in W. P. 246/64 the turnover aggregates to Rupees 27,235-58.

4. The main contention of the learned counsel for the petitioners is based on the explanation inserted in the Third Schedule to the Act by Amending Act XVI of 1963. This explanation

relates to item 5 of the Third Schedule and reads as follows :-

> "The expression 'coconuts' in this schedule means dried coconuts, shelled or un-shelled including copra, but excluding tender coconuts." This new explanation superseded the old explanation which had been inserted by Amending Act XXVI of 1961. The old explanation read :-"The expression 'coconuts' in this schedule means fresh or dried coconuts, shelled or un-shelled including copra, but excluding tender coconuts."

On the strength of the new explanation, two alternative contentions have been put forward on behalf of the petitioners. First that dried coconuts are those which do not contain any water at all, the water having dried up. Therefore, coconuts which contain water must fall within the category of tender coconuts which are excluded from the purview of schedule 3 by the express words of the explanation and also exempted under section 8 by being enumerated as item 9 in the Fourth Schedule. This argument postulates that there can only be two possible classifications of coconuts, one dried and the other tender and that all coconuts must fall in one of these two categories. The other argument is that a coconut in which the water has not dried up is in no sense a "dried" coconut, even if it cannot be regarded as a tender coconut. According to this argument a coconut which is ripe and fully grown and which contains water cannot be regarded as a "dried" coconut within the meaning of the third schedule to the Act.

5. The learned Government Pleader appearing on behalf of the respondent seeks to counter these contentions by urging that what is not a tender coconut, that is to say, a coconut which has undergone its full growth, should be regarded as a dried coconut within the meaning of schedule 3. According to this argument coconuts can be classified only as tender and dried. It does not recognize the possibility of a third category. This is how the first part of the petitioners' contention is sought to be met on behalf of the respondent.

6. The second limb of the petitioners' contention is sought to be answered by saying that even if the water inside the coconut has not dried up it can still be called a dried coconut, it not being a tender coconut. This argument is practically a repetition of the earlier argument in slightly different words. The question is whether there is a category of coconuts not covered by the description of either tender or dried. I think the answer must be in the affirmative. 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 do describe this class of coconuts as either dried or tender. This category of coconuts is excluded from the explanation in schedule 3 to which I have already adverted.
Therefore, coconuts which have fully grown and have well developed kernel and which contain water are taken out of the ambit of schedule 3 to the Act. It follows that purchases of such coconuts cannot be taxed under section 6 read with schedule 3.

7. The learned Government Pleader however urges that the expression "dried coconuts" must be understood in its popular sense. In support of this contention he has relied upon a decision of the

Supreme Court in *Ramavatar Budhaiprasad v. Asst. Sales Tax Officer*[1], The question that fell for the decision of the Supreme Court in that case was whether betel leaves could be regarded as vegetables. In that context their Lordships pointed out that the expression "betel leaves" must be understood in the popular sense and not in a technical or botanical sense. It is not easy to appreciate how this decision can advance the contention of the respondent. The word "dried"' which is the crucial word does not appear to be susceptible of more than one meaning in the present context; if can only mean that the water which the coconut contains has dried, bringing into existence a dry kernel. In no other reasonable sense can it be understood so far as I am able to see. This is not putting upon the expression "dried coconuts" any technical or botanical meaning. I think it is only the popular and natural meaning that I have indicated above. In my opinion, the meaning sought to be put upon the expression "dried coconuts" on behalf of the respondent is artificial and strained and far from its natural or popular meaning.

8. The learned counsel for the petitioners has rightly pointed out that the omission of the word "fresh" from the new Explanation in schedule 3 is significant. The only difference between the Explanation which was inserted in 1961 and the Explanation which superseded it in 1963 is that the earlier Explanation covered both fresh and dried coconuts whereas the present Explanation covers only dried coconuts. It is relevant to look at this circumstance for ascertaining the intendment of the present Explanation. It appears to me that the expression "fresh coconuts" as contra distinguished from "dried coconuts" denoted fully grown and matured coconuts containing water. This category was omitted from the scope of the new Explanation. This is an added reason in support of the contention of the learned counsel for the petitioners.

9. It is next submitted on behalf of the respondent that fresh coconuts are not exempted under Section 8 of the Act by their inclusion in the fourth schedule and that therefore the Explanation in Schedule 3 must be understood as covering this class of coconuts also. I do not think this is a permissible mode of construction, especially in regard to a provision in a taxing statute. The Explanation clearly states that the expression 'coconuts' in the third schedule means 'dried coconuts'. Therefore it cannot be construed as meaning any other variety of coconuts. If one seeks to import into the scope of this Explanation undried coconuts or fresh coconuts as they are sometimes called, it would certainly be importing something which is not warranted by the plain words or the Explanation. The word "means" occurring in the Explanation is important.

10. In considering the definition of the word "Christians" in Section 3 of the Christian Marriage Act, a Division Bench of the Allahabad High Court in *Maha Ram v.*

[1] Akola 1961-12 STC 286

Emperor[2], stated as follows :-

> "The term 'Christian' is interpreted in Section 3 of the Act runs as follows :
> "The Expression 'Christians' means persons professing the Christian religion."
> The use of the word 'means' in this passage shows that the definition is a hard and fast definition and that no other meaning can be assigned to the expression than is put down in the *definition. Cough v. Cough*[3], *Bristol Trams and Carriage Co v. Bristol Corporation*[4],"

I think the effect of the use of the word "means" in the Explanation in Schedule 3 of the Act must be similarly understood.

11. Further, it has been pointed out in *Cape Brandy Syndicate v. IRC*[5],:

> "In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

This has been approved by Viscount Simon L.C. in *Canadian Eagle Oil Co. v. R*[6].

12. The aforesaid principle of interpretation of statutes will be offended, if the Explanation in Schedule three of the Act is so construed as to bring within its scope fresh and undried coconuts. Besides, it is incorrect to think that all articles, the sales or purchases of which are taxable under the Act - save those which are exempted by inclusion in the fourth schedule - should be enumerated in the third schedule. The third schedule catalogues only certain chosen articles dealings in which are to be taxed in a particular manner - at a single profit of last purchase for instance. It is therefore not tenable to argue that non-inclusion of fresh coconuts in Schedule 4 should lead to the inference that they were intended to be included in schedule 3. Sales or purchases of many articles which do not find place in Schedules 3 and 4 can be and are being taxed under the provisions of the Act. If sales or purchases of coconuts, which are neither dried nor tender, can be taxed under the other provisions of the Act, that is to say, provisions other than section 6 and Schedule 3, it will be open to the authorities to bring them to tax. It is unnecessary for me in this case to go into the question as to whether or not the other provisions of the Act provide for or warrant such taxation.

13. The last argument put forward on behalf of the respondent is that these writ petitions are not maintainable because it is open to the petitioners to raise their objections before the assessing authority at the time of the final assessment and to carry the matter in appeal, if they are aggrieved by the final order of the assessing authority. But I do not think this rule of policy or convenience should be followed in a case like the present where the action taken by the respondent is attacked as one
devoid of jurisdiction and authority and in contravention of law. What is more, the
threat of collecting the tax by coercive process and also the threat of imposing penalty

[2] AIR 1918 All168 [4](1890) 59 LJQB 441 [6](1946) AC 119
[3](1891) 2 QB 665 [5](1921) 1 KB 64

for delay in payment of the tax have rendered the matter one or real urgency to the petitioners. A real and immediate threat to collect tax in contravention of law and in clear excess of jurisdiction bears upon the fundamental right of a citizen. In such a case, it will be a proper exercise of discretion to entertain a writ petition under Article 226. That a petition under Article 226 will not ordinarily be entertained before the petitioner has exhausted his other remedies under the statute is not an inflexible rule. It is essentially a matter of discretion depending upon the particular circumstances of a case which include the nature and enormity of the vice vitiating the impugned order, the imminence of the injury apprehended and the harm which would be caused to the petitioner on account of the delay which pursuit of other remedies would ordinarily entail. It must be remembered that it is not as if the High Court has no jurisdiction to entertain a petition for a writ of certiorari when the petitioner has an alternative remedy and has not pursued it. The true position is that the High Court is entitled in its discretion to decline to entertain a writ petition, if

it is satisfied that there is an effective and adequate alternative remedy to the petitioner. This self-imposed limitation does not preclude this Court from entertaining a writ petition, if it is satisfied that the circumstances of a particular case require it to be entertained. Some of these circumstances I have indicated above. An exhaustive enumeration of them is neither feasible nor advisable. But it can generally be stated that in a case where the fundamental right of a citizen is really threatened or jeopardised or where the impugned order is shown to be one devoid of jurisdiction and in cigar violation of law and where recourse to an alternative remedy will be ineffective to save the petitioner immediate harm. It will be open to the High Court - may it will be its duty - to entertain a writ petition and afford redress to the aggrieved person. Vide *State of U.P. v. Mohammad Nooh*[7], In *Calcutta Discount Co. Ltd. v. Income Tax Officer*[8], the Supreme Court reiterated that where an impugned order passed by an assessing authority acting without jurisdiction subjected or was likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts would issue appropriate orders or direction under Article 226 to prevent such consequences and that the existence of such alternative remedies as appeals and reference to the High Court should not always be regarded as a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

14. In view of what I have stated above, these writ petitions are allowed with costs. Counsel's fee Rs. 100 in each petition.

Petitions allowed.

[7]1958 SC 242 at pp. 248 and 249-250 (AIR 1958 SC 86 at pp. 93-94)

[8](1961) 41 ITR 191