ANDHRA PRADESH HIGH COURT

G. Ramaswamy

Vs

The State of Andhra Pradesh

(Gopal.Rao Ekbote, C.J. C Reddy, J.)

30.08.1972

JUDGMENT

Gopal Rao Ekbote, C.J.

1. The short but important question which must be answered in this batch of writ petitions is whether planks, rafters, cut sizes, etc., sawn or cut out of nascent timber, i.e, log of wood, is timber within the meaning of item 63 of the First Schedule to the Andhra Pradesh General Sales Tax Act, hereinafter called "the Act".

2. The facts do not matter because nothing turns upon them; it is enough to say that all the petitioners are dealers in timber. They purchase logs of wood and saw or cut them into planks, rafters, cut sizes, etc. and then sell them for the purpose of construction of buildings and the like.

3. Under Section 5(2)(a) read with item "63. Timber" in the First Schedule to the Act a dealer in timber is liable to pay sales tax thereon at 3 pies in a rupee at the point of first sale. The petitioners are sought to be taxed on "planks, rafters, cut sizes, etc.," which they sell to the customers under Section 5 of the Act treating them as general goods. The contention of the petitioners is that they deal in timber and since the sales which they effect are not the first sales, they are not therefore liable to pay any tax under item 63 of the First Schedule to the Act. They submit that since the transactions fall under item 63 as they deal in timber, they cannot be taxed under Section 5 of the Act.

4. Since the obligation to pay tax arises only from a legislative provision, the nature and extent of the liability is naturally measured by the legislative intent. All the relevant rules of statutory construction therefore become relevant in the interpretation of a tax measure.

5. The first and most elementary rule of construction is that the words used in a statute have to be given their ordinary meaning unless that appears to be at variance with the intention of the

Legislature or leads to manifest absurdity.

6. Conspicuously important to the interpretation of a tax measure is also the rule that words are to be given their common and ordinary meaning.

7. It is plain that in dealing with matters relating to the general public, statutes are presumed to use words in their popular, rather than their narrowly legal or technical sense. It was not contended that the word "timber" used has any narrowly legal or technical meaning. Since the provision is directed to deal with a matter affecting people generally, as the timber is in common use, the word used would have the meaning attached to it in the common and ordinary use of language.

8. What then is the common or ordinary meaning of the word "timber" ? It is neither a technical word nor a word of art. It is not defined in the Act or the Rules made thereunder.

9. Although the dictionaries are not to be taken as authoritative exponents of the meanings of the words used in an Act, it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense and the courts are therefore sent for instruction to the dictionaries. Dictionaries have been resorted to in innumerable cases for guidance of the courts in the absence of any legislative or judicial guidance.

10. Pocket Oxford Dictionary defines the word "timber" to mean "wood as material for building or carpentry especially in squared logs and planks, or beam or other wooden structural parts".

11. The Reader's Digest Great Encyclopaedic Dictionary gives the meaning as "wood prepared for building, etc., piece of wood".

12. Law Lexicon by P. Ramanatha Iyer states that "timber" means "wood fitted for building or other such like use".

13. Even in common parlance it was not doubted that timber means not only the logs of wood but includes planks, rafters and square sticks prepared for the construction of a building.

14. Thus the word "timber" may in the context mean the timber tree; when it is felled, the wood; when it is cut into logs for convenience of transport, the ballis cut to sizes or even the planks, rafters, cut sizes, etc., for the use of construction of buildings or such other like purpose.

15. Let us look at the same problem from the point of view of its meaning in the commercial field. It is a rule well recognised that if the statute is one passed with reference to a particular business, words are used therein which everyone conversant with that trade or business or transaction knows and understands to have a particular meaning in it, then the words are to be

construed as having that particular meaning. Thus the commercial usage in this regard is relevant and the meaning in practice which in business circles is given to the word "timber" may influence the interpretation to be placed on that word used in the Act. The general rule therefore is that in the absence of a legislative intent to the contrary, commercial terms when used in a statute relating to trade or commerce are presumed to have been used in their trade or commercial meaning. Of course the trade or commercial meaning of a particular word is a fact to be proved in each case and until such fact is proved, an alleged commercial or trade meaning of common terms is presumed to be the same as the common meaning. It must, however, appear that such commercial meaning is the result of established usage in commerce and trade and that such usage was definite, uniform and general and not partial, local or personal.

16. We are fortified in this view of ours by a decision of the Supreme Court in *Sales Tax Commissioner, Indore v. Jaswant Singh*[1], Their Lordships said :

...while construing the word 'coal' in entry 1 of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute, being one levying a tax on goods, must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include 'charcoal' in the term 'coal'. It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal; otherwise, both of them would in ordinary parlance as also in their commercial sense be spoken of as coal.

17. The petitioners have asserted in their affidavits that the timber in the commercial field also means the planks, the rafters and cut sizes, etc. There has been no convincing denial by the Government.

18. Indian Standard "Rules for gradation of cut sizes of timber" prepared in October, 1960, has been produced. The authenticity of it was not doubted. The book freely uses the word timber for all kinds of standard cut sizes for building purposes. The book is issued by the Indian Standard Institution. The committee of the Institution consists of several prominent members.

19. Other documents have also been filed to show that the word "timber" is freely used in the commercial circles for planks and cut sizes, etc.

20. Indian Airlines Quotation No. 406 of 26th April, 1972, is produced. The words used are "timber teak-wood" and then the required sizes are mentioned.

21. Likewise a letter from Market Purchasing Officer of the Andhra Pradesh State Road Transport Corporation Limited is also filed. It refers to supply of "timber teak-wood" of the sizes mentioned therein.

22. A cash bill relating to K.K. Patel & Company, Timber Merchants, is filed. Various sizes of.cut timber are mentioned therein.

23. Auction sale notice of "timber" at Ballarshah at Government Timber Depot on 25th March, 1971, is also produced.

24. These documents and the affidavits made out clearly that even the cut sizes of timber are commonly known as timber in commercial field. The Government could not dispute these plain facts. Fortunately for us both in the popular sense as well as in the commercial sense the word "timber" has the same meaning.

25. Even those who are responsible for administering and enforcing the provisions of the Act were till recently treating the planks, rafters, square sticks, cut sizes, etc., as timber within the meaning of that term used in the Act.

26. One of the most significant aids of construction in determining the meaning of a tax provision is the administrative interpretation given to it by the agency that, is responsible for its administration and enforcement. The authority for such interpretation is usually traced to three distinct sources. One of the sources is the interpretation given by the administrative agency or its officers, appearing in less formal rulings such as the departmental rulings and the like. Such interpretation, it is true, is formal, or unauthoritative administrative construction. Nevertheless the courts have given weight to it in the construction of doubtful language. It may be that since such rulings or communications are made without the authority, care and deliberation with which ordinarily interpretative rules are promulgated, their efficacy is reduced. The courts, however, in interpreting a word used in a statute may have regard to the interpretation placed by those who are presumed to be acquainted with the economic significance of the tax in question. It is true that these interpretations given by the authorities have no force of law nor are they binding upon the courts. Nevertheless they may serve as a tool of construction of some words used in the statute.

27. What happened in relation to the tax on timber was that a query was made to the Board of Revenue whether the term "timber" in entry 63 of the First Schedule includes timber logs, timber cut to different sizes and timber waste ?

28. The answer given by the Board on 13th April, 1964, to this query was "when timber had met with tax, the commodities produced by processing the same are not liable to tax".

29. We are not here concerned with the question whether the Board was competent to tender such an advice or express its opinion in that form. It is, however, plain that the persons knowing the mind of the Board must have believed and acted upon the advice so given. No question of estoppel, however, arises. We are only pointing out to the construction once put by the Board of Revenue on the word "timber" and the department acted accordingly.

30. A Memo. No. 2347/S/68-9 dated 7th March, 1969, seems to have been issued by the Special Secretary to State Government. In paragraphs 3 and 4 of the memo., it is observed...It follows that when the original form or character of goods like timber or logs of wood of trees fallen is altered or transferred (by physical, chemical, mechanical or other process) while preparing or making planks, rafters, firewood, cut sizes, etc., from nascent timber for purpose of marketing and the original timber is converted into commercially new and different goods having a distinct name, character or use and if in commercial sense, the nascent timber ceased to exist as such, then the new goods commercially spoken or known as planks, rafters, firewood, cut sizes, etc., are taxable even though both the original and new goods retain substantial identity, but not commercial identity.

4. The question whether a goods is converted by manufacture or other process into a different goods depend upon several criteria and one of the essential tests is whether in a commercial sense the original goods has ceased to exist and a new goods has taken its place. The question whether a goods has been converted into a commercially different goods is a question essentially of fact and one which appropriately falls for consideration before the Sales Tax Officer. Evidence should, therefore, be led before that officer for the purpose of showing that the goods sold by the dealer was not commercially different from the goods like timber purchased by him.

31. While the matters stood thus, the Accountant-General, Andhra Pradesh, in his letter dated 5th April, 1969, requested the Government to clarify the following two points : (1) the classification and rate of tax leviable on the cut sizes, planks, etc,; (2) whether in view of the decision of the Government past cases are to be reopened and assessed.

32. In regard to the first question, the Government agreed with the view of the Board of Revenue that "the planks, rafters, cut sizes, etc., obtained from nascent timber have to be treated as falling under general goods liable to tax at 3 per cent at each point of sale in the State".

33. In regard to the second question, the Government also agreed with the view expressed by the Board of Revenue that since in view of the Board's letter of 4th April, 1964, the dealers may not have collected sales tax, effect to this revised clarification should be given from 1st April, 1969.

34. The clarification was issued by Memo. No. 1708/ST/69-11 dated 7th September, 1970.

35. Accordingly, the Board of Revenue in supersession of the earlier clarification given by it on 4th April, 1964, directed that "planks, rafters and cut sizes, etc." obtained from nascent timber be treated as general goods falling under Section 5 of the Act from 1st April, 1969.

36. It is only then that the taxing authorities started issuing notices for revising the assessments or assessing the dealers to tax, In some cases where dealers were so taxed, appeals are pending.

37. It will thus be plain that right from the inception, the Commercial Taxes Department has been treating planks, rafters and cut sizes as timber and never taxed them till the attention of the Government was drawn by the Accountant-General, Andhra Pradesh. Realising that the commodity was not so taxed in view of the construction which the Government had placed on the word "timber" for a considerably long time, the Government directed to tax these goods prospectively under Section 5 treating them as general goods. One thing which is conspicuous is that even in the subsequent stand the Government has taken, they do not say that the planks, rafters, etc., do not come within the meaning of timber used in item 63. What they say is that "planks, rafters and cut sizes, etc., obtained from nascent timber have to be treated as falling under general goods".

38. What must follow is that planks, rafters, cut sizes, etc., obtained from logs of wood according to the popular or commercial usage or the interpretation placed by the administration is "timber" within the meaning of item 63 of Schedule I to the Act.

39. *In Tungabhadra Industries Ltd. v. Commercial Tax Officer*[2] the Supreme Court held :

...hydrogenated oil still continues to be 'groundnut oil' notwithstanding the processing which is merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desire to consume groundnut oil.

40. Apparently, the test applied was that of user. It is observed that hydrogenated oil serves the same purpose as a cooking medium and has identical food value as refined groundnut oil.

41. *In State of Madhya Bharat v. Hiralal*[3] the respondent purchased scrap iron locally and imported iron plates from outside and after converting them into bars, flats and plates in his mills, sold them in the market. The question before the Supreme Court was whether the iron bars, flats and plates are not iron and steel within the meaning of item 39 of the relevant notification. It was observed :So long as iron and steel continue to be raw materials, they enjoy the exemption. Scrap iron purchased by the respondent was merely re-rolled into bars, flats and plates. They were processed for convenience of sale. The raw materials were only re-rolled to give them attractive and acceptable forms. They did not in the process lose their character as iron and steel. The dealer sold 'iron and steel' in the shape of bars, flats and plates and the customer purchased

'iron and steel' in that shape.

42. In *Commissioner of Sales Tax v. Harbilas Rai & Sons*[4] the Supreme Court agreed with the observation of the High Court. The High Court had said that:It does not result in the production of a commercially different article; what is bought by it from Kanjars is bristles and what it exports for sale is also brfstles.

43. The Supreme Court said that the articles which they produced are known as bristles both in the form in which they are bought from Kanjars and the form in which they are sold at London.

44. In *Mohanlal Vishram v. Commissioner of Sales Tax*[5] the Madhya Pradesh High Court held that: By felling standing timber trees, cutting them and converting some of them into ballis, a dealer does not alter their character as timber or uses them for the manufacture of 'other goods' within the meaning of Section 8(1) of the M. P. General Sales Tax Act, 1958. Such goods retain their character as timber and do not become 'other goods' and, therefore, purchase tax cannot be levied under Section 8(1).

45. Applying these principles thus decided to the facts of the present cases, we have no hesitation in reaching the conclusion that merely because planks, rafters and cut sizes, etc., are sawn or cut from logs of wood, they do not alter their character. They still continue to be raw materials which by themselves and in the same form cannot be directly put to use for construction purposes. The log of wood purchased by the timber merchant is merely cut or sawn to sizes for convenience sake and to make them acceptable to the customers. They do not in that process lose their character as timber. They retain the same character. What the merchants purchased in the form of log of wood was timber. What they sold to their customers in the shape of planks, rafters and cut sizes after processing them was also timber. The customers purchased timber. There is no other name suggested to such planks, rafters, etc., except timber.

46. We are therefore clear in our view that planks, rafters and cut sizes, etc., are "timber" within the meaning of item 63 of the First Schedule to the Act. What follows is that this commodity being timber and falling under item 63 cannot come within the purview of Section 5(1) of the Act. The Government has no power to treat those goods as general goods and direct them to be taxed under Section 5(1) of the Act.

47. It was a common ground that since timber is taxed at first point of sale, when the Forest Department sells the standing timber trees, is the first sale and the sale by the timber merchants in the form of planks, rafters and cut sizes, etc., cannot be taxed a second time, as item 63 permits levy of tax at the point of first sale. The timber having suffered tax once cannot be taxed again.

48. We would therefore declare the position of law as stated above and direct the respective tribunals to deal with each individual case in the light of what is laid down above.

49. For the reasons given, we allow the writ petitions accordingly. There will, however, be no order as to costs. Advocate's fee Rs. 50 in each case.

Cases Referred.

1A.I.R. 1967 S.C. 1454
2[I960] 11 S.T.C. 827 at 835 (S.C)
3[1966] 17 S.T.C. 313 (S.C)
4[1968] 21 S.T.C. 17 at 19 (S.C)
5[1969] 24 S.T.C. 101