ANDHRA PRADESH HIGH COURT

Udata Narasimha Rao

Vs

The State of Andhra Pradesh

(A Kuppuswami, CJ. Amareshwari, J.)

02.03.1982

JUDGMENT

Amareswari, J.

1. In these writ petitions the common question raised is that entries 144 and 147 of the First Schedule to the Andhra Pradesh General Sales Tax Act are ultra vires and violative of article 286(3) of the Constitution of India read with section 15(a) of the Central Sales Tax Act.

2. The petitioners are dealers in rice, ravva, dhalls and grains at different places in the State of Andhra Pradesh. Their main complaint is that ravva obtained from rice or wheat and fried gram dhall are not liable to be taxed at the rate of 1 per cent and 5 per cent respectively as per entries 144 and 147 of the First Schedule to the Andhra Pradesh General Sales Tax Act.

3. The question that arises for consideration is whether ravva obtained from wheat, rice or maize and parched and fried Bengal gram are assessable to tax at the rates and conditions mentioned in items 144 and 147 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as the State Act), after the amendment of the Central Sales Tax Act by Act No. 103 of 1976, which came into force with effect from 7th September, 1976. While the petitioners contend that items 144 and 147 of the First Schedule no longer have any legs to stand, the respondents contend that the position remains unchanged.

4. The main contention advanced on behalf of the petitioners is that ravva and rice are one and the same commodity. Ravva is nothing but granulated rice or rice made into small particles. No manufacturing process is involved. No new substance is added and since rice was included in section 14 of the Central Sales Tax Act (hereinafter called the Central Act) as one of the declared goods by the Central Sales Tax (Amendment) Act (103 of 1976) with effect from 7th September, 1976, the levy of tax by the State is subject to the restrictions contained in section 15(a) of the Central Act which says that the tax payable under the State law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage. Hence the imposition of tax as per clause (b) of item 144 of the First Schedule which imposes additional tax of one paisa in the rupee on ravva obtained from wheat, rice or maize which has already met tax under the State Act is illegal. Similarly they contend that parched or fried Bengal gram is not different from gram or gulab

gram. They are one and the same excepting that the Bengal gram is fried and converted into fried gram. Since gram is also specified as one of the goods of special importance in inter-State trade and commerce under section 14 of the Central Sales Tax Act with effect from 7th September, 1976, item 147 of the First Schedule to the Andhra Pradesh General Sales Tax does not apply.

5. In support of the contention that rice and ravva are one and the same commodity, the petitioners relied upon a decision of the Supreme Court in Alladi Venkateswarlu v. Government of Andhra Pradesh . They also relied upon the decisions in T.R.C. No. 137 of 1978 dated 22nd November, 1978, which followed the decisions *in Alladi Venkateswarlu v. Government of Andhra Pradesh , Tungabhadra Industries Ltd. v. Commercial Tax Officer , Commissioner of Sales Tax v. Jaswant Singh Charan Singh and State of Andhra Pradesh v. Sri Durga Hardware Stores*[1]

6. Mr. S. Dasaratharama Reddi, the learned counsel for the petitioners in some of the writ petitions, raised the same contention, namely, that ravva obtained from wheat is the same commodity as wheat and since wheat is one of the declared goods under section 14 of the Central Act, it is liable to be taxed under item 16 of the Third Schedule and not under item 144 of the First Schedule to the State Act.

7. In order to appreciate the rival contentions it is necessary to refer to certain provisions of the State and the Central Acts.

8. Section 2(1)(f) of the State Act defines declared goods as goods declared under section 14 of the Central Act to be of special importance in inter-State trade or commerce.

9. It is not in dispute that prior to 7th September, 1976, rice wheat and gram or gulab gram were not goods declared under section 14 of the Central Act. They were specified as goods of special importance in inter-State trade or commerce under section 14 of the Central Act by Amendment Act No. 103 of 1976 which came into effect from 7th September, 1976. Prior to 7th September, 1976, they were subject to tax at the rates mentioned and as per the conditions laid down in the respective entries relating to these commodities in the First Schedule under section 5(2) of the State Act. In respect of declared goods, under section 15(a) of the Central Sales Tax Act, the State can impose sales tax on the sale or purchase subject to certain restrictions, namely, that the tax payable shall not exceed four per cent and cannot be levied at more than one stage. This provision is introduced to be in conformity with the restrictions contemplated under article 286(3) of the Constitution of India. The resultant position is that rice, wheat, gram and gulab gram cannot be taxed at the rate of more than four per cent and at more than one stage with effect from 7th September, 1976. Consequent on the amendment of the Central Act specifying these commodities as goods of special importance they were included in the Third Schedule to the State Act, the caption of which is "Declared goods in respect of which a single point tax only is leviable under section 6" of the State Act as items 15, 16 and 22 which say tax shall be levied at the rate of four paise per rupee at the point of first sale. But the question that arises for consideration is whether ravva made out of rice, wheat and parched or fried Bengal gram are also declared goods within the meaning of section 14 of the Central Act. The meaning of any expression used in an enactment must be ascertained with reference to the object and scheme of that enactment. We are now concerned with the Central Act. The said expressions cannot be interpreted with reference to the provisions of the State Act. Section 14 of the Central Act

declares only certain goods as goods of special importance in inter-State trade or commerce. Clause (i) starts mentioning "cereals" and the items included under that head are followed by the expression "that is to say" paddy, rice, wheat, jowar, etc. The expression "that is to say" is clearly indicative of the intendment of Parliament that the cereals mentioned therein are exhaustive. In such a case it is not permissible to give an extended meaning. For instance, if ravva obtained from rice is to be construed or understood as rice, by the same reasoning paddy includes rice, as rice is obtained by just pounding or milling the paddy. If one includes the other, rice and paddy need not have been mentioned as separate items. Therefore, from the language used in the section itself, it can be said that the commodities mentioned under section 14 are meant to be exhaustive and no goods other than the ones specifically mentioned can be said to be goods of special importance under section 14 of the Act. Under clause (i-a) of section 14 while specifying coal as declared goods it is specified that coal including coke in all its forms, but excluding charcoal. If the expression "coal" includes all its forms, it need not be specifically mentioned "coal" including in all its forms. So also clause (ii) mentions cotton and then explains by using the expression "that is to say" all kinds of cotton in its unmanufactured state, but not including cotton waste. Similarly, when we examine all the expressions mentioned under section 14 of the intention is quite clear that only the goods mentioned therein are declared goods and not goods made out of the goods mentioned therein. Clause (iv) of section 14 says "iron and steel" by using the word "that is to say" and gives as many as 16 items of iron and steel made out of iron and steel and are obtained out of iron and steel. By a reading of section 14 we have no hesitation in holding that it is only the goods that are mentioned by name in section 14 are declared goods and not any other commodity or any other goods made or obtained from out of that commodity. Parliament intended that the items mentioned therein are the only goods of special importance. Otherwise, they would have mentioned rice in all its forms or wheat in all its forms just as they said in the case of other goods.

10. Even from the view-point of goods of special importance in inter-State trade and commerce, one differs from the other in essential aspects. Take for instance, rice and wheat. They constitute the chief item of consumption as food in most of the parts of the country - rice particularly in the south and wheat in other parts, whereas ravva which is made out of these commodities is not used for consumption as regular food but for making some preparations to be eaten occasionally. Ravva is not used for preparing food for regular consumption. So also gram is used for several purposes whereas fried Bengal gram is essentially used for making chutney and occasional munching. Their value as items of constant use differ. Hence it cannot be said that every commodity obtained from goods declared to be of special importance is also a commodity of special importance.

11. In *State of Tamil Nadu v. Pyare Lal Malhotra* while dealing with entry No. (iv), namely, iron and steel, it was held that the ordinary meaning to be assigned to a taxable item in a list of specified items is considered as a separately taxable item for the purposes of single point taxation in a series of sales unless the contrary is shown. The mere fact that the substance or raw material out of which it is made has also been taxed in some other form, when it was sold as a separate commercial commodity, would make no difference for purposes of the law of sales tax. The object is to tax the sale of each commercial commodity and not the sale of the substance out of which they are made. It is further explained that the expression "that is to say" is apparently meant to exhaustively enumerate the kinds of goods on a given list.

12. In Stroud's Judicial Dictionary, 4th Edition, Volume 5, at page 2753, the expression "that is to say" is stated to be the commencement of an ancillary clause which explains the meaning of the principal clause and it has the following properties : (1) it must not be contrary to the principal clause; (2) it must neither increase nor diminish it; (3) but where the principal clause is general in terms it may restrict it. Thus it shows that the expression "that is to say" is used to make clear the meaning of what is to be explained and not used to amplify a meaning. As observed earlier, if really the Parliament intended rice in all its forms to be declared goods, it would have said so. Applying this test, in the above case, the Supreme Court held that wire which is made out of steel plates was taxable and the fact that the substance of raw material out of which it is made has been taxed in some other form when it was sold as a separate commercial commodity would make no difference for purposes of the law of sales tax.

13. In Deputy Commissioner of Commercial Taxes, Tiruchirapalli v. Kuppuswamy Chettiar [1976] 38 STC 587, in considering the question whether the fried groundnut kernel could be an item falling under section 14(vi) of the Central Act, the learned Judges applied the test whether in commercial circles fried groundnut is treated as an oil-seed and held that it is not so treated. From this decision it is clear that one of the tests is whether in commercial parlance the commodity is treated as one and the same. In this case, the Madras High Court relied upon two decisions, namely, *City Oil Mill v. Joint Commercial Tax Officer*[2] and *Avadh Sugar Mills Ltd. v. Sales Tax Officer*[3]

14. *In State of Tamil Nadu v. Syam Steel Rolling Mills (P.) Ltd*[4]. a question arose whether purchase of M.S. rounds after paying tax and sale after conversion into M.S. angles and M.S. squares were again liable to tax or whether they are entitled to the benefit of single point tax. In considering this question a Division Bench of the Madras High Court held that for the purpose of enjoying the benefit of single point taxation, the article must retain its identity as a commercial commodity. Once that identity is lost and a different commercial commodity emerges as a result of a manufacturing or any other process, then the resultant commodity cannot be said to be the same commodity as the one from which it resulted, and therefore, a dealer cannot claim exemption from tax in respect thereof on the ground that the original commodity had suffered tax. What is necessary for the benefit of a single point taxation is the retention of the identity of the goods as the same commercial commodity. On this reasoning it was held that excepting M.S. rounds which are the same commodity as purchased in the State of Tamil Nadu, M.S. angles and M.S. squares which were made out of M.S. rounds cannot enjoy the benefit of single point taxation as they are a different commodity commercially. The learned counsel for the petitioners in this context have submitted that in obtaining ravva from rice or wheat or frying in the case of fried Bengal gram, no manufacturing process in involved and hence it cannot be said that they are different commodities. We cannot accept this argument as sound. Even in the case referred to above, the learned Judges have observed that a commodity can become commercially a different commodity either by manufacturing process or otherwise. Therefore, what is necessary to be determined is whether it is commercially a different commodity, and once it is a different commodity, it cannot enjoy the benefit of a single point taxation.

15. *In Modi Spinning and Weaving Mills Co. Ltd. v. Commissioner of Sales Tax their* Lordships of the Supreme Court held that the intention of clause (3) of article 286 of the Constitution of India is not to destroy all charging sections in the Sales Tax Acts of the States which are discrepant with section 15(a) of the Central Sales Tax Act, 1956, but to modify them in

accordance therewith. The law of the State is declared to be subject to the restrictions and conditions contained in the law made by Parliament and the rate in the State Act would pro tanto stand modified.

16. The decisions cited by the learned counsel for the petitioners have no application to the facts of the present case.

17. *In Alladi Venkateswarlu v. Government of Andhra Pradesh* on which great reliance was placed by the petitioners, the question was whether "atukulu" (parched rice) and "muramaralu" (puffed rice) are "rice" within the meaning of entry 66(b) of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957. There was no separate entry in the First Schedule to the State Act for "atukulu" and "muramaralu". In considering that question the learned Judges referred to the relevant entry 66(b) which reads : "Rice obtained from paddy that has met tax under this Act" and relied upon the meaning of paddy as contained in the dictionary as "rice in the husk" and held that when it was converted into parched rice and puffed rice, it is only a process of converting rice grain into a different form of it by heating or parching. In that connection, the learned Judges held that the process of heating or parching does not convert them into separate items for the purposes of entry 66 in the First Schedule to the Act. In that case, the question of interpretation of the provisions of the Central Act had not arisen as in the present case. Up to 7th September, 1976, rice as well as ravva and fried Bengal gram were separate entries, namely, 144 and 147, and are taxable at the rates mentioned in the First Schedule. It was only after 7th September, 1976, rice was removed from the first Schedule and included in the Third Schedule, as rice, wheat, and gram became declared goods under section 14 of the Central Sales Tax Act in respect of which a single point tax is only leviable under section 6 of the State Act.

18. *In Tungabhadra Industries Ltd. v. Commercial Tax Officer the* question was whether hydrogenated groundnut oil comes under groundnut oil and therefore deduction under rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, can be granted to hydrogenated groundnut oil. In considering the said question, the Supreme Court observed that hydrogenated oil served the same purpose as a cooking medium and as identical food value as refined groundnut oil and that there is no use to which the groundnut oil can be put for which the hydrogenated oil could not be used nor is there any use to which the hydrogenated oil could be put for which the raw oil could not be used. Applying this test it was held that they are one and the same commodity and hence entitled to the reduction of the purchase price of the kernel or groundnut which went into the manufacture of the hydrogenated groundnut oil from the sale turnover of such oil. We do not find this decision to be of any assistance to the petitioners.

19. *In Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh* a question arose whether the expression "coal" includes "charcoal". The learned Judges while saying it includes charcoal observed that in construing such word how it is understood in common parlance should be the test and viewed from that angle it was held that coal includes charcoal. In the present case if the same test is applied, we are of the opinion that rice does not include ravva, and gram or gulab gram does not include fried gram which is altogether used for a different purpose.

20. The learned counsel for the petitioners relied upon a single Judge decision of the Madras

High Court in Writ Petitions Nos. 4389 of 1977 and batch dated 31st July, 1980 *(S. K. Nataraja Mudaliar and Co. v. State of Tamil Nadu[5]),* wherein it was held that fried or parched gram would cover pulses of all kinds and grams of all kinds and that fried gram in common parlance is still known as gram or dhall. We find no discussion in the judgment as to the meaning of the expression after the amendment of the Central Sales Tax Act including pulses and gram as goods of special importance and whether fried Bengal gram can also be treated as declared goods by giving an extended meaning to the expression "pulses and grams" used in section 14. We are not inclined to accept the view of the Madras High Court that fried gram includes grams and pulses specified as declared goods under section 14 of the Central Act. Section 15(d) of the Central Act which was referred to by the Madras High Court, in our opinion, shows a contrary intention. Section 15(d) says that each of the pulses referred to in clause (vi-a) of section 14, whether whole or separated and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under the law. While taking care to mention that pulses whole or separated, husked or dehusked should be treated as a single commodity, the section does not mention about fried dhall.

21. For all the above reasons, we hold that entries 144 and 147 of the First Schedule to the State Act are intra vires and continued to hold good even after the Central Sales Tax Act is amended by Act No. 103 of 1976 with effect from 7th September, 1976. The commodities mentioned in items 144 and 147 cannot be considered as declared goods under section 14 of the Central Act and consequently section 6 of the State Act has no application to the goods mentioned therein.

22. In the result, the writ petitions and the T.R.C. are dismissed, but in the circumstances without costs. Advocate's fee Rs. 100 in each.

23. An oral application is made on behalf of the petitioners for leave to appeal to the Supreme Court. We do not see any substantial question of law of general importance involved in these cases. The oral application is dismissed.

24. Writ petitions and T.R.C. dismissed.

Cases Referred.

1[1973] 32 STC 322
2[1970] 25 STC 33
3[1973] 31 STC 469 (SC)
4[1977] 40 STC 156
5[1982] 51 STC 55