Shri Siddhvi Vinayaka Coconut and Co. and ors. Etc. Vs. State of Andhra Pradesh and ors. (Writ Petitions Nos. 1424 and 1612 of 1973, with Wps Nos. 1902, 1902a, 1903, 1903a, 2043 and 2044 of 1973). M/S. Chodisetty Chandra Rao and Co. Etc. V. State of Andhra Pradesh and anr. Etc. (Civil Appeals Nos. 1631 of 1973 and 13 and 69 of 1974).

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Appeal No. : Writ Petitions Nos. 1424 & 1612 of 1973, with WPs Nos. 1902, 1902A, 1903, 1903A, 2043 and 2044 o

Appellant : Shri Siddhvi Vinayaka Coconut and Co. and ors. Etc.

Respondent : State of Andhra Pradesh and ors. (Writ Petitions Nos. 1424 and 1612 of 1973, with Wps Nos. 1902,

Judgement :

Alagiriswami, J. - The question for decision in these cases is about the liability to sales tax under the Andhra Pradesh General Sakes Tax Act of 'watery coconuts'. The Act contains four schedules. The First Schedule contains goods in respect of which a single point sales tax only is leviable under section 5 (2) (a). The Second Schedule contains goods in respect of which a single point purchase tax only is leviable under section 5(2) (b). The Third Schedule contains declared goods in respect of which a single point tax only is leviable under section 6. The Fourth Schedule contains goods exempted from tax under section 8. By an amendment made in 1961, there was till 1963 only one entry coconuts,in the Third Schedule and the Fourth Schedule contained tender coconuts which are useful only for drinking purposes which were exempted from tax. An explanation to the Third Schedule read as follows :

'The expression 'coconuts' in this Schedule means fresh or dried coconuts, shelled or unshelled including copra, but excluding tender coconuts.'

By Amending Act XVI of 1963 this explanation was replaced by another explanation, which read :

'The expression 'coconuts' in this Schedule means dried coconuts, shelled or unshelled including copra, but excluding tender conconuts.'

Thus coconuts were divided only into two classes, coconuts as defined in the explanation and 'tender coconuts'.

2. After the amendment of 1968 certain dealers questioned their liability to tax on the purchases made by them of watery coconuts. That challenge was upheld by a learned

Single Judge of the Andhra Pradesh High Court in Sri Krishna Coconut Co. vs. Comml Tax Officer. The learned Judges reasoning was that a fully grown coconut with a well developed kernel which contains water could not be called either a tender or a dried coconuts, and that this was the well-known variety of coconuts used for culinary purposed and on suspicious occasions and as part of the offerings in temples, He drew particular support for his conclusion from omission of the word 'fresh' from the new explanation in the Third Schedule.

3. Thereafter, by Amending Act 18 of 1966 the explanation in the Third Schedule was replaced by another explanation which read :

'The expression 'coconuts' in item 5 means dried coconuts, shelled or unshelled including copra, but does nut include watery coconuts falling under item 14 of the Second Schedule and tender coconuts falling under item 9 of the Fourth Schedule.'

At the same time item 10 'watery coconuts' was included in the Second Schedule and to this there was an explanation added which read.

'The expression watery coconuts' in item 10 includes all coconuts other than coconuts falling under item 5 of the Third Schedule and tender coconuts under item 9 of the Fourth Schedule.'

Thus for the first time 'coconuts' were divided into three classes, tender coconuts, watery coconuts and coconuts.

4. After this the question arose whether 'watery coconuts' are oilseeds and as such declared goods within the meaning of that term in item 6 of section 14 of the Central Sales Tax Act under the Andhra Pradesh high Court in Tagoob Mohammed vs. Comml. Tax Officer held that 'watery coconuts' were oilseeds It was thereafter that the Andhra Pradesh Legislature passed Amending act XII of 1971 which came into force on 17-4-1971. By that Act item 10 in Second Schedule relating to 'Watery coconuts' and the explanation there to were omitted and this amendment was given effect to from 1-8-1963. Item 5 of the Third Schedule was amended as 'coconuts of all varieties' and a new item 5-A was introduced which read as follows :

'5-A. (i) At the point of last purchase in the 2 paise in Watery State during the period commencing on the rupee coconuts the 1st August 1963 and ending with the 31st March, 1965.

(ii) At the point first sale in the State 2 paise in during the period commencing on the in rupee 1st April, 1965 and ending with the 22nd December, 1966.

(iii) At the point of first purchase in the 3 paise in State during the period commencing on the rupee the 23rd December, 1966, and ending with the date immediately before the date of the commencement of the Andhra Pradesh General Sales Tax (Amendment) Act, 1971 :

Provided that where during the aforesaid periods, any tax has been levied and collected in respect of watery coconuts and where the tax has also been levied and collected in respect of coconuts formed out of such watery coconuts, the tax so levied and collected in respect of such watery coconuts shall alone be refunded.'

Explanation I to Third Schedule which related to a definition of 'coconuts' was also omitted. The Act also introduced two new sections secs. 7 and 8 which read as follows :

'7. Validation of assessments etc. :-

(1) Notwithstanding anything in any judgement, decree or order of any Court or other authority, to the contrary, and subject to the provisions of section 8, any assessment, re-assessment, levy or collection of any tax made or purporting to have been made, any action or thing taken or done in relation to such assessment, re-assessment, levy or collection under the provisions of the principal Act before the commencement of this Act, shall be deemed to be as valid and effective as if such assessment, re-assessment, levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and accordingly -

(a) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the assessment, re-assessment, levy or collection of such tax shall for all purposes, be deemed to be and to have always been, done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or continued in any court before any authority for the refund of any such tax; and

(c) no court shall enforce any decree or order directing the refund of any such tax.

(2) It is hereby declared that nothing in sub-section (1) shall be construed as preventing any person.

(a) from questioning in accordance with the provisions of the principal Act, as amended by this Act, any assessment, re-assessment, levy or collection of tax referred to in sub-section (1); or

(d) from claiming refund or any tax paid by him in excess of the amount due from him by way of tax under the principal Act as amended by this Act :

Provided that every application for any relief under this sub-section shall be made by the person concerned to the assessing authority within a period of one year from the date of the commencement of this Act and the assessing authority may, making such inquiry as he deems necessary and after giving the person concerned an opportunity of being heard, pass such order as he deems fit.'

'8. Revision of assessment on coconuts :

(1) Notwithstanding anything in any judgment, decree or order of any court or other authority to the contrary, the assessing authority may assess or re-assess the amount of tax payable by the dealer on his turnover relating to coconuts of all varieties during the period commencing on the 1st August, 1963 and ending with the date immediately before the date of the commencement of this Act, in accordance with the provisions of the principal Act, as amended by this Act.

(2) Notwithstanding the expiration of any of the periods specified in section 14 of the principal Act, an assessment or re-assessment under sub-section (1) may be made

within a period of one year from the date of commencement of this Act.'

5. Another statutory provision which should be noticed is section 14 of the Central Sales Tax Act with regard to what are called declared goods. Item (vi)therein originally read as follows :

(vi) 'Oil-seeds, that is to say, seeds yielding nonvolatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication, and, volatile oils used chiefly in medicines, perfumes, cosmetics and the like;'

By Amendment Act LXI of 1972, which came into effect on 1-4-73 if was amended as follows :

(vi) Oilseeds, that is to say,

(8) Coconut i.e. copra excluding tender coconuts (Cocos nucifera).'

6. After the amendments made by Act XII of 1971 a member of writ petitions were filed before the High Court of Judicature, Andhra Pradesh, They were all dismissed by a Division Bench consisting of the learned Chief Justice and Justice Lakshmaiah. The civil appeals are by some of the petitioners therein and the writ petitions are filed by certain other dealers direct to this Court under Art. 32 of the Constitution.

7. It is unnecessary to consider where the Andhra Pradesh High Court was right in its decision that watery coconuts is an oilseed for the reasons given by them, especially after the amendment made by the central Act which seems to proceed on the basis that only copra is an oilseed as the Andhra Pradesh Act proceeds on the basis that watery coconut is also an oilseed. That amendment applies only to the period after 1 April, 1973 and these appeals and petitions relate to the period before 17 April, 1971. Mr. Basi Reddy appearing for the State of Andhra Pradesh does not seek to question this finding either. Undoubtedly, it is the watery coconut that in due course becomes dry coconut or copra. Mr. Basi Reddy dies not even seek to argue that the same watery coconut after having suffered tax should also be taxed as dry coconut.

8. The first point to be noticed about the 1971 amendment is that in one of its aspects it deals with the period between August, 1963 to April, 1971 and validates taxes already levied and collected. Therefore, the proviso to entry 5-A of Schedule III which provides for refund does not really suffer form the defect pointed out by this Court in Bhawani Cotton Mills case that a provision for taxation which would not be justifiable cannot be upheld merely on the ground that it provides also for a refund. The various periods mentioned in item 5-A are there because of historical reasons and they are only re-productions of provisions of earlier law. The decisions in the Bhawani Cotton Mills case on which the petitioners relieds cannot apply in this case because in the Act there under consideration there was no provision indicating the stage at which the tax was to be levied. The very same levy was upheld in Rattan Lal & Co. vs. Assessing Authority after the Act was amended by specifying the stage as the last purchase or sale of declared goods by a dealer liable to pay the tax and making the stage quite clear, and by giving the dealer an option not to include other transactions in his returns and thus saving him from the liability to pay the tax till he was the dealer liable to pay the tax. This Court then pointed out that the information whether his was the last purchase or sale was always possessed by a dealer and by providing

that he need not include in his turnover any transaction except when he was the last dealer, the position was made clear. It is this decision that will be applicable to the facts of this case.

9. In this connection we may point out that the provisions of Rule 45 of the Andhra Pradesh General Sales Tax Rules are similar. It provides that every dealer has to maintain a true and correct account showing the value of the goods produceds, manufactured, bought and sole by him, the names and address of the persons from whom goods were purchased, supported by a bill or delivery note issued by the seller. Every dealer carrying on business in the goods specified in the First, Second and Third Schedules whose total turnover exceeds Rs. 10,000 a year and every other dealer whose turnover exceeds Rs. 20,000 a year shall issue a bill or cash memorandum in respect of every sale involving an amount or Rs. 5 or more. Every such bill or cash memorandum shall be duly signed and dated and a counterfoil shall be kept by the dealer. The bills or cash memoranda issued by a dealer shall be serially numbered for each year and in each of the bills or cash memoranda issued the dealer shall specify the full name and style of business, the number of his registration certificate, the particulars of goods sole and the price thereof and in the case of sales of a dealer the full name and address and the number of the registration certificate to the purchaser. The bill or cash memoranda issued in the case of sales of goods liable to a single point tax shall contain the following certificate ..... 'certified that in respect of the turnover of goods mentioned in item (s) of this bill the tax has been paid or is payable by me or is payable by Sri Ms ..... Being the dealer who has purchased them from me.' These make it amply clear that there can be no question of either a dealer in dry; coconuts having to pay a tax over again hereinafter. They can include in their return only goods which are liable to and need not include those which have already suffered tax.

10. Another aspect of the 1971 Act is that as a result of it there are two entries, 5 and 5A in Schedule III, namely coconuts of all varieties and 'watery coconuts there is no possibility of watery coconuts suffering tax after they become dried coconuts, if they have already suffered tax as watery coconuts. Rule 45 provides sufficient safeguards for this purpose.

11. We also accept the contention put forward on behalf of the State of Andhra Pradesh that watery coconuts and dried coconuts are two distinct commodities commercially speaking. Watery coconuts are put to a variety of uses e.g., for cooking purposes. for religious and social functions whereas dried coconuts are used mainly for extracting oil. This Court has in a number of cases held that the same commodity at different state could be treated and taxed as commercially different articles. In A Hajee Abdul Shakoor & Co. vs. State of Madras this Court held that 'hides and skins in the untanned condition are undoubtedly different as articles of merchandise that tenned hides and skins' and pointed out that' the fact that certain articles are mentioned under the same heading in a statute or the constitution, does not mean that they all constitute one commodity.' We may also refer to the decisions in Jagannath vs. Union of India where tobacco in the whole leaf and tobacco in the broken leaf were treated as two different commodities, East India Tabacco Co. vs. State of Andhra Pradesh where virginia tobacco and country tobacco were treated as tow different commodities, and Venkataraman vs. State of Madras where cane jaggery and palm jugglery were treated as two different commodities.

12. We do not think that the Act can be said to contrivance section 15 of the Central

Sales Tax Act. Under the Act though watery coconuts and dried coconuts are treated separately there is a provision for refund when the same watery coconuts, which have suffered tax, become dry coconuts later. It is for this contingency that, as we have pointed out earlier, provision for refund is made. In any case in the future no difficulty would arise as we pointed out earlier.

13. In the result all the writ petitions and appeals are dismissed. The appellants and writ petitioners will pay the costs of the State of Andhra Pradesh, one set.