A

ALLADI VENKATESWARLU & ORS.

v.

GOVT. OF ANDHRA PRADESH & ANR.

February 21, 1978

B [M. H. BEG, C.J. AND N. L. UNTWALIA, J.]

Interpretation of taxing statute—If the language is clear, it will be unfair to interpret against the assessee.

Andhra Pradesh General Sales Tax Act, 1957 S. 5 r/w Entry 66 of Schedule I to the Act—When "Paddy" was already taxed under item 8 Schedule II, Whether "Atukulu" (Parched Rice) and "muramuralu" (Puffed rice) are exigible to tax for the second time as rice falling under Item 66(a) of Schedule I—Whether "Atukulu" (Parched rice) and "muramuralu" (Puffed rice) are "rice" within the meaning of entry 66(b) of Schedule I.

C

Andhra Pradesh General Sales Tax Act, 1957, Section 5(2)—Difference between taxation u/s 5(2)(a) and 5(2)(b).

Section 5 of the Andhra Pradesh General Sales Tax Act, 1957 regulates the levy of tax on sales or purchase of goods. S. 5(1) enjoins that every dealer (other than a casual trader and an agent of a non-resident dealer) whose total turnover is Rs. 25,000 and upwards and every agent of a non-resident dealer irrespective of his turnover shall pay a tax for each year at the rate of four paise on every rupee of his turnover. "Paddy" is subjected to sales tax under item 8 of the 2nd schedule @ the rate of *five* paise in the rupee at the point of first purchase in the State. A rebate of 2 paise in the rupee shall be allowed on the paddy purchased and consumed in the State. Under s. 5(2)(a) r/w entry 66 of Schedule I to the Act, rice is subject to sales tax at the rates specified at the point of the sale effected by the dealer selling them. "Paddy" is either parched or heated and sold as Atukulu (parched rice) and "muramuralu" (puffed rice). When the sales tax authorities sought to levy once over again on the sale of paddy which has already been taxed at the purchase point, after making it edible in th form of "atukulu" and "Muramuralu" the appellants challenged the said action. The Andhra Pradesh High Court held that parched rice and puffed rice, not being rice at all, falling within either of the two parts of entry 66 were taxable as separate kinds of goods altogether u/s 5, sub-section 1 of the Act.

D

E

F Allowing the appeals by special leave the Court,

HELD : 1. Where two interpretations of a provision are possible, courts should apply the principle that the interpretations which favours the assessee should be preferred. Unless the language of the taxing statute was absolutely clear, it should not be given an obviously unfair interpretation against the assessee. [195-G-H]

2. Commonly accepted sense of a term should prevail in construing the G description of an article of food. [195D]

Kalyani & Co. v. *Commissioner of Sales Tax,* [1953] (4) S.T.C. 387 @ 390 (Hyd.) referred to.

3. Court must give a broad enough interpretation to the term "rice" in accordance with the common sense rule of interpretation laid down by this Court in *M/s Tungabhadra Industries Ltd.* v. *Commercial Tax Officer, Kurnool,* [1961] 2 S.C.R. 14 @ 23. [196 C-D]

H

4. The term rice is wide enough to include rice in its various forms whether edible or unedible. Rice in the form of grain is not edible. Parched rice and puffed rice are edible. But the entry rice covers both forms of rice. At any rate it is wide enough to cover them. [194H, 195A]

5. There is a distinction between "paddy" as found in item 8 of the 2nd schedule and "rice" as mentioned under item 66 of the first schedule. The view that, if paddy has been taxed in the hands of the purchaser, who is a dealer the same individual was made to pay tax on it again as rice falling within item 66(a) and not as "rice" falling under item 66(b) cannot be accepted because such a view would run counter to the express provisions of item 66(b). If what is taxed is "rice", it would obviously fall under item 66(b) because it has already been taxed in the form of paddy. It could certainly not fall under item 66(a) which is for "rice" not so taxed. To urge that it falls under item 66(a) is to concede that it is "rice". [194A] A B

6. On a parity of reasoning the term 'rice' as ordinarily understood in English language would include both parched and puffed rice. Atukulu (parched rice) and "muramuralu" (puffed rice) are "rice" within the meaning of entry 66(b) of Schedule I of the Andhra Pradesh General Sales Tax Act, 1957. [197 A-B]

7. The difference between taxation under the I schedule u/s 5(2)(a) and under the II schedule u/s 5(2)(b) is that whereas the first is a tax at the point of sale, the second is a tax at the point of purchase. The II schedule is meant for goods in respect of which a single point tax is leviable u/s 5(2)(b) of the Act. The dealer's turnover may include purchases as well as sales. In the instant case the dealer has paid a tax at the time of purchase of rice under item 8 of the II schedule when it was paddy. [193F-G] C

8. It is not the intention of the legislature to tax u/s 5(1) as well as under section 5(2) of the Act. Simultaneously s. 5(2) does not say that a "further" tax would be levied u/s 5(2). It only talks of levying 'the tax' in accordance with s. 5(2) of the Act in cases falling within the ambit of the 2nd schedule to which reference is made in s. 5(2) of the Act. It is not fair to so interpret a taxing statute as to impute an intention to the legislature to go on taxing what is virtually the same product in different forms over and over again. Such a result would be contrary to basic axioms of taxation. [194B-D] D

9. Keeping in view the various provisions of the Act, together with the history of exemption of "palalu" and "muramuralu" and its cancellations it was not the intention of the State Govt. suddenly to make the incidence of tax so heavy. [196C] E

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 391 and 392 of 1977.

(Appeals by Special Leave from the Judgment and Order dated the 24-8-1976 of the Andhra Pradesh High Court in W.A. Nos. 1/75 & 61/76). F

S. C. Manchanda and *B. Kanta Rao* for the appellants.

P. Parameshwara Rao and *T. V S. Narasimhachari* for the Respondents. G

The Judgment of the Court was delivered by

BEG, C.J.—The question before us in these appeals by special leave was framed as follows :

> "Whether 'Atukulu' (parched rice), and 'Muramuralu' (puffed rice) are 'rice' within the meaning of Entry 66(b) of Schedule I to the Andhra Pradesh General Sales Tax Act, 1957" H

A This question arose before the Andhra Pradesh High Court in appeals from single Judge decisions of the High Court, out of provisions of Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as 'the Act').

Section 5(1) of the Act provides :

B "5. Levy of Tax on Sales or Purchases of Goods : (1) Every dealer (other than a casual trader and an agent of a non-resident dealer) whose total turnover for a year is not less than Rs. 25,000 and every agent of a non-resident dealer whatever be his turnover for the year, shall pay a tax for each year, at the rate of four paise on every rupee of his turnover."

C Section 5(2) enacts :

"Notwithstanding anything contained in sub-section (1) the tax under this Act shall be levied—

(a) in the case of the goods mentioned in the first Schedule, at the rates and only at the point of the sale specified as applicable thereof effected in the State by the dealer selling them, on his turnover of sales in each year relating to such goods irrespective of the quantum of turnover,

(b) in the case of the goods mentioned in the Second Schedule, at the rates and only at the point of the purchase specified as applicable thereto, effected in the State by the dealer purchasing them, on his turnover of the purchase in each year relating to such goods irrespective of the quantum of turnover."

The first Schedule to the Act dealing with matters provided by S. 5(2)(a) contains the entry 66 which runs as follows :

Description of goods	Point of levy	Rate of tax
66. Rice : (a) Rice not covered by (b) below	At the point of sale by the first wholesale dealer in the State effecting the sale.	6 Paise in the rupee

Provided that a rebate of two paise in the rupee shall be allowed on the rice sold and consumed in the State in accordance with such rules as may be prescribed.

(b) Rice obtained from	At the point of sale by the first wholesale dealer in the state effecting the sale.	1 Paise in the rupee.

H It seems that tax on paddy which was converted into 'Atukulu' (parched rice), and 'Muramaralu' (puffed rice) had already been

levied in the form in which it comes to the market as a crop. The Division Bench of the High Court in the judgment under appeal before us stated :

> "It is common case that the paddy out of which these commodities have been made in all the three cases has been subjected to tax".

On this assumption, the only question before us is whether the parched rice and the puffed rice are covered by item 66(b) which reads : "rice obtained from paddy that has met tax under the Act". 'Paddy' is defined in the dictionary as "rice in the husk". The question is : Does it cease to be even "rice" when it is converted into parched rice and puffed rice ? It is true that it is no longer rice grain as it emerges from the husk. To make it edible as parched rice and puffed rice it has to go through further processes. These are only products obtained by converting rice grain into a different form of it by heating or parching. If such rice is still rice, even if we confine the term "rice" to grain, is it by going through these processes of heating or parching converted into separate items for the purposes of entry 66 in the 1st Schedule of the Act ?

We find that considerable argument was advanced in the High Court on the question whether if parched rice and puffed rice are not covered at all by entry 66 of the 1st Schedule it would still be taxable. We find that the answer given by the High Court was that, in any case, such rice would be taxable under Section 5, sub-section (1) of the Act set out above.

It was also pointed out before us that paddy out of which the products in question become available, had already been taxed, as admitted by both sides, under item 8 of the 2nd Schedule which imposes a tax of 5 paise in the rupee on paddy at the point of first purchase in the State. The entry also says :

> "Provided that a rebate of 2 paise in the rupee shall be allowed on the paddy purchased and consumed in the State in accordance with such rules as may be prescribed".

The 2nd schedule is meant for goods in respect of which a single point tax is leviable under section 5(2)(b) of the Act. The difference between taxation under the 1st schedule under section 5(2)(a) and under the 2nd schedule under section 5(2) (b) appears to be that whereas the first is a tax at the point of sale the second is a tax at the point of purchase. The dealer's turnover may include purchases as well as sales. Therefore, as is assumed in the instant case, the dealer had paid a tax at the time of purchase of rice under item 8 of the 2nd schedule, when it was "paddy", could it be contemplated that he must pay a tax again on the same item as "rice" not covered by item 66(b), that is to say, as "rice" falling under item 66(a)? It is impossible to accept the view that, if paddy has been taxed in the hands of the purchaser, who is a dealer, the same individual was made to pay tax on it again as rice falling within item 66(a) and not

A as "rice" falling under item 66(b) because such a view would run counter to the express provisions of item 66(b). If what is taxed is 'rice', it would obviously fall under item 66(b) because it has already been taxed in the form of paddy. It could certainly not fall under item 66(a) which is for "rice" not so taxed. To urge that it falls under item 66(a) is to concede that it is "rice".

B We find that the High Court had come to the conclusion that parched rice and puffed rice, not being rice at all, falling within either of the two parts of item 66 were taxable as separate kinds of goods altogether. This meant that, although, the dealer had paid a tax of five paise per rupee on paddy as item 8 in schedule 2, he will have to pay again a tax at the rate of 4 paise on every rupee of his turnover under section 5(1) if his total turnover was not less than Rs. C 25,000/- per year. We do not think that the intention of the legislatures could be to tax under section 5(1) as well as under section 5(2) of the Act simultaneously. Section 5(2) does not say that a "further" tax would be levied under section 5(2). It only talks of levying "the tax" in accordance with section 5(2) of the Act in cases falling within the ambit of the 2nd schedule to which reference is made in section 5(2) of the Act. We do not think that it is D fair to so interpret a taxing statute as to impute an intention to the legislature to go on taxing what is virtually the same product in different forms over and over again. Such a result would be contrary to basic axioms of taxation. Unless the language of the taxing statute was absolutely clear, it should not be given an obviously unfair interpretation against the assessee.

E It may be that an item may be taxed once as raw material, and, after it is manufactured and converted into separately taxable goods, taxed again as another taxable item altogether. But, in such cases, the identity of the goods sold would be deemed to be different even though the raw materials may have been taxed already in a different form earlier. The question, therefore, before us is whether "rice", which obtained from paddy, already taxed under item 8 of the 2nd F schedule, ceases to be "rice" falling "prima facie" under item 66(b) as rice on which a tax was already paid when it was in the form of paddy? Does heating or parching only to make it edible have that effect?

It is clear that there is a distinction between "paddy", as found in item 8 of the 2nd schedule, and "rice", as mentioned under item 66 G of the first schedule. Apparently, the removal of the husk makes this difference. It is true that the 1st schedule, which contains as many as 136 items, includes a number of separate fairly detailed entries. Entry 58 is for bran or husk of "rice", and entry 59 is for "deoiled bran of rice". It appears, therefore, that "rice in husk" is "paddy". When it is removed from husk, the husk and rice become separately taxable. But, there are no separate entries for rice and H rice reduced into an edible form by heating or parching without any addition of ingredients or appreciable changes in chemical composition. The term "rice" is wide enough to include rice in its various forms whether edible or inedible. Rice in the form of grain is not

edible. Parched rice and puffed rice are edible. But, the entry "rice" seems to us to cover both forms of rice. At any rate, it is wide enough to cover them.

The High Court had relied on a judgment of the Division Bench of the Hyderabad High Court in *Kalyani & Co.* v. *Commissioner of Sales Tax*(1), where it was held, inter alia (at p. 390) that :

> "Rice in all forms would mean all kinds or variety of rice or species of rice, such as broken rice, kichidi rice, pichodi rice or rice flour, etc. In this view of the matter we find no justification in holding that "rice" in item No. I of the exempted articles in Schedule I of the Hyderabad General Sales Tax Act dealing with cereals should be interpreted as meaning cooked rice or biriyani or pulao".

But, in that very case, Jaganmohan Reddy, J., delivering the judgment of the Division Bench, had held in dealing with the term bread".

> "When the Legislature uses a term relating.... to a particular kind, such as 'double roti' ".

The judgment in *Kalyani & Co.'s* case (supra) related to items in a different schedule of a different enactment. The only principle deducible from it is that the commonly accepted sense of a term should prevail in construing the description of an article of food. While dealing with an item meant for rice as a cereal, the Court had accepted a more limited meaning of the term "rice" so as to exclude cooked rice in all its forms. Of course, the case before us is not a case of rice cooked and prepared in the form of "pulao" or "biryani" or any other type of cooked rice which may have undergone changes of character by additions or chemical transformation which may convert it into a food product with a substantially different identity. It was only converted from unedible grain into an edible form by parching or puffing through a heating process.

Even if parched rice and puffed rice could be looked upon as separate in commercial character from rice as grain offered for sale in a market, yet, keeping in view the other matters mentioned above, it could not be presumed that it was intended to exclude from entry 66 "rice", which at any rate, had not so changed its identity as not to be describable as "rice" at all. 'Muramaralu' was after all rice even though it was puffed. 'Atukulu' even though parched was still called rice. We must also remember that the schedule which we have to intetpret is in the English language where the term rice is still found in the rendering or description of 'palalu' as well as that of 'muramaralu' in the English language. And, in any case, if two interpretations of a provision are possible, we think that we ought to, in such a case, apply the principle that the interpretation which favours the assessee should be preferred.

(1) [1953] (4) S.T.C. 387 @ 3290.

A It was possible for the Government to lay down a separate category for parched rice and puffed rice, but it has not done so. Section 40 of the Act lays down the power of the State Government to modify, to alter or to cancel any item in the Schedule. It can also notify, under section 9 of the Act, exemptions and reductions of tax. In this connection, it is worth remembering that both "palalu" and "muramuralu" B were previously exempted completely from tax under a notification of the State Government probably bcause they are largely consumed by the poorer sections of the public. But, the exemption had been withdrawn before the assessment years under consideration. If that be so, it could not be the intention to suddenly put these items in a category where they will become unusually or doubly taxed items in substance. We, therefore, think that, keeping in view the various provisions of the C Act, together with the history of exemption of "palalu" and "muramuralu" and its cancellation, it could not be the intention of the State Government suddenly to make the incidence of tax so heavy as it would be if the view of the High Court is allowed to stand.

Keeping in view all the matters mentioned above, we think that we must give a broad enough interpretation to the term "rice", in accor- D dance with what may perhaps be best described as the "commonsense" rule of interpretation, laid down by this court in *M/s. Tungabhadra Industries Ltd.* v. *the Commercial Tax Officer, Kurnool.*(1)

That was a case of taxation of ground nut oil. A question arose whether dehydrogenated oil called Vanaspati was still ground nut oil or a product of ground nut oil. This Court held inter alia :

E

> "To be ground nut oil two conditions had to be satisfied—it must be from groundnut and it must be "oil". That the hydrogenated oil sold by the appellants was out of the groundnut not being in dispute, the only point is whether it continues to be oil even after hydrogenation. Oil is a chemical compound of glycerine with fatty acids or rather a glycerine of a mixture of fatty acids principally oloic, linoleic, stearic and palmitic, the proportion of the particular fat varying in the case of the oil from different oilseeds and it remains a glyceride of fatty acids even after the hardening process, though the relative proportion of the different types of acids undergoes a slight change. In its essential nature therefore no change has occurred and it remains an oil--a glyceride of fatty acids—that it was when it issued out of the press".

F

G

In *Tungabhadra Industries* case (supra) this Court rejected the argument, based on an analysis of chemical changes produced by the absorption of hydrogen atoms in the process of hardening and on the consequent intermolecular changes in the oil. It said :

> "But neither mere absorption of other matter nor intermolecular changes necessarily affect the identity of a substance as ordinarily understood".

H

(1) [1961] 2 S.C.R. 14 at 23.

We think that, on a parity of reasoning the term "rice" as ordinarily understood in English language would include both parched and puffed rice. A

For the reasons given above, we set aside the judgment of the High, Court and we answer the question framed above as follows : 'Atukulu' parched rice, and 'muramaralu' (puffed rice) are rice within the meaning of entry 66(b) of Schedule I of the Andhra Pradesh Central Sales Tax Act, 1957. Parties will bear their own costs. B

Appeal allowed.