MUKESH KUMAR AGGARWAL & ORS.

v.

STATE OF MADHYA PRADESH & ORS.

DECEMBER 18, 1987

[S. NATARAJAN AND M.N. VENKATACHALIAH, JJ.]

Madhya Pradesh General Sales Tax Act, 1958: Schedule II Part II Entry 32A and Part V, Entry 12—Stacks of 'Eucalyptus wood' sold by forest department after separating the 'Ballies' and 'Poles'—Whether 'Timber' or 'firewood'—Liability for sales Tax.

Words and Phrases—'Timer'—'Fire'-wood'—Meaning of.

The Forest Department of Madhya Pradesh sold to the appellants, who are dealers in timber, stacks of "eucalyptus-wood" after separating the "Ballies" and "poles". Sales tax at the rate of 16% ad-valorem leviable on the sale of 'timber' under Entry 32A of part II of Schedule II of the Madhya Pradesh General Sales Tax Act, 1958, was sought to be recovered from the appellants on the grounds that what was sold was 'timber'. The levy was challenged by the appellants in the High Court of Madhya Pradesh.

The High Court rejected the appellants' contention that what was sold, being left-overs after the extraction of "poles" and "Ballies", was merely 'fire-wood' within the meaning of and attracting entry No. 12 of Part V of Schedule II of the Act and thus liable to sales tax only at the rate of 3%. The High Court upheld the levy on the view that the goods were 'Timber' and attracted entry 32A of Part II. The High Court took the view that where the wood was not, in the normally accepted commercial practice, fire wood, and more especially, where the wood was sold and purchased subject to specifications which conduce the wood to particular purposes other than fuel, the goods sold cannot be regarded as firewood.

The appellants' contentions reiterated before this Court were (1) that what was sold were the left-overs and remnants, (2) that the forest department had itself described the goods in the tender notice as 'fire wood heaps', (3) that the wood-stacks could, by no stretch of imagination, be held to answer the well-known concept of 'Timber', and (4) that the wood sold was 'fire-wood' or at all events, plain 'wood' not amounting to 'Timber' or 'firewood' in which case it fell within the residuary entry.

A The respondents, on the other hand, urged that the 'wood' sold did not admit of being described as 'fire-wood' because nobody used eucalyptus wood as fire-wood due to its very high cost.

Allowing the appeal in part and remitting the matter to the High Court it was,

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HELD: (1) The finding of the High Court that the goods was 'Timber' appears to have been reached as necessary consequence and logical corollory of the goods not being 'fire-wood'. If the wood is not "fire-wood" it need not necessarily and for that reason alone be 'Timber'. All wood is not timber as, indeed, all wood is not 'fire-wood' either though perhaps it may not be incorrect to say that both 'fire-
C wood' and 'Timber' are 'wood' in its generic sense. [508C]

(2) All parts of portions of even a timber tree need not necessarily be 'Timber'. Some parts are timber, some parts merely 'fire-wood', and yet others merely 'wood'. [509F]

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(3) In a taxing statute words which are not technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance i.e. "that sense which people conversant with the subject matter with which the statute is dealing,
E would attribute to it." Such words must be understood in their popular sense. [505B-C]

(4) The use to which the 'goods' are capable of being put is not determinative of the nature of the goods; nor even the nomenclature of the goods as given by the authorities is determinative. The fact that the
F purchasers were dealers in timber is also not conclusive. [508G]

(5) The expression 'Timber' has an accepted and well-recognised legal connotation and is nomen-juris. It has also a popular meaning as a word of everyday use. In its popular sense, 'timber' is understood to be 'imarathi-Lakdi'. In a popular-sense 'Timber' has certain association
G of ideas: as to its size, stability, utility, durability, the unit of measure of quantity and of valuation etc. [505D; 507A]

(6) Having regard to the size, nature and description of the wood in the present case, the 'wood-heaps' were not susceptible to be or did not admit of being called 'Timber' with all the concomitants and
H associations of that idea. [509F]

(7) No tests of general validity applicable to or governing all cases can at all be laid-down. Perhaps different considerations might apply if, say, the pieces of eucalyptus wood are of a longer-length or of a higher girth. Differences of degree can bring about differences of kind. [509E-G]

Shantabai **v.** *State of Bombay,* **[1959] SCR 265; referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4026-27 of 1987.

From the judgment and Order dated 10.9.1986 of the Madhya Pradesh High Court in M.P. No. 2191 and 413 of 1985.

A.K. Sanghi for the Appellant in C.A. No. 4026 of 1987.

G.L. Sanghi and J.R. Das for the Appellant in C.A. No. 4027 of 1987.

S.N. Khare, R.K. Sharma and T.C. Sharma for the Respondents.

The Judgment of the Court was delivered by

VENKATACHALIAH, J. In these petitions under Article 136 of the Constitution of India, petitioners seek special leave to appeal from the Judgment and order dated, 10.9.1986 of the Madhya Pradesh High Court in Misc. Petition 2919 of 1985 and Misc. Petition No. 413 of 1985 respectively.

The appeals raise a short and interesting question whether stacks of "eucalyptus-wood' sold by the forest-department after separating the "Ballies" and "poles" constitute and answer the description of 'Timber' under entry 32 A of Part II of Schedule II to the Madhya Pradesh General Sales Tax Act 1958 (The 'Act'). The High Court, rejecting the appellant's contention that what was sold, being left-overs after the extraction of "poles" and "Ballies" of Eucalyptus (Nilgiri) Trees, was merely 'fire-wood' within the meaning of and attracting entry No. 12 of Part V of Schedule II of the Act, held that the goods were 'Timber' under the said entry 32 A. It was, accordingly, held that appellants were liable to pay sales-tax at the rate of 16% ad-valorem.

2. Special Leave is granted in both the cases. The appeals are taken-up for final hearing, heard and disposed of by this common-judgment. We have heard Shri G.L. Sanghi, Senior Counsel and Shri A.K. Sanghi for the appellants and Shri T.C. Sharma for the respondents.

3. Though, the notification inviting tenders and certain other documents appear to describes the goods variously as "eucalyputs fire-wood stacks", "eucalyptus wood stacks", 'Nilgiri fuel wood' etc., the nomenclature is not determinative or conclusive of the nature of the "goods" which will have to be determined by the application of certain well-settled principles, guiding the matter.

Three entries as they then stood in the Schedule to the 'Act' were pointed out by learned counsel as the possible alternatives:

Schedule II

Part II

Entry	32	A	:	Timber ... 16%

PART V

Entry	12	:	Fire-wood & charcoal .. 3%

Part VI

Entry	1	:	All other goods not included in Schedule I or any other part of the Schedule ... 10%

Appellants' contention urged before the High Court—and reiterated before us—was that what was sold were the left-overs and remnants of eucalyptus trees after the extraction of the substantial timber in the form of "poles" and "Ballies" and that even on the basis of what the forest-department itself described the goods to be while putting the 'goods' to tender, the goods were 'fire wood heaps'. It was urged that having regad to the well-known concept of what constitutes 'Timber' the wood-stacks sold could, by no stretch of imagination, be held to answer the description of 'Timber'. The wood sold, it was said

"fire-wood" or at all events, plain 'wood' not amounting to 'Timber' or 'firewood' in which case the goods fall within the residuary-entry. This contention did not find favour with the High Court. A

4. In a taxing statute words which are not technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as under-stood in common parlance i.e. "that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it". Such words must be understood in their 'popular sense'. The particular terms used by the legislature in the denomination of articles are to be understood according to the common, commercial understanding of those terms used and not in their scientific and technical sense "for the legislature does not suppose our merchants to be naturalists or geologists or botonists". B C

The expression 'Timber', it seems to us, has an accepted and well-recognised legal connotation and is nomen-juris. It has also a popular meaning as a word of everyday use. In this case, the two meanings of 'Timber' the legal and the popular, coalesce and are broadly subsumed in each other. D

In *Honeywood* v. *Honeywood*, [1874], L.R. 18 Eq. 306, at p. 309. Sir George Jessel referred to what distinguishes and is "Timber": E

> "The question of what timber is depends, first on general law, that is, the law of England; and secondly, on the special custom of a locality. By the general rule of England, oak, ash and elm are timber, provided they are of the age of 20 years and upwards, provided also they are not so old as not to have a reasonable quantity of useable wood in them, sufficient ..... to make a good post. Timber, that is, the kind of tree which may be called timber, may be varied by local custom. There is what is called the custom of the country, that is, of a particular country or division of a country, and it varies in two ways. First of all, you may have trees called timber by the custom of the country-beech in some countries, hornbeam in others, and even whitethorn and black-thorn, and many other trees, are considered timber in peculiar localities—in addition to the ordinary timber trees. Then again, in certain localities, arising probably from the nature of the soil, the trees of F G H

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> even 20 years old are not necessarily timber, but may go to 24 years, or even to a later period, I suppose, if necessary; and in other places the test of when a tree becomes timber is not its age but its girth."

B In *Shantabai* v. *State of Bombay & Ors.*, [1959] SCR 265 this court, referring to the distinctions between 'standing timber' and 'tree' referred to the following lexicographic meaning of 'timber':

> "(30) Timber is well enough known to be—"wood suitable for building houses, bridges, ships etc., whether on the tree or cut and seasoned". (Webster's Collegiate Dictionary).

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It was, accordingly, held:

> Therefore, "standing timber" must be a tree that is in a state fit for these purposes *and, further a tree that is meant to be converted*
> D *into timber so shortly that it can already be looked upon as timber for all practical purposes even though it is still standing.*
> (emphasis supplied)

Legal Glossary, (published by the Ministry of Company Affairs Law & Justice) gives this meaning of 'Timber':

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> "wood meant for building or such like use".

In the Chambers 20th Century Dictionary, the meaning of the word 'Timber' is this:

F '*wood suitable for building or carpentry, whether growing or cut: standing trees* of oak, ash, elm, (locality by custom) other kinds etc.'

(emphasis supplied)

G In words and phrases by John B. Saunders (Vol. 5) 'Timber' is heed to be:

> 'Trees less than six inches in diameter have been said not to be timber.'

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(emphasis supplied)

5. In its popular sense, 'timber' is understood to be 'Imarathi-Lakdi'. In a popular-sense 'Timber' has certain association of ideas: as to its size, stability, utility, durability, the unit or measure of quantity and of valuation etc. The question is whether by the standards of these popular connotations, the 'wood-stacks' or 'wood-heaps' sold to, and purchased by, the appellants can be held to answer the popular notions of "Timber". When 'standing-timber, is sold as uncut tree different considerations may arise.

The nature of the "wood" sold is described in the letter, dated, 30.5.1985, addressed by the Divisional Forest Officer. The subject matter of the sale has been referred to as 'Nilgiri fuel-wood'. The wood was offered for sale in stacks of the size of $1 \times 1.25 \times 2$ mtrs. With each piece of a length of 1.25 meters and a girth, at the thinner end, of not less than 10 cms. They were sold not by volume or by the number of pieces. The wood was offered with a particular kind of user in mind, viz, as a source of industrial raw material for 'pulp' in the manufacture of synthetic fibre. As pointed out by the High-Court, in the returns filed by the respondents, it was mentioned that eucalyptus-plantation was a recent development and promoted with the specific-purpose for use in specifically in the preparation of pulp and sold throughout the state with this specific object.

Respondents in their endeavour to controvert appellants' contention that the wood sold was "fire-wood" went on to say that while stacks of fire-wood of similar sizes fetch prices between Rs.20 to Rs.80 each, the stacks of the eucalyptus-wood on the other hand, fetch to Rs.300 to Rs.600 per stack and that, therefore, nobody uses eucalyptus as "fire-wood". The High Court, felt pursuaded to the view that the 'wood' sold did not admit of being described as "fire-wood". It reasoned:

> "Fire-wood in common commercial parlance and as understood by the trade as well as by the consuming public, is not just any wood that can be used as logs of fuel. Every kind of wood is potential fire-wood, for you can start a fire with any wood. But this is not the test. Firewood is wood of a kind which has attained notoriety as fuel. Nobody who sells fire-wood debarks the wood before sale. Nobody who buys firewood requires them to be shaved and debarked. Purchasers may desire the wood to be cut to size. But that is all. There may be eccentric sellers and eccentric buyers who may indulge their fancies in specialities in firewood.

A But that, again, is not the test. Where the wood is not, in the normally accepted commercial practice, firewood, and more especially, where the wood is sold and purchased subject to specifications which conduce the wood to particular purposes other than fuel, which is the case in the present two revisions, the goods sold cannot be regarded as B firewood."

While something, perhaps, could be argued in support of this reasoning, what however, emerges is that the finding that the goods was 'Timber' appears to have been reached as a necessary consequence and logical corollory of the goods not being 'fire-wood': If the wood is C not "fire-wood", it need not necessarily and for that reason alone be 'Timber'. All wood is not timber as, indeed, all wood is not 'fire-wood' either though perhaps it may not be incorrect to say that both 'fire-wood' and 'Timber' are 'wood' in its generic sense.

The High Court further reasoned:

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" ..... It has also been mentioned that timber is obtained by cutting standing trees. It may be hard wood timber or soft wood timber. Eucalyptus trees are covered by soft wood timber ....."

E "..... The petitioners offered to purchase the goods which could be used for manufacture of woodware, furniture, etc. as well as manufacture of pulp. The petitioners deal in timber ....."

Here again, pushed to its logical conclusions, the reasoning incurs the F criticism of proceeding to determine the nature of the 'goods' by the test of the use to which they are capable of being put. The 'user-test' is logical; but is, again, inconclusive. The particular use to which an article can be applied in the hands of a special consumer is not determinative of the nature of the goods. Even as the description of the goods by the authorities of the forest-department who called them G varyingly as 'eucalyptus fuel-wood' 'eucalyptus wood-heap' etc. is not determinative, the fact that the purchasers were dealers in timber is also not conclusive.

The High Court also observed:

H "..... The length of the pieces is not relevant criteria to

> determine whether the wood is timber or not. The goods offered for sale were eucalyptus wood-stacks ....."

Length is, no doubt a relevant consideration; but it is a relative concept and associated with the idea of utility. A piece of rope, it is said, is itself a rope, provided it serves the purpose of one.

6. The question is not really whether "Eucalyptus"(Nilgiri) Tree is or is not a 'Timber' tree. By every reckoning it is. Eucalyptus is a large, rapid growing, evergreen tree of the myrtle family, originally a native of Austrailia, Tasmania and Malaysis. There are a large number of its species. The ideal species under ideal conditions, it would appear, reaches a height of 370 ft. with a girth of nearly 25 ft. Apart from its utility as a source of gum and medicinal oils, the slow-growing species are especially known for the quality of its timber marked for strength size and durability (See: Encyclopaedia Britannica: 1968: Vol. 8 page 806 & 807; Encyclopaedia American: Vol. 10 pages 648 & 649). But the question is whether the subsidiary parts of the tree sold in heaps after the 'Ballies' and 'poles are separated, can be called 'Imarathi-Lakdi' or 'Timber'. We think, it would be somewhat of a strain on the popular meaning of the expression 'Timber' with the sense size and utility implicit in the idea. to call these wood-heaps 'Timber', meant or fit for building purposes. Persons conversant with the subject-matter will not call these wood-heaps 'Timber' whatever else the goods might, otherwise, be. It would appear that at one stage the forest department itself opined that the 'goods' were not timber; but only "fire-wood". We must, however, add that no tests of general validity applicable to or governing all cases can at all be laid-down. The point to note and emphasis is that all parts or portions of even a timber-tree need not necessarily be 'Timber'. Some parts are timber, some parts merely "fire-wood" and yet others merely 'wood'. Having regard to the nature and description of the wood in the present case, we think, the 'wood-heaps' are not susceptible to be or admit of being called 'Timber' with all the concomitants and associations of that idea. Perhaps, different considerations might apply if, say, the pieces of eucalyptus wood are of a longer-length or of a higher girth. Differences of degree can bring about differences of kind.

7. What emerges therefore, is that the goods in question are not 'Timber' within the meaning and for purposes of entry 32A of the Act.

In regard to the question as to what other description the goods answer and which other entry they fall under, learned counsel on both

A sides submitted that, if we hold that entry 32 A is not the appropriate one, the matter be remitted to the High Court for a fresh consideration of the matter in the light of such other or further material the parties may place before the High Court. We accept this submission.

B 8. In the result, these appeals are allowed in part and the finding of the High Court that the goods in question fall within and attract entry 32 A of Part II of Schedule II of the 'Act' is set aside and the matter is remitted to the High Court for an appropriate decision as to which other entry the goods in question attract. The appeals are disposed of accordingly.

C 9. We might advert to yet another submission of Sri Sanghi. He submitted that consistent with the finding that the 'goods' do not attract tax at 16% under the said entry 32A respondents cannot retain the tax already collected at 16%. Learned Counsel submitted that even if the goods are said to fall under the Residuary entry, the rate of tax D would only be 10% and that respondents, accordingly, should be directed to refund to the appellants sums equivalent to 6% of the tax, wherever tax at 16% has been collected, without waiting for a decison on remand as indeed, there would be no prospect of the goods attracting tax at a rate higher than 10%—now that entry 32 A is held inapplicable. This, in our opinion is a reasonable request and requires to be E accepted. The concerned Respondents are directed to refund to the appellants' sums equivalent to 6% wherever the taxes are already recovered at 16%.

10. In the circumstances, there will be no order as to costs.

R.S.S. Appeals allowed.