



W.P. Nos.46464 to 46470 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.06.2022

Pronounced on : 29.07.2022

CORAM

**THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

W.P. Nos.46464 to 46470 of 2006

W.P. No.46464 of 2006:

M/s. United Nilgiri Tea Estates Company Ltd.,
3, Saviri Shanmugam Road, Race Course,
Coimbatore-18.

.. Petitioner

Vs.

1.The Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench),
Rep. by its Secretary,
Commercial Taxes Building,
Balasundaram Road, Coimbatore.

2.The Addl. Appellate Assistant Commissioner (CT),
Commercial Taxes Building,
Balasundaram Road, Coimbatore.

3.The Commercial Tax Officer,
Trichy Road Circle, Coimbatore.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st Respondent / Tribunal in CTA No.69/05 and quash the order dated 09.05.2006 passed therein.



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For Petitioner : Mr.R.L.Ramani
in all W.Ps. Senior Counsel
for Mr.P.V.Sudhakar

For Respondents : Mr.Richardson Wilson,
in all W.Ps. Addl. Govt. Pleader (Taxes)

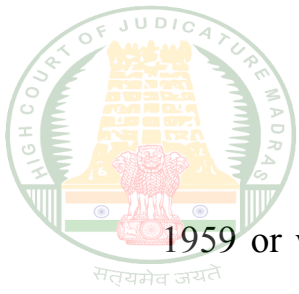
COMMON ORDER

MOHAMMED SHAFFIQ, J.

Heard both sides and perused the materials available on record.

2. A common order is passed in this batch of writ petitions as the issues involved herein are identical and the petitioner is aggrieved by the common order dated 09.05.2006 passed by the first respondent/ Tamil Nadu Sales Tax Appellate Tribunal in CTA Nos.453/02, 520/02, 521/02, 522/02, 523/02, 69/05 and 120/05, relating to the assessment years from 1997-98 to 2003-04.

3. The short question that arises for consideration herein is, whether the sales of cut / sized Silver Oak (*Scientific name : Grevillea robusta*) grown as shade trees in the Tea Estates of the petitioner admittedly in cubic metre and charged per cubic metre would constitute "agricultural produce" in terms of Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959 (*for the sake of brevity, "TNGST Act, 1959"*) or would constitute sales of "firewood" and thus exempt in terms of Entry 52 of Part B of the Third Schedule to the TNGST Act,



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1959 or would constitute sales of "timber" liable to tax under the TNGST Act,

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4. At the outset, it may be relevant to note that the following facts are not in dispute viz.,

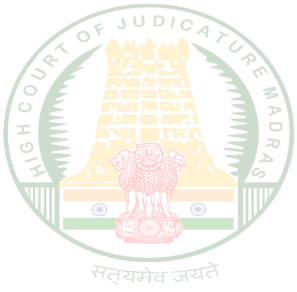
a. That the wood sold is cut/ sized Silver Oak grown as shade tree in the Tea estate of the petitioner.

b. That the sale is effected by the petitioner in cubic metres and not by weight.

5. The petitioner during the proceedings for the relevant assessment years, raised a two fold claim, viz.,

(a) That the sale of cut/sized Silver Oak, would constitute "agricultural produce", thereby falling outside the purview of "turnover" in terms of Section 2(r) of TNGST Act, 1959.

(b) Alternatively, the sale of cut/sized Silver Oak represents the sale of "firewood" and is thus, exempt in terms of Entry 52 of Part B of the Third Schedule to the TNGST Act, 1959.



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6. To the contrary, it was the case of the Revenue that the wood/ goods sold by the petitioner is neither agricultural produce nor firewood, but sale of timber, liable to tax in terms of the TNGST Act, 1959. In support of the said contention, reliance was placed on the sale bills, which would show that the wood was sold in cubic metre and not by weight. According to the Revenue, firewood is normally sold by weight and not in cubic metre. It is only the timber that is sold by length/cubic metre. The said factum was taken to be conclusive proof of the fact that the wood sold was neither agricultural produce nor firewood, but sale of timber and thus, liable to tax.

7. Aggrieved by the orders of the Assessing Authority rejecting the claim of the petitioner that the wood sold was agricultural produce or alternatively firewood, the petitioner preferred appeals before the First Appellate Authority, who confirmed the orders of assessment, while placing reliance on the sale bills and the fact that the wood was sold in cubic metre and not by weight. Though the First Appellate Authority referred to a number of judgments on what would constitute firewood, reference is not made to those judgments in this order as it may not be necessary to examine the same in view of the conclusion that we propose to draw.



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8. Before we examine the order of the Tribunal, it is necessary to note that the First Appellate Authority found that the wood sold by the petitioner was "shade tree", cut / sized only, for the sake of convenience of transportation. The following extracts from the order of the First Appellate Authority are relevant and thus extracted below:

i) Admission of the Addl. Departmental Representative that wood sold by the petitioner was "shade tree":

"6. Thus, the learned Additonal Departmental Representative's point was that once the shade trees were cut and sized into logs, it would automatically be derived that the item ceased to be firewood...."

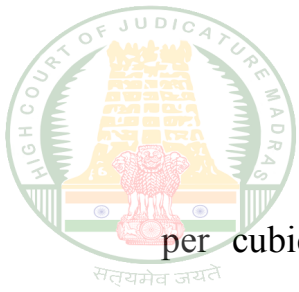
ii) Finding the sale is of shade tree by the First Appellate Authority, affirmed by the Tribunal:

"9.

11. The main point is to be ascertained here is whether the shade trees, though being claimed to be an "agricultural produce" whether felled in pursuance of contract for sale and cut into sizes of specific measurements, to the indenter.....The shade trees sold by a tea estate company after sizing them for convenience for transportation in lorries would be the agricultural produce and exempt from sales tax under the TNGST Act, 1959. Though the High Court has observed in an earlier case of the appellants that the shade trees cut into sizes and sold were not liable to tax under the TNGST Act, 1959, there is a treak of difference in the facts of the earlier case and the present case, since the shade trees in the present case had been cut into sizes only with an intention to sell as timber, as evidenced by using measurements to describe the commodity in the bills and charging at the unit rate per cubic meter....."

9. The attempt by the Respondents to treat the sale of shade trees cut/

sized as "timber" by relying on the fact that measurements were made at unit rate

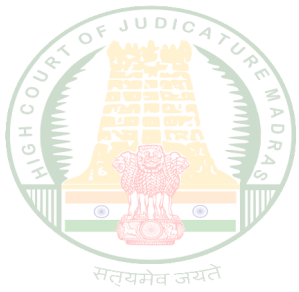


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per cubic meter, in other words, applying the 'user' test to determine the classification / rate of tax after admitting that the wood that was sold is shade trees cut/ sized only for the purpose of transportation may not take the case of the Respondents forward inasmuch as 'user' test, that is determination of the nature of the goods by finding out the use to which the goods are capable of being put to, has been held as inconclusive in determining the classification, unless the Entry itself refers to the nature of use as relevant. In this regard, it may be relevant to refer to the following judgments:

- a. Porritts and Spencer vs. State of Haryana [(1978) 42 STC 433];*
- b. Andavar and Co. vs. State of Tamil Nadu [(1995) 97 STC 141]; and*
- c. State of Tamil Nadu vs. Modern Mill Stores [(1996) 102 STC 539 SC].*

10. The above orders of the First Appellate Authority were carried in appeals to the Appellate Tribunal, which again affirmed the orders of the Authorities below on the premise that the petitioner had effected sales of timber. The said conclusion was drawn primarily on the basis that the wood was sold in cubic metre and not by weight, which is an unusual practice, when it comes to sales of firewood. The Tribunal brushed aside the argument of the petitioner that the wood sold was "agricultural produce" and the issue was covered by a decision of the Division Bench in respect of the petitioner's own case, reported in 45 STC 10 stating that the same was considered by the First Appellate Authority.



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11. The present writ petitions are filed by the petitioner against the order of the Tribunal challenging the levy of tax, on the premise that sale of shade trees cut/sized for the purpose of transportation, would still constitute "agricultural produce" and would fall outside the purview of turnover under the TNGST Act, 1959. In any event, the sale of shade trees cut/sized would constitute firewood and the authorities below have misdirected themselves in looking to the manner of billing to decide the classification viz., whether the wood/ goods sold was timber or fire wood or agricultural produce.

12. In our view, whether shade trees grown in tea estate cut/sized and sold would constitute "agricultural produce", may be the principal question that needs to be answered first. If the answer to the said question is in the affirmative, the need to travel beyond and examine, whether the wood sold is firewood or timber, may not even arise. This is, in view of the fact that once it is "agricultural produce", then, it goes outside the purview of the turnover under the TNGST Act, 1959. In this regard, it may be relevant to refer to Section 2 (r) of the TNGST Act, 1959 and Explanation I thereto, which reads as under :

"Section 2(r) : " turnover " means the aggregate amount which goods are bought or sold , or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment of other valuable consideration , provided that the proceeds of the sale by a person of agricultural or



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horticultural produce other than tea, and rubber (natural rubber latex) and all varieties and grades of raw rubber grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

Explanation (1) - "Agricultural or horticultural produce" shall not include such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or dying."

13. A reading of the above would show that to fall within the exclusion under the above provisions as agricultural / horticultural produce, the following requisites have to be satisfied viz.,

- a. The proceeds of sale must be of "agricultural or horticultural" produce.
- b. The produce should be grown within the State.
- c. The activity of growing the produce must be by the assessee himself.
- d. The claimant of the exemption / exception must have a substantial and not merely a formal interest in the land whereon the agricultural produce is grown.

14.1. To understand, what would constitute "agriculture", it may be relevant to refer to the following judgments of the Hon'ble Supreme Court and the Madras High Court:

(i) *CIT vs. Raja Benoy Kumar Sahas Roy (31 ITR 426)* wherein it was

held that "some basic operation prior to germination involving application of



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human effort on the land itself was necessary to constitute agriculture".

WEB COPY (ii) *CIT vs. Sundara Mudaliyar (18 ITR 259)* wherein it was pointed

out that "irrespective of the nature of the produce or the product of the land whatever is grown on land aided by human labour and effort, whatever does not grow wild or spontaneously on soil without human labour or effort, would constitute "agricultural produce".

14.2. The shade trees that have been cut/sized and sold are Silver Oak. These trees have their origin in Australia, an exotic plant variety and they are used as shade trees in tea estates in southern parts of India. These shade trees viz., Silver Oak need to be attended to periodically and they have to be planted and grown at particular intervals/distance to serve its purpose as shade trees for growth of tea plants. It is not the case of the Revenue that the growth of Silver Oak is wild or spontaneous, rather it is the case of the petitioner, which remains uncontroverted, these require human effort/labour and attention and thus, would constitute "agricultural produce".

15. Keeping the above aspects in mind, we find that the above question had already arisen for consideration in the case of the petitioner's tea estate reported in 45 STC 10, wherein a Division Bench of this Court, while rejecting



the claim of exemption on firewood, had however upheld the petitioner's claim

that what was sold, was agricultural produce and thus, outside the purview of turnover in terms of Explanation 1 to Section 2(r) of the TNGST Act, 1959. The relevant paragraph of the said decision may be set out below:

Claim of sale of firewood rejected:

"In respect of the turnover relating to the sale of shade trees, it is true that they were capable of being used as firewood. We are, however, concerned with the character of the trees were cut, and not with the purpose for which the purchasers are likely to use them. It is a misnomer to call the sales as sales of firewood as they were cut and sold as trees or logs, and not as firewood by splitting them with an axe. The sales were actually of shade trees after they were cut. They were sized for enabling convenient transportation. Timber by being sized does not become firewood....."

(emphasis supplied)

16. The above extract would show that the claim of the petitioner that the cut / sized Silver Oak / shade tree would constitute "firewood", was rejected. However, this Court had taken the view that the cut/ sized Silver Oak would constitute "agricultural produce", thus, not liable to tax. The following extract would make the position clear:

".....Thus, that were agricultural produce is clear from this finding. We shall presently examine whether they lost the character. But, as they were agricultural produce, they would be eligible for the exemption from tax. The Hon'ble Supreme Court has pointed out in Commissioner of Income-tax vs. Raja Benoy Kumar Sahas Roy that some basic operation prior to germination involving an application of human effort on the land itself was necessary to constitute agriculture. In an earlier decision of a Bench of this Court in Commissioner of Income-tax vs. Sundara Mudaliar, Viswanatha Sastri, J., pointed out that irrespective of the nature of the



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produce or product of the land, whatever is grown on land aided by human labour and effort, whatever does not grow wild or spontaneously on the soil without human labour or effort, would be agricultural produce. In the above case, the court was dealing with the assessability to income-tax of the income derived from the sale of casuarina trees and it was held to be agricultural income. Judged by the test propounded in the above decision also, in the present case, the trees would constitute agricultural or horticultural produce.

The exclusion contemplated by the explanation would not apply to the present case because there is no process employed for making them fit for consumption. The timber was sized only for the purpose of convenient transportation so as to enable their sale. There is no material to show that the timber was not merely sized but was split further so as to convert them into firewood. The sizing in this case was necessary only for convenience of transportation in lorries. Sizing them for convenience of transportation is different from splitting them into firewood which would be a different commercial commodity. Further, operations would be necessary to convert them into firewood. We are, therefore, satisfied that the assessee is eligible for exemption in respect of sales of the shade trees for the two years."
(emphasis supplied)

17. In view of the above, it is clear that the cut/ sized shade trees would constitute "agricultural produce" and therefore, fall outside the purview of TNGST Act, 1959. In the light of the conclusion that we have arrived at, we are of the view that it may not be necessary to examine the other question viz., as to whether the wood/ goods sold was firewood or timber, though a number of decisions were cited by both sides, in this regard. The said exercise would be purely academic, which we do not intend to enter into.



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18. For all the reasons stated above, the order of the first respondent /

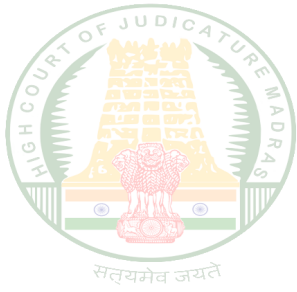
WEB TRIBUNAL, is set aside and all the writ petitions are allowed. No costs.

[R.M.D., J.] [M.S.Q., J.]
29.07.2022

Index : Yes/No
Speaking/Non-Speaking Order
mka

To

- 1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench), Commercial Taxes Building,
Balasundaram Road, Coimbatore.
- 2.The Addl. Appellate Assistant Commissioner (CT),
Commercial Taxes Building,
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Pre-delivery Order in
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