(1984) 04 KAPT CK 0001

Karnataka Appellate Tribunal

Case No: STA 496 of 1982

Mysore Coffee Curing Works		APPELLANT
	Vs	
Addl. Dy. Commissioner of Commercial Taxes.		RESPONDENT

Date of Decision: April 25, 1984

Citation: (1985) 29 KarLJ 47

Hon'ble Judges: K. V. Narayana Raju, Member; K. M. Shetty, J

Judgement

K.M. Shetty, CM.-The appellant is a Public Limited Company, dealing in planters requirements like Chemical Fertilisers, insecticides, Copper Sulphate besides curing Coffee on behalf of Coffee Board. The appellant was assessed by the Assistant Commissioner of Commercial Taxes (Asst), Mysore Division, Mysore for the period from 1-4-1979 to 30-6-1980, on 27-11-1980 on gross and taxable turnovers of Rs. 1,41,05,131-54 and Rs. 61, 84.089-13 respectively to tax of Rs. 3,38,365-20, additional tax of Rs. 35, 836-52 and surcharge on Sales Tax of Rs. 33,836-52. The assessing officer has assessed the sales of lime powder of Rs. 2,60,625-45 @8% under entry No. 79 of II Schedule to the Karnataka Sales Tax Act, 1957 instead of under S. 5(1)@4% as contended by the appellant. The first appeal before the Deputy Commissioner of Commercial Taxes (Appeals) Bangalore City Division, Bangalore failed vide his order No. AP 103/80-81 dt. 27-6-1981. Hence the second appeal before this Tribunal.

2. We have heard Sri C.R. Srinivasa Murthy, the learned Sales Tax Practitioner for the appellant and Sri Jayachandra, the learned State Representative for the State. We have perused the grounds of appeal, as the production of records was dispensed with. Sri Murthy contended that lime is an agricultural in put (Chemical Fertiliser), that lime is not a Chemical (in common parlance) merely because it has chemical properties, that lime is used for white washing of walls, that lime is either a fertilizer or an unclassified item falling under S. 5(1), that though water is H20, it is not a chemical, that though common salt is sodium chloride, it is not treated as a chemical

in commercial world, that though tamarind is tartaric acid, It is treated as an unclassified item, and therefore, the lime may be treated as an unclassified item and taxes @4%. Shri Murthy relied on Judgments of Allahabad High Court in Bishamhar Dayal Shri Niwas case (1963) (14 STC 184) and Industrial Gas Ltd, case (1968 21 STC 124) and contended that lime may be treated as Taxable under S. 5(1) as lime is capable of being put to different uses like insecticide to protect the young Coffee Plants from termites, white washing of walls, fertiliser etc.

3. On the facts and in the circumstances of case the question for determination is whether lime is to be treated as a chemical or an unclassified item for purpose of levy of Sales Tax under the Karnataka Sales Tax Act 1957?

4. In Bishambar Dayal Shri Niwas case (1963) 14 STC 184, the question for consideration was whether red lead and zinc oxide are covered by the term "dyes and colours" or fall under "chemicals of all kinds". In Industrial Gas Ltd., (1968 21 STC 124), the question was whether oxygen is a chemical (for industrial or commercial use). In both the above decisions'' the uses to which the articles are capable of being used and how they were treated by the seller and buyer was considered in the words of their Lordships of Allahabad High Court in the former case:

"If an article is sold as an article belonging to one category it must be treated as a sale of an article of that category even though it answers the description of another category, if therefore an article is capable of being used as a chemical and also as a colour, the answer to the question what was sold would depend upon how it was treated by the vendor. If he stocked and sold it as a chemical, it would be a sale of chemical and more so if it was bought by the vendee also as such"

But the same High court in the decision reported at page 127 in 21 STC observed as follows:

"We doubt the correctness of the proposition that the purpose for which an article is sold by a vendor or the use to which it is put by the purchaser determines its classification for purposes of Sales Tax in every case.

5. Entry No. 79 of the II Schedule to the Karnataka Sales Tax Act 1957 read as follows:

"Heavy Chemicals (such as Sulphuric Acid, Hydrochloric Acid, Caustic Soda etc.,). The entry in this form was in existence upto 31-8-78. From 1-9-1978 the entry reads as follows:

"Chemicals of all kinds.

6. The natural question arising out of the above entry is;- What is a chemical? According to Shorter Oxford English Dictionery Vol. I the word "chemical means" relating or belonging to chemistry; obtained by chemistry. A substance obtained or

used in chemical operations. In Webster''s Third New International Dictionery Vol. I, the meaning given is relating to applications of chemistry, as acting or operated by chemical means produced by chemical means or synthesized from chemicals: suitable for use in or used for operations in chemistry: having reference to or relating to the science of chemistry, a substance (as an acid, alkali, salt, synthetic organic compound) obtained by a chemical process, prepared for use in chemical manufacture or used for producing a. chemical effect".

7. Now, let us examine what is "lime"? According to Encyclopaedia Britannica Vol. 14 Page 129A:

"Lime is one of the oldest products known to man, dating possibly as far back as the caveman era and the discovery of fire. Primitive Kilns which are believed to have been used for preparing lime during the Stone Age have been excavated. It is certain that lime was the first manufactured chemical used by mankind probably the first agricultural material employed for soil fertility, and certainly one of the oldest mortar and plastering building materials known".

"In the strict chemical sense lime refers only to calcium oxide (or quicklime) High calcium limes, chiefly used for various chemical and industrial purposes, are produced from calcareous materials (generally lime stone but also chalk and oyster shells) containing 95% to 99% calcium Carbonate."..............

....."In common usage the term"lime"includes the various chemical or physical forms of quicklime, hydrated lime and hydraulic lime When lime stone is heated under controlled calcination, conditions, the Carbonates decompose, producing quick lime....Quick lime as it is normally manufactured, is highly reactive; Lime vary considerably in chemical and physical properties.....Lime is widely used to neutralize acids .....Next to Sulphuric acid, lime was the most widely used Chemical in industry In the 1950s and was the leading alkali In tonnage consumed. Both quick and hydrated lime products find extensive application in the agricultural, building and chemical industries Formerly lime was considered primarily a building and agricultural material and in many undeveloped parts of the world application for lime are still largely confined to these fields. However, today lime is employed basically as a chemical in industry. In the U. S. alone three fourths of the annual lime tonnage is consumed industrially. Chemical lime is consumed in large quantities by the metallurgical industry (steel), production of magnesium, treatment of aluminium, gold and silver ores, and the smelting and refining of copper, Zinc and other metals.....Large quantities of lime are required in the manufacture of paper, Calcium Carbide and glass, as well as in the purification of water supplies, and in the treatment of sewage and industrial wastes. Other chemical application are in Sugar and petroleum refining and in the manufacture of sand-lime brick and concrete products, insecticides, leather goods, bleaching powder, sodium hydroxide, varnish and paints, grease and other products, A market for lime was also developed as a soil-stabilizing agent in the construction of base courses of modern highways and

airport runways. In agriculture, lime-not to be confused with pulverized lime stone-is one of several soil liming materials used for promoting crop production by correcting soil acidity and furnishing important plant nutrients."

8. According to Condensed Chemical Dictionary, 9th Edition, Revised by Gersner by Havenly:

Lime: "Specifically, Calcium Oxide (Cao) more generally any of the various chemical and physical forms of quicklime, hydrated lime, and hydraulic lime.....Non-combustible".

Calcium oxide: (Lime, quicklime, burnt lime calx, unslaked lime, fluxing lime, Cao: Second in order of high volume chemical produced in U.S.".

Properties:"White or grayishwhite hard lumps.....odourless, crumbles on exposure to moist air, Sp.Gr. 3.40 M.P. 2570 C b-p 2580 C. Soluble in acids, reacts with water to form calcium hydroxide, with evaluation of heat.

Derivation Calcium carbonate (lime stone) is roasted in kilns until all the Carbon dioxide is driven off.

Uses: Refractory: Flux in Steel manufacture; Pulp and paper; manufacturing by Calcium Carbide; S. 2 removal from stock gases; sewage treatment (phosphate removal, PH Control); poultry feeds, neutralization of acid waste effluents; insecticides and fungicides; dehairing of hides; food processing, sugar refining".

9. According to Shorter Oxford English Dictionary III Edition,"Lime means:

(1) Birdlime.

(2) Usually coupled with stone: Mortar or Cement used in building.

(3) The alkaline earth which is the chief constituent of mortar; calcium oxide (Cao). It is obtained by calcining limestone (carbonate of lime), the heat driving off the Carbonic acid, and leaving a brittle white solid, which is pure lime (or quickline). It is powerfully caustic, and combines readily with water, evolving great heat In the process, and forming hydrate of lime."

10. According to Webster Third New International Dictionary-Unabridged-Vol. II page 1312:

"Lime means Calcium oxide.....

(1) A caustic highly infusible solid that consists essentially of calcium oxide often together with magnesia, that is obtained usu, in the form of white to grayish lumps or pebbles by calcining limestone, seashells (as oyster or conch shells) coral, or other forms of calcium carbonate, and that Is used chiefly in building (as in mortar plaster, and brick) in agriculture, in metallurgy, in the chemical and related industries and in the treatment of water, sewage, and trade wastes-called also burnt

lime, caustic lime, quicklime".

11. Now applying the above tests, the question is whether lime is a chemical. Lime can be used for producing a chemical effect, lime can also be produced by a chemical process. The uses to which lime as a chemical are put are extensive. In the appellants'' case, lime may be used in making Bordeaux mixture for spraying plantation crops, white washing wall, correcting the acidity in the soil etc , All the uses inicated that lime is used because of its chemical properties.

12. The learned State Representative draws our attention to the Karnataka High Court decision in State of Mysore v. U.M. Gulam and Sons and Others (1975 36 STC 254) wherein the High Court did not agree that lime is a heavy chemical as per the old entry No. 79; As a result of the judgment the lime was treated as an unclassified item taxable under S. 5(1) of the Act. But the overall reading of the decision gives an impression that lime is a chemical though not a heavy chemical. This judgment of the Karnataka High Court arose out of the judgment of this Tribunal in STA Nos. 2, 3, 4, 5, 6 and 251/72 dt. 19-6-73, in which the Tribunal has held that the lime is not a heavy chemical, but nevertheless it observed the fact that lime is a chemical is hardly disputed and can never be disputed.

13. Our finding that lime is a chemical has support in the case of State of Gujarat v. Shah Bhagwanji Manekchand 1982 50 STC 147 High Court of Gujarat, after detailed discussion, held lime to be a chemical for the purpose of levy of tax under Gujarat Sales Act 1969. The question for consideration in that case was whether lime would fall under the entry relating to "Dyes and Chemicals" subject to tax at a lower rate than under the residual entry sub. ject to tax at a lower rate than under the residual entry subject to tax at a higher rate. While answering the question in favour of the assessee, High Court relied on their judgment in an earlier case of Gujarat Distributors (1975) 36 STC 116 from which they quoted extensively as under (page 150 of 50 S.T.C):

"This shows that, broadly speaking all chemicals which are used, in the commercial world can be classified as (1) basic chemicals, (2) chemical products which are intermediary and which are used for producing other finished articles, and (3) end-products, which are ready for final consumption. Speaking of entry No. 4 of Schedule C which contemplates ''dyes and chemicals'', we have to consider in what particular category out of the three categories mentioned above, the word ''chemicals'' used in entry No. 4 of Schedule C falls In order to decide this question, we have necessarily to bear in mind the fact that the word ''chemicals'' is put by the legislature along with the word ''dyes''.....In other words, the use of both these words together in one entry would attract the principle of noscitur a sociis.... ltcannot be disputed that dyes are intemediary products and are utilised for various purposes.... When this word is used along with the word ''chemicals'' and when the principle of noscitur a sociis is applied, it follows that the word ''chemicals'', which is used in entry No. 4 of Schedule C is that chemical which can be used as an

intermediary product and not as an ''end-product....

...Since we find that dye is an intermediate chemical product, which determines the nature of the wider word ''chemicals'', we are of the opinion that the word ''chemicals'' should take its meaning from the category of chemicals which a dye represents.

....In other words, dyes and chemicals which are referred to in this entry are the intermediary products." In our opinion, the principle of noscitur a socii''s is not applicable to the instant case as the entry simply reads as "Chemicals of all kinds" and the question whether lime is used/sold as a basic Intermediary or end product is not relevant, in so far as It answers the description of a chemical.

14. The contention of the learned Sales Tax Practitioner that user theory or common parlance theory of interpretation will have to be applied to consider whether lime is a chemical or not, may not be of much avail as the purpose for which an article is sold by a vendor or the use to which it is put by the purchaser may not determine the classification of the commodity for the purpose of Sales Tax in every case in so far as a commodity like lime answers the nomenclature of "chemical" as per Entry No. 79 of II Schedule. Beca- use lime may be used for correcting soil acidity, it cannot be held as a chemical fertiliser (E.No. 48 of II Schedule) as it is not extensively used like a chemical fertiliser. Water though Chemical is exempted from Tax under E.No. 21 of V Schedule. Similarly, though salt is a chemical, the same is exempt under E.No. 4 of V Schedule. The Tartaric acid is not tamarind but derived from tamarind which is similar to oyster shells from which lime is obtained. In this case, we have to consider whether lime is a chemical or not and lime is one of the oldest products of chemical reaction known to man. We have therefore, no hesitation in rejecting the contention of the appellant and in holding that lime is a chemical falling under the amended Entry No. 79 of the II Schedule to the Karnataka Sales Tax Act 1957. Appeal dismissed.