

Chiranjit Lal Anand vs State Of Assam & Anr on 2 August, 1985

Equivalent citations: 1985 AIR 1387, 1985 SCR SUPL. (2) 385, AIR 1985 SUPREME COURT 1387, 1986 TAX. L. R. 2161, 1985 TAX. L. R. 2161, 1985 STI 144, 1985 SCC (SUPP) 392, 1985 SCC (TAX) 532, (1985) 60 STC 89

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, V.D. Tulzapurkar, Misra Rangnath

PETITIONER:
CHIRANJIT LAL ANAND

Vs.

RESPONDENT:
STATE OF ASSAM & ANR.

DATE OF JUDGMENT 02/08/1985

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
TULZAPURKAR, V.D.
MISRA RANGNATH

CITATION:
1985 AIR 1387 1985 SCR Supl. (2) 385
1985 SCC Supl. 392 1985 SCALE (2) 113
CITATOR INFO :
R 1987 SC1737 (17)
D 1987 SC1885 (9)

ACT:
Assam Sales Tax Act 1947, Schedule III Item 11 -
'Meat', sale of - Whether includes 'meat on hoof' - Whether
exempted from sales tax.
Words and Phrases - 'Meat' - Whether includes 'meat on
hoof' - Assam Sales Tax Act 1947, Schedule III Item 11.

HEADNOTE:
The appellant, who was carrying on supply business of
various items of ration including 'meat on hoof' to the
Central Reserve Police units, was assessed to sales tax
under s.19 of Assam Sales Tax Act, 1947 for the period
ending 30th September 1965.

He challenged before the High Court in a writ petition the order of assessment and the notice of demand dated 23rd May, 1969 on the grounds: (i) that 'meat on hoof' is a peculiar abbreviation used mainly by the Military which is nothing but a live goat and the sole purpose for which the 'meat on hoof' was supplied was for meat, and that it was a device to satisfy certain religious sentiments of the people in the Military that the aforesaid phrase had been used and since 'meat' is exempted from sales-tax as appearing at Serial No. 11 of Schedule III to the Act, the assessment order was unauthorised and invalid; (ii) that goods as defined in Section 2(4) did not include 'meat on hoof' which was nothing but live animal and the provisions of the said Act were not attracted to sale of animals, and (iii) that entry 48 of List II of the Seventh Schedule to the Government of India Act, 1935 under which the said Act was passed, the tax was on "sale of goods and on advertisements" and not on "animals". The High Court dismissed the petition on the ground that 'meat' at Serial No. 11 of Schedule III to the said Act could not be equated with 'meat on hoof' and it was not possible to interpret the exempted item in the Schedule with reference to what the parties understood at the time of the contract and since 'meat on hoof' was live animal, its sale is sale of goods under the said Act.

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Allowing the Appeal,

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HELD : 1. It is well-settled that in interpreting items in statutes like the Sales Tax Acts whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning i.e. the meaning attached to them by those dealing in them. (emphasis supplied). If any term of expression has been defined in the enactment then it must be understood in the sense in which it is defined. But in the absence of any definition being given in the enactment, the meaning of the term in common parlance or commercial parlance has to be adopted. [390 D-F]

In the instant case, 'meat on hoof' is not defined in the Act. Therefore, it must be understood in the context of the persons who were dealing in 'meat on hoof'. It has been found as a fact that the 'meat on hoof' was intended for supply of ration to the personnel of the Third Battalion of the M.S.R.P.F. What was intended to be bought was undoubtedly meat for ration and a reasonable explanation has been given as to why instead of near (flesh of the goat) 'meat on hoof' was asked to be supplied. Therefore the transaction that were between the parties were for the 'meat' in respect of which the levy of sales tax was sought to be imposed. That cannot be done. In that view of the matter, the High Court was in error in holding that the

transactions in question were subject to sales tax. [390 E-F, 392 D-E, 391 E-F, 392 E]

Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh, [1981] 3 S.C.R. 294, His Majesty the King v. Planters Nut and Chocolate Co. Ltd. [1951] C.L.R. (Ex.) 122 and Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh, [1967] 2 S.C.R. 720, Daffadar Bhagat Singh & Sons v. Joint Excise and Taxation Commissioner, Punjab, Patiala, and Anr., 37 S.T.C. 527, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1763- 1766 (NT) of 1973.

From the Judgment and Order dated 25.6.1973 of the Gauhati High Court in Civil Rules Nos. 683-686 of 1969.

B.B. Ahuja and S.K. Nandy for the Appellant. Miss Halida Khatoon for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. These appeals are by special leave from a decision of the Division Bench of the Gauhati High Court in respect of assessment made under the Assam Sales Tax Act, 1947 (hereinafter referred to as the 'Act'). The appellant was carrying on supply business of various items of ration to the Central Reserve Police Units within the State of Assam for a number of years. In response to a tender notice issued by the Superintendent of Police, Jorhat, the appellant had submitted a tender to supply various items of ration in Army Scale including 'Meat' on hoof'. 'Meat on hoof' is described in the tender notice as follows :

5(d) Contractor shall be bound to supply different varieties of Meat on hoof as per following ratio of the monthly requirement :

Khasi - 50% He Goat - 30% Sheep(Ram)-20% The Khasi and Ram to be supplied for the purpose of meat must not be over 5 years or below two years of age and He goat must not be over one year or below six months of age."

The tender notice also indicated that all contracts would be on schedule rates per 100 K.G. net. The tender of the appellant was accepted and an agreement was made on 1st April, 1965 between the appellant and the Superintendent of Police.

According to the appellant, in his application under Article 226 of the Constitution to the High Court, 'meat on hoof' is a peculiar abbreviation used mainly by the Military which is nothing but a live goat. It was stated that it was a device to satisfy certain religious sentiments of the people in the Military that the aforesaid phrase had been used. The appellant had further alleged in his petition that the sole purpose for which

the meat on hoof was supplied was for meat and that was the consideration for which the price was fixed. It was further stated that it was a device to satisfy certain religious sentiments of the people in the Military that the aforesaid device was fixed.

consideration for which the price was fixed. It was further stated that it was a device to satisfy certain religious sentiments of the people in the Military that the aforesaid device was fixed.

Reliance was placed before the High Court on a Notification dated 11th October, 1967 in the Assam Gazette with regard to the scale of meat, though it was alleged that in actual practice live animals were being supplied for the purpose of meat. The scale is indicated in the Assam Gazette

- paragraph 14(a) and (b) which is as follows : "14(a) The scale of meat for Assam Rifles is for dressed meat. In actual practice live animals (Chicken in the case of hospital supplier) will be supplied for the purpose of meat. Live animals/chickens after production and having been passed by the Ration committee may in certain supply points/ stations be required to be slaughtered under customary rights prevalent in the unit by the contractor at his own expense and agreements. After the carcass has been dressed and wiped down it will be hung for 3 to 6 hours according to the season of set. Then dressed out meat will be duly weighed and supplied to the supply points/stations as per demand.

(b) In case of OPs which are dependent on Bn.HQ/Wing HQ/sub-wing HQ for the purpose of supply, contractor will have to supply live animals for the purpose of meat and half the weight of such live animals, i.e. 50 per cent only will be taken as equal to that of dressed meat."

The appellant in response to a notice under the Sales- Tax Act originally did not file any return. Thereafter assessment was made under Section 19 of the said Act for the period ending 30th September, 1965. Application under Article 226 of the Constitution was made to the High Court to quash the said order of assessment and the notice of Demand dated 23rd May, 1969 in pursuance of the assessment order.

It was the contention of the appellant that 'meat' is exempted from sales-tax as appearing at Serial No. 11 of Schedule III to the Act and since 'meat on hoof' was nothing but 'meat', the assessment in this case under the said Act was unauthorised and invalid. Section 2(4) of the said Act defines goods as follows :

"2(4) "goods" means all kinds of movable property other than newspapers, actionable claims, stocks, shares or securities, and includes all materials, articles and commodities, whether or not to be used for the purposes referred to in sub-clauses

(a) and (b) of Clause (2)."

Section 3 imposes liability to tax and provides that every dealer whose gross turnover of sales exceeded the taxable quantum as fixed in the Act shall be liable to pay tax under the Act. We need not deal with the provision in detail. Reliance was, however, placed on Section 6(2) which provides that the provisions of the said Act shall not apply to the sale of goods specially exempted under the provisions of the said Act.

Schedule III of the said Act deals with goods exempted under Section 7 of the Said Act. Section 7 of the Said Act provides that subject to the conditions and exemptions, if any, set out in Schedule III to the said Act, the sales of goods specified therein shall be exempted from taxation under the said Act. Item 11 of Schedule III to the said act reads as follows :

----- Sl. No. Description. Conditions
and except subject to which exemption has been allowed.

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11. Fish, Ghee (But not vegetable ghee), Except when sold in Dahi, Butter, Cream,
Ceasin, Meat sealed containers.

and Vegetables (but not Onion, Garlic Spices and Condiments.) It was also submitted on behalf of the appellant that goods as defined in Section 2(4) did not include 'meat on hoof' which was nothing but live animal and the provisions of the said Act were not attracted to sale of animals. Thirdly and lastly it was urged before the High Court that entry 48 of List II of the Seventh Schedule to the Government of India Act, 1935 under which the said Act was passed, the tax was on "sale of goods and on advertisements" and not on "animals". The High Court held that it was clear that the above item 11 listed the particular goods exempted under Section 7 of the Said Act and the conditions and exceptions subject to which exemptions were allowed appear to be "except when sold in sealed containers". The exception specified in the item also clearly pointed to "meat" being "dressed meat" and not "meat on hoof" which was really the sale of the animal. According to the High Court, 'meat at Serial No. 11 of Schedule III to the said Act could not be equated with 'meat on hoof' and it was not possible to interpret the exempted item in the Schedule with reference to what the parties understood at the time of the contract. Apart from that, the High Court was of the view that the particular item in the tender and the agreement between the parties was not capable of the meaning suggested on behalf of the appellant.

For the aforesaid reasons and in view of the fact that in the opinion of the High Court 'meat on hoof' was live animal, and that the sale of animal is sale of goods under the said Act, it dismissed the application under Article 226 of the Constitution. These appeals have been preferred from the said decision of the High Court after obtaining special leave from this Court.

It is well-settled that in interpreting items in statutes like the Sales Tax Acts whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort

should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning i.e. the meaning attached to them by those dealing in them. (emphasis supplied) If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined. But in the absence of any definition being given in the enactment, the meaning of the term in common parlance or commercial parlance has to be adopted. See the observations of this Court in *Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh* [1981] 3 S.C.R. 294, and also in the case of *His Majesty the King v. Planters Nut and Chocolate Company Limited* [1951] C.L.R. (ex.) 122, (Which decision was approved by this Court in *Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh*) [1967] 2 S.C.R. 720.

In the context of transactions with the Central Reserve Police Force posted North Eastern Region, the question, therefore, is how is the expression 'meat on hoof' understood by persons who dealt in them.

Identical expression 'meat on hoof' came up for consideration in the case of *Daffadar Bhagat Singh & Sons v. Joint Excise and Taxation Commissioner, and Taxation Commissioner, Punjab, Patiala and Another* 37 S.T.C. 527. There the appellants were a firm of army contractors and they were registered as a dealer under the Punjab General Sales Tax Act, 1948, and the Central Sales Tax Act, 1956. Under the contract between the appellants and the army authorities, the appellants had to supply, among other things, "meat" and "meat on hoof". Under Section 6 read with entry 18 of Schedule to the Punjab Act no tax was payable on the sale of meat, fish and eggs except when sold in tins, bottles or cartons. The question that arose in that case was whether "meat on hoof" was taxable under the Punjab Act. The High Court was of the view that "meat on hoof" was taxable inasmuch as "meat on hoof was preserved meat, the preservation being the natural carton consisting of the skin of the Animal". On appeal, this Court observed that the skin covering the flesh of the animal preserved its life; to think that the skin was a carton for the flesh, which could be used for food after the animal was slaughtered, was against commonsense. This Court further observed whether what was sold by the appellants in that case to the army authorities as meat on hoof was really meat or live animals would depend on a correct reading of the contract between the parties, and since all the terms of the contract were not before the court, the matter was remanded.

We have already noticed the relevant clause in the tender, the appropriate term in the contract, the extract from the Assam Gazette and the purpose for which the meat was being purchased. Furthermore it has been found as a fact that the meat on hoof was intended for supply of ration to the personnel of the Third Battalion of the M.S.R.P.F. What was intended to be bought was undoubtedly meat for ration and a reasonable explanation has been given as to why instead of meat (flesh of the goat) 'meat on hoof' was asked to be supplied. The abundant and undisputed evidence on record about the purpose of the supply and the position that 'meat on hoof' becomes meat proper as soon as the goat is slaughtered and the skin is pulled off, leaves no doubt in our mind that the assessee had advanced a tenable claim.

In the Oxford English Dictionary, 1933 Edn. Volume V, page 372, one of the meanings of the 'hoof' mentioned is as follows:

"The massive horny growth which sheathes the ends of the digits or in cases the foot of quadrupeds forming the order Ungulata, primarily that of the horse and other equine animals: It corresponds to the nails or claws of other quadrupeds. In Collins English Dictionary at page 705 'hoof' is defined as under:

"1.a. the horny covering of the end of the food in the horse, deer, and all other ungulate mammals. b. (in combination) : a hoofbeat. Related adj.: ungular. 2. the food of an ungulate mammal. 3. a hoofed animal. 4. Facetious. a persons's foot. 5. On the hoof. (of livestock) alive-vb. 6. (tr.) to kick or trample with the hoofs. 7. hoof it, Slang. a. to walk. b. (intr.) to dance. (Old English hof; related to Old Norse Hofr, Old High German huof (German Huf), Sanskrit saphas)."

In Stroud's Judicial Dictionary, 3rd Edn. Vo1.2 page 1333 'hoofs' is mentioned in respect of 'Fertilisers and Feeding Stuffs Act, 1926.

In any event, as mentioned hereinbefore 'meat on hoof' a such is not defined in the said Act. It must be understood in the context of the persons who were dealing in 'meat on hoof'. Meat is exempted under the said Act. Therefore the transactions that were between the parties were for the 'meat' in respect of which the levy of sales tax was sought to be imposed. That cannot be done. In that view of the matter, we are of the opinion that the High Court was in error in holding that the transactions in question were subject to sales tax.

In the premises these appeals must be allowed and the appellant is entitled to succeed in his application under Article 226 of the Constitution. For the aforesaid reasons, the impugned order of assessment is hereby set aside along with the notice of demand dated 23rd May, 1969. The appellant is entitled to costs of these appeals.

M.L.A.

Appeals allowed.