Royal Hatcheries Pvt. Ltd vs State Of A.P on 15 October, 1993

Equivalent citations: 1994 AIR 666, 1994 SCC SUPL. (1) 429

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, P.B. Sawant

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           PETITIONER:
ROYAL  HATCHERIES PVT. LTD.

        Vs.

RESPONDENT:
STATE  OF  A.P.

DATE OF JUDGMENT15/10/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SAWANT, P.B.

CITATION:
 1994 AIR  666            1994 SCC  Supl.  (1) 429
 JT 1993 (6)   248        1993 SCALE  (4)147


ACT:



HEADNOTE:



JUDGMENT:
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The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J.- The appellants in this batch of appeals are Hatcheries in the State of Andhra Pradesh. They sell day-old chicks to poultry farms. The Sales Tax authorities levied tax on the sales of day-old chicks effected by the appellants under Section 5(1) of the Andhra Pradesh General Sales Tax Act, 1957. The authorities treated day-old chicks as general goods. The appellants' case was that inasmuch as day-old chicks fall within clause (xxvi) of Rule 5(2) of the Andhra Pradesh General Sales Tax Rules, tax must be levied at the purchase point and, therefore, no tax can be levied or collected from the appellants. The appellants' contention was rejected by the authorities whereupon they approached the High Court of Andhra Pradesh by way of writ petitions disputing the levy and collection of tax upon the sale of chicks by

them. They raised two contentions before the High Court, namely (1) chicks are not 'goods' within the meaning of Entry 54 of List 11 of the Seventh Schedule to the Constitution of India and, therefore, no tax can be levied upon the sale or purchase of chicks at all and (2) that even if the chicks are 'goods', the tax is leviable at the purchase point by virtue of Rule 5(2)(xxvi) of the rules. The Division Bench of the High Court negatived both the contentions and dismissed the writ petitions.

2. In these appeals, the first contention urged before the High Court is not urged before us. The only contention urged is that chicks fall within Rule 5(2)(xxvi) of the rules and, therefore, taxable at the purchase point. For this reason, it is contended, no tax can be collected from the appellants who are the sellers.

3. Rule 5(2)(xxvi) reads as follows:

> "(2) In the case of under-mentioned goods, the turnover of a dealer for the purposes of these rules shall be the total amount payable by the dealer as the consideration for the purchase of goods.
>
> (xxvi) Livestock, that is to say, all domestic animals such as, oxen, bulls, cows, buffaloes, goats, sheep, horses etc."

4. Mr Sorabjee, learned counsel for the appellants submitted that the dayold chicks sold by the appellants are livestock. They are also domestic animals. The animals mentioned in the said clause are merely illustrative but not exhaustive which is evident from the use of the word "etc." at the end of the clause. The High Court was in error in holding that only quadrupeds (fourlegged animals) are included within the clause but not birds. Chicks and chicken are domestic animals, whether one looks at the dictionary meaning of 'animal' or its technical meaning. Learned counsel cited a number of decisions, both Indian and English, in support of his contentions. On the other hand, Shri C. Sitaramiah, learned counsel appearing for the State of Andhra Pradesh supported the reasoning and conclusion of the High Court. Counsel submitted that the expressions occurring in a sales tax statute should be understood in their popular sense i.e., in the sense in which the common people and the traders dealing in the said goods understand them in their daily course of business and not in their technical or scientific sense. Quite a few decisions are cited by the learned counsel to support his submissions.

5. Having regard to the relevance of the language employed in Rule 5(2)(xxvi), it would be appropriate to set out the same over again here. It reads: "Livestock, that is to say, all domestic animals such as, oxen, bulls, cows, buffaloes, goats, sheep, horses etc." The clause opens with the word, 'livestock', but it does not stop there. Had it stopped there, there could be no doubt that day-old chicks or for that matter, older chicks and chicken would have certainly fallen within the ambit of the expression 'livestock' and would have been taxable at purchase point. But the clause proceeds further and restricts the ambit of the expression "livestock" to domestic animals referred to therein. That is the effect of the words "that is to say". The meaning and purport of the words "that is to say" is explained by this Court in Rajasthan Roller Flour Mills Assn. v. State of Rajasthan'. They

are words of limitation. In other words because of the use of the said words, the livestock contemplated by the said clause becomes confined to the domestic animals referred to in the said clause. 'Livestock' is, ordinarily speaking, not confined to domestic animals. As held in Peterborough Royal Foxhound Show Society v. IRC2 the word 'livestock' takes in 'animals' of any description. But the rule-making authority chose to limit the meaning of 'livestock' in the said clause only to domestic animals mentioned therein. Yet again, the clause does not stop with the words "all domestic animals". It proceeds further and goes on to illustrate the meaning of the expression "all domestic animals" by mentioning some of them, namely oxen, bulls, cows, buffaloes, goats, sheep and horses and then ends with the word " etc.". This could not have been without a purpose. It could only be to indicate the type of domestic animals the rule-making authority had in mind. Why did the rule-making authority not mention a single bird, while mentioning so many animals? It is true, the words "such as" indicate that what are mentioned thereafter are only illustrative and not exhaustive. The clause also ends with the word "etc.", which does mean that some more domestic animals in addition to those specifically mentioned therein are also included within the meaning the words "all domestic animals". But the question still remains, whether day-old chicks were contemplated as included within the clause? In other words, whether chicks can be called 'domestic animals' so as to fall within the purview of the said clause?

6. It is a well-settled proposition that such expressions occurring in sales tax enactments must be understood in their popular sense, that is in the sense in which "people conversant with the subject-matter with which the statute is dealing would attribute to it". In State of W.B. v. Washi Ahmed3 this Court observed: (SCC pp. 248-49, paras 2 & 3) "... Now, the word 'vegetable' is not defined in the Act but it is well settled as a result of several decisions of this Court of which we may 1 1994 Supp (1) SCC 413: JT (1993) 5 SC 138 2 20 Tax Cases 249 :(1936) 1 All ER 813 3 (1977) 2 SCC 246: 1977 SCC (Tax) 278:(1977) 39 STC 378 mention only two, namely, Ramavatar Budhaiprasad v. Assistant STO4 and Motipur Zamindary Co. Ltd. v. State of Bihar5 that this word, being a word 'of every day use, must be construed not in any technical sense, not from any botanical point of view, but as understood in common parlance. The question which arose in Ramavatar case4 was whether betel leaves are ,vegetables' and this Court held that they are not included within that term. This Court quoted with approval the following passage from the judgment of the High Court of Madhya Pradesh in M.P. Pan Merchants' Assn., v. State of Mp.6:

> 'In our opinion, the word "vegetables" cannot be given the comprehensive meaning the term bears in natural history and has not been given that meaning in taxing statutes before. The term ,'vegetables" is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table.' and observed that 'the word "vegetable" in taking statutes is to be understood as in common parlance i.e. denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table'. This meaning of the word 'vegetable' was reiterated by this Court in Motipur Zamindary case7 where this Court was called upon to consider whether sugar-cane can be regarded as vegetable and it was held by this Court that sugar-cane cannot be said to fall within the definition of the word ,vegetable'. It is interesting to note that the same principle of construction in relation to words used in a taxing statute has also been adopted in

English, Canadian and American courts. Pollock, B., pointed out in Grenfell v. IRC8 that , if a statute contains language which is capable of being construed in a popular sense such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words "popular sense", that sense which people conversant with the subjectmatter with which the statute is dealing would attribute to it.' So also the Supreme Court of Canada said in Planters Nut and Chocolate Co. Ltd. v. The King9 while interpreting the words 'fruit' and 'vegetable' in the Excise Act: 'They are ordinary words in every day use and are, therefore, to be construed according to their popular sense'. The same rule was expressed in slightly different language by Story, J., in 200 Chests of Tea10 where the learned Judge said that 'the particular words used by the legislature in the denomination of articles are to be understood according to the common commercial 4 AIR 1961 SC 1325 : (1962) 1 SCR 279 :

(1961) 12 STC 286 5 AIR 1962 SC 660: 1962 Supp (1) SCR 498 :

(1962) 13 STC 1
6 (1956) 7 STC 99, 102 (Nag AC)
7 Motipur Zamindari Co. v. State of Bihar, AIR 1962 SC 660
8 (1876) 1 Ex C 242, 248
9 (1591) 1 DLR 385
10 22 US (9 Wheaton) 430, 438 : 6 L Ed 430

understanding of the terms used, and not in their scientific or technical sense, for the legislature does "not suppose our merchants to be naturalists, or geologists, or botanists.....

7. To the same effect are the decisions in CST v. S.N. Brothers" and Charanjit Lal A nand v. State of Assam12.

8. Another rule of construction which is equally well established is that the Court would not adopt a construction which would render some of the words in a statutory provision nugatory and/or superfluous. It is from the above standpoint that we have to approach and interpret the clause in question and determine whether day-old chicks can be said to fall within its scope?

9. Besides Peterborough Royal Foxhound Show Society v. IRC2 Mr Sorabjee brought to our notice the definition of "livestock" in the Livestock Importation Act, 1898, the notification dated July 20, 1960 issued by the Central Government under the said Act, the textbook Livestock Breeding in India by D. Sundaresan and the FAO publication The Livestock in Less-Developed Countries in support of the proposition that day-old chicks are livestock. Inasmuch as there is no quarrel with the said proposition, it is not necessary to refer to them in any detail.

10. Mr Sorabjee then brought to our notice certain decisions and literature in support of his proposition that chicks are "domestic animals". In the Words and Phrases, Permanent Edition, Volume 13, p. 407 as well as in the Collins Cobuild English Language Dictionary, "domestic animals" are defined as including chicken. In the latter Dictionary, a domestic animal is defined as "one which is not wild and is kept on a farm to produce food or in someone's home as a pet". In Bridge v. Parsons13 a case arising under the enactment providing for prevention of cruelty to animals, a question arose whether cock was included within the meaning of the word 'animal' in Section 29 of the Relevant Act. The definition in Section 29 ran thus:

> "The word 'animal' shall be taken to mean a horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or any other domestic animal."

11. The Court rejected the contention that a cock is not a domestic animal within the meaning of said definition inasmuch as all the animals mentioned in the definition are quadrupeds, while cock is not. The Court observed:

> "But goats, hens and poultry are as much domestic animals as bulls and other animals which are mentioned, and the Act seems to have intended to draw a distinction between such animals as are of a domestic nature and such as are wild."

12. Certain notifications and clarifications issued by the Central Board of Direct Taxes under the Wealth Tax Act and the Income Tax Act and by the Central Board of Excise and Customs under the Central Excise Act are brought to our notice which say that hens on a poultry farm are animals, that poultry farming falls within the meaning of animal husbandry and that poultry feed is treated as animal feed respectively. It is also pointed out that the Indian Customs 11 (1973) 3 SCC 496 : 1973 SCC (Tax) 254 :(1973) 31 STC 302 12 1985 Supp SCC 392 : 1985 SCC (Tax) 532 : (1985) 60 STC 89 13 (1863) 32 LJMC 95 Tariff Act, 1986-87 has classified "Poultry" as a species of "live animals". Reliance is also placed upon a textbook Genetics and Animal Breeding by Maciejowski wherein domestic animals have been divided into five broad categories, namely, cattle, oxen, swine, sheep and poultry. Domestic animals are also classified into farm animals and those which are merely associated with farms.

13. On the other hand, Mr C. Sitaramiah, the learned counsel for the State of Andhra Pradesh relied upon the following decisions in support of his contention that in popular sense and in common/commercial parlance, day-old chicks are never understood as domestic animals and, therefore, do not fall within the said clause (xxvi). In Casher v. Holmes 1 4 question arose, whether gold and silver are included within the expression "all other metals"

> occurring in the relevant enactment providing duty on several goods. Lord Tenterden, C.J. held that "the words 'all other metals' in this Act of Parliament must be understood in their ordinary and popular sense; and in that sense they certainly do not include gold and silver. They are never spoken of in popular language as metals, but as 'precious metals'." To the same effect are the observations of Littledale,

> J. While undoubtedly, gold and silver are, strictly speaking, metals, the learned Judge held, they cannot be treated as such for the purpose of the Act in question which provided for levy of duties on several metals. Two other learned Judges, Parke, J. and Taunton, J. too agreed with this view. The next decision cited is in Earl of Normanton v. Giles' 5 . There the question was whether rearing pheasants for sport can be characterised as livestock-keeping within the definition of the expression 'agriculture'. The Rent Agriculture Act, 1976 defined 'agriculture' in the following words-
>
> "(a) agriculture includes - (i) dairy-farming and livestock keeping and breeding (whether those activities involve the use of land or not).....

14. It was held by the House of Lords that rearing pheasants for sport cannot be characterised as livestock- keeping or breeding for the purposes of the Act. However, if the pheasants are reared and bred for food, the situation would be different. Similarly in Hemens (Valuation Officer) v. Whitsbury Farm and Stud Ltd. 1 6 the House of Lords held that keeping and breeding of thoroughbred racehorses does not amount to agricultural operation within the meaning of General Rate Act, 1967. Learned counsel also relied upon the decision in Alexander v. Immigration Appeal Tribunal 17 to support his contention that the delegated legislation must be construed sensibly according to the natural meaning of the language which was employed and not with the strictness applicable to a statute or statutory instrument. The rules considered in the said decision are the Immigration Rules.

15. So far as words "such as" are concerned, there is no dispute that they are meant to be illustrative and not exhaustive. It is, therefore, unnecessary to refer to the decisions cited by the learned counsel for the appellants on this aspect.

14 109 ER 1263: (1831) 2 B & Ad 592(KB) 15 (1980) 1 All ER 106 16 (1988) 1 All ER 72 17 (1982) 2 All ER 766

16. The learned counsel for the appellants also cited certain decisions to show that the rule of ejusdem generis should be applied with great care and that the present trend is towards less and less reliance upon the said rule. On this score again, there is no controversy and, therefore, we do not think it necessary to refer to the decisions cited.

17. Mr Sorabjee relied upon a decision of House of Lords in Ambatielos v. Anton Jurgens Margarine Works18 to illustrate the meaning of the word 'etc.' The relevant clause in the charterparties, which fell for consideration in the said decision read as follows:

> "Should the vessel be detained by causes over which the charterers have no control, viz., quarantine, ice, hurricane, blockade, clearing of the steamer after the last cargo is taken over, etc., no demurrage is to be charged and lay days not to count."

18. The question was where the discharge of goods was held up on account of a general strike by the dock labourers, is it a cause falling within the said clause? It was held that it is. The opinion of

Viscount Finlay shows that the expression "viz." stands for "videlicet", which means "to wit" or "that is to say". These words are generally understood as words of limitation. Regarding the meaning of the word "etc.", it was observed that the word "etc." is absolutely different from "et alia" and that it means "all the rest." Having regard to the context and object underlying the said clause it was held that the cause in question was covered by the said clause which spoke of "causes over which the charterers have no control", though the said cause was not one among the causes specifically mentioned therein.

19. We may now proceed to answer the question arising for our consideration in the light of the decisions and other material referred to above. We have hereinbefore analysed the clause in para 5. It is enough to reiterate here that clause (xxvi) of Rule 5(2) does not cover all "livestock". It covers only that 'livestock' which answers the description "domestic animals". In popular and common parlance, day-old chicks - or for that matter, chicks - are not referred to or understood as 'animals', though in its literal sense, the word ,animal' refers to any and every 'animate' object as distinct from inanimate objects. The wider interpretation placed upon the said word in Bridge v. Parsons13 must be understood having regard to the object and purpose of the enactment concerned therein viz., prevention of cruelty to animals. For that reason, cock-fights were held to be covered by the enactment. The principle of this decision cannot be applied mechanically to every situation, more so to a taxing provision like the one concerned herein. The several decisions cited by Shri C. Sitaramiah show that words of this nature are construed having regard to the context and the object underlying the enactment. For example, in Casher v. Holmes14 arising under an enactment levying duties on several articles, 'metals' were construed as not including gold and silver. It was held that gold and silver are popularly referred to as precious metals and not as 'metals'. This brings to our mind another illustration. Diamonds are stones so are there several semiprecious stones used in carvings in marble. They are referred to as precious or semi-precious stones. When one speaks of stones, he does not mean to include 18 (1923) AC 175 : 39 TLR 106 the precious and semi-precious stones therein - unless, of course, the context drives him to do so. Coming back to the popular sense, chicks are referred to as 'birds' - not as 'animals'. That this is the sense in which the said word is used is borne out by the type of animals mentioned in the clause by way of illustration. All of them are animals - domestic animals, to wit, oxen, bulls, cows, buffaloes, goats, sheep and horses. It is significant to notice that not one of them belongs to the birds' category. No doubt, the word 'etc.' follows the said words but then in the context, it would be reasonable and appropriate to say that while animals like dogs and cats - without trying to be exhaustive - may be covered by the said clause by virtue of the word "etc.", chicks cannot certainly be included therein. To do so would be to depart from and ignore the ordinary popular connotation of the words "domestic animals"

> besides doing violence to the spirit and structure of the clause. The use of the word "all" preceding "domestic animals" does not make any difference. It only means all domestic animals of the type mentioned therein - all of which are quadrupeds. If birds are also included in the clause, the very purpose of giving the illustrations disappears. Those words in the clause would become superfluous. Such an interpretation ought not to be adopted except perhaps to avoid an absurd result. For all the above reasons, we hold, in agreement with the High Court, that the chicks sold by the appellants are not included within clause (xxvi) of Rule 5(2) of the A.P.

General Sales Tax Rules.

20. It is brought to our notice by Mr Sorabjee that by an exemption notification issued in August 1992, day-old chicks have been exempted from the tax. May be so. The said circumstance is in no way relevant on the question at issue. The exemption notification is also not placed before us. In fact, the very fact of exemption shows the exigibility to tax under the Act. We have, of course, not placed any reliance upon the said circumstance in deciding the question at issue.

21. For the above reasons, the appeals and review petition fail and are dismissed. No costs.