

(1978) 08 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 81 of 1971

Chandreswar Singh

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-08-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 301, 304

Citation : (1978) 42 STC 424

Hon'ble Judges : C.M. Lodha, C.J.;Baharul Islam, J

Bench : Division Bench

Advocate : P. Choudhuri and R.L. Rara, for the Appellant; B.M. Goswami, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

C.M. Lodha, C.J.—This is a petition under Article 226 of the Constitution of India, whereby it has been prayed that Notification No. FTX. 98/62/84, marked annexure C, be cancelled and the opposite parties may be directed not to enforce it against the petitioner. It has been further prayed that an amount of Rs. 49,048.97 paid by the petitioner as sales tax be ordered to be refunded.

2. The petitioner deals in onion, garlicks, potatoes, etc., in Fancy Bazar of Gauhati and, in the course of his business, imports among other things onions from outside the State of Assam. He is a registered dealer within the meaning of the Assam Finance (Sales Tax) Act, 1956 (hereinafter to be referred to as the Act) and the Rules framed thereunder. His case is that he had to deposit under protest a sum of Rs. 49,048.97 up to the period ending 31st March, 1970, as sales tax on the onion imported by him from outside the State of Assam. The contention of the petitioner is that, in the first place, "onion" is not a bulb and, at any rate, onion grown within the territory of Assam cannot be subjected to sales tax as it is neither made nor manufactured nor processed and, therefore, the levy of sales tax on the onion imported by the petitioner from outside the State is discriminatory and liable to be struck down under Article 301 of

the Constitution.

3. We shall deal with the points raised by the learned counsel for the petitioner in due course. But before we do so, we consider it necessary to point out that the schedule, annexure C, filed by the petitioner along with the petition does not represent the correct state of affairs inasmuch as item No. 56, which is the subject-matter for decision before us, has been amended. In annexure C, item 56 reads as under :

56. Dried fruits, bulbs and plants 5 paise in the excluding orchids. rupee.

4. In this connection, we may point out that item No. 56 has been amended by insertion of the words "including onions and garlis" after the word "bulbs" and before the word "and" by Act No. 18 of 1967 with effect from 25th October, 1967.

5. Some argument was advanced in the beginning by the learned counsel that "onion" does not fall within the definition of the term "bulb" and, therefore, onion is not taxable. He also referred to the dictionary meaning of the word "bulb" in this connection. But, in view of the amendment referred to above, we consider it unnecessary to address ourselves to this argument. Irrespective of the fact whether the term "bulb" embraces "onion" within its definition, it is clear from the amended item No. 56 that onion has been expressly included within the term "bulb" and, therefore, so far as the impugned schedule is concerned, we have to proceed on the basis that "onion" is "a bulb" whatsoever may be the dictionary meaning of the word "bulb".

6. Now, we may come to the second branch of the learned counsel's argument that the levy of sales tax on the imported onion is bad as it is discriminatory, the onion grown in Assam not being subjected to sales tax. Before examining the legal aspect of the case, we consider it necessary to point out here and now that in the reply filed by the State of Assam, it was asserted in unequivocal terms in para 3 that "onion produced in the State of Assam is equally taxable with onion imported from outside the State of Assam". This factual position alleged in the reply to the petition has not been controverted on behalf of the petitioner and, therefore, we have no alternative but to accept that as a matter of fact onion produced in the State of Assam does attract the levy of sales tax and factually there is no discrimination so far as the levy of this tax is concerned between the onion produced in Assam and the onion imported from outside the State of Assam. However, the learned counsel was at pains to argue that whatever may be the actual state of affairs, the levy cannot be justified under the law. In this connection he has drawn our attention to the definition of the term "dealer" contained in Section 2, Sub-section (2), of the Act, which reads as under :

(2) "Dealer" means any person who sells taxable goods manufactured, made or processed by him in Assam, or brought by him into Assam from any place outside Assam for the purpose of sale in Assam.

7. To put the argument of the learned counsel in nutshell, his contention is that a person who sells onion produced in Assam is not a dealer inasmuch as onion is neither manufactured nor made nor processed. On this assumption, the learned counsel contends that levy of sales tax on onion imported from outside the State of Assam is hit by Article 301 of the Constitution, which deals with freedom of trade, commerce and intercourse throughout the territory of India. It is argued that Article 304(a) cannot come to the rescue of the State for justifying this levy inasmuch as Article 304(a) provides that the legislature of a State may by law impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced. In support of this contention, the learned counsel has relied on *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, ; *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras* and *Another*, and (1969) 2 SCC 710. On the other hand, Mr. Goswami, learned counsel for the State of Assam, contends that there is no discrimination between onion imported from outside and onion grown in the State of Assam inasmuch as both are subjected to levy of sales tax. The argument in this connection has centred round the definition of the word "processed". It is urged by the learned counsel for the petitioner that onion cannot be processed inasmuch as it is not subjected to any mechanical process after it has been removed from the earth.

8. The word "process" used as a transitive word means according to Webster's New International Dictionary "to prepare by or subject to treatment or process". In *Nilgiri Ceylon Tea Co. v. State of Bombay* [1959] 10 S.T.C. 500, Shah, J., as he then was, observed as follows :

The expression "process" has not been defined in the Act. According to Webster's Dictionary "process" means "to subject to some special process or treatment, to subject (especially raw material) to a process of manufacture, development or preparation for the market, etc., to convert into marketable form, as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurising, fruits and vegetables by sorting and repacking.

According to Chambers's Twentieth Century Dictionary, "process", *inter alia*, means to prepare, (e.g., agricultural product) for marketing. In the Oxford English Dictionary, Vol. VIII, "process" has been defined to mean besides other things, "to preserve fruit, vegetable, etc., by some process". In Webster's New International Dictionary, Vol. II, besides other things, process has been defined to mean "a course of procedure, something that occurs in the series of actions.

9. Now, it is common knowledge that the onion has its roots under the earth with coats of bulbs also and its leaves sprout on the surface of the earth. It is removed along with the root, the leaves are dried up and the main part which may be called bulb is exposed in the sunshine and after the leaves have dried up and have been removed from the bulb, the bulb, i. e., the edible round article is taken to the market for sale. From this it will be clear that the commodity is

subjected to a treatment or process. It does not remain in the same condition in which it was when embedded to the earth or as initially harvested. Looked at from this angle, we are inclined to hold that onion is processed and that is why the onion grown in the State of Assam has been rightly subjected to a levy of sales tax by the Government.

10. In this connection, reference may be made to Schedule III of the Act, where amongst the list of goods u/s 7 of the Assam Sales Tax Act, it is specifically mentioned that onion, garlicks, spices and condiments would not be included within the ambit of the term "vegetables". We are, therefore, unable to accept the contention advanced by the learned counsel that on account of the wordings contained in the definition of the term "dealer" in the Act, onion produced within the territory of the State of Assam cannot be subjected to sales tax. As observed earlier, it has been stated in the reply and so also it has also been asserted before us by the learned counsel for the State in the course of arguments that the onion produced in the State of Assam has been subjected to levy of sales tax. In this view of the matter, the argument based on alleged discrimination between the onion produced in the State of Assam and that imported from outside loses all its force. At this stage, we may mention that we do not consider it necessary to discuss the authorities cited by the learned counsel for the petitioner based on Articles 301 and 304(a) of the Constitution, because the learned counsel for the State has taken no exception to the proposition propounded therein that any levy discriminating between the goods produced in the State and those imported from outside would be hit by Article 301 of the Constitution. Besides that, there is no gainsaying the fact that the petitioner is a dealer and therefore the argument raised in this connection that even though the petitioner is a dealer registered under the Act, still he would not be liable to pay sales tax on the sale of onion imported from outside on the ground that the onion produced in the State of Assam does not attract the levy of tax is, in our opinion, unsustainable.

11. We are, therefore, of the opinion that the levy of sales tax on the onion imported by the petitioner from outside the State of Assam is justified and cannot be struck down. In view of the conclusion to which we have come, the question of refund of the tax already paid by the petitioner does not arise and we consider it wholly unnecessary to refer to the cases relied upon by the learned counsel on both the sides on the question whether refund can be ordered or not.

12. The result is that this petition fails and hereby dismissed. But, in the circumstances of the case, we leave the parties to bear their own costs.

Baharul Islam, J.

13. I agree.