
(1989) 01 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 376 of 1979

Kali Kumar Sharma

APPELLANT

Vs

Sales Tax Tribunal, Tripura

RESPONDENT

Date of Decision : 12-01-1989

Acts Referred:

Tripura Sales Tax Act, 1976 — Item 54, Item 54

Citation : (1989) 1 GLJ 119 : (1989) 1 GLR 91

Hon'ble Judges : B.L.Hansaria, J and W.A.Shishak, J

Bench : Division Bench

Advocate : D.N.Konwar, J.P.Bhattacharjee, G.K.Joshi, A.K.Saraf, Advocates
appearing for Parties

Judgement

Hansaria, J.—The question involved in this Civil Rule is whether betel nut is assessable to tax under the provisions of the Tripura Sales Tax Act, 1976, hereinafter the Act. The authorities have sought to levy the tax on the sale of betel nut because of item No. 54 in the Schedule to the Act. This item reads as below :

"Dry or preserved fruit, that is to say, any fruit or edible part of a fruit that has undergone full or partial dehydration or any other preserving process, including Almond, Khasta badam, Pistachio, nut, Chilgoza or Neoza, Apricot, Alubukhara, Cashew nut, Walnut, Fig, Raisina (locally known as Khajur, Zahedi or Soheia) but excluding any fruit which is oilseed as defined in Section 14 of the Central Sales Tax Act, 1956 (Act 74 of 1956)."

The precise point for determination is whether betel nut could be called "dry or preserved food".

2. It is an accepted rule of interpretation that in a matter like the one at hand it is the common sense view or the popular sense which has to be followed while deciding whether a commodity is taxable under the provisions of the Sales Tax Act. The botanical or technical meaning is not to prevail in this regard. It is the

meaning understood in common parlance which is decisive in this context. The dictionary meaning is relegated to a subsidiary position while answering the question of the present nature. This is the view expressed in *Ramavatar vs. Assistant Sales Tax Officer*, 12 STC 286 (SC) wherein betel leaves were not regarded as "vegetable". It was stated in this connection that the word used in the taxing statute which is of everyday use must be construed in its popular sense, meaning that sense which people conversant with the subject matter would attribute to it. The importance of common sense view was also emphasised in *Alladi Venkateswarlu vs. Govt. of Andhra Pradesh*, 41 STC 394 (SC) and *Assam Cotton Mills vs. Commissioner of Taxes*, 1988, (2) GLR 398. In *T. C. Nadar vs. Additional Appellate Assistant Commissioner*, 60 STC 80(SC), it was stated that the meaning which has to prevail in this context is the one which a householder would like to ascribe. It was stated that understanding of the word in botanical sense cannot be decisive. The botanical understanding had also been rejected in *Ramavatar* (supra).

3. In *Delhi Cloths & General Mills vs. State of Rajasthan*, 46 STC 256 (SC), it was reiterated that in determining the meaning or connotation of words and expressions describing an article or commodity, the turnover of which is taxed in a sale tax enactment if there be one principle fairly wellsettled, it is that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and the consumer.

4. In *Ganesh Trading vs. State of Haryana*, 32 STC 623 (SC), it was stated as below in this connection :

"This Court has firmly ruled that in finding out the true meaning of the entries mentioned in a Sales Tax Act, what is relevant is not the dictionary meaning, but how those entries are understood in common parlance, especially in commercial circles".

5. Relying on the aforesaid decisions, it was submitted by Shri Bhattacharjee that a betel nut would never be understood in common parlance as a dry or preserved food. It is urged by the learned counsel that though the word "nut" has been used in item No. 54 that would not be decisive inasmuch as every nut would not be comprehended within the expression "dry or preserved food". Learned counsel submits that the expression "that is to say" used in the item (after which the word "nut" appears) has been implied to make clear and fix the meaning of what is explained or defined. Such words are not used, submits the counsel, to amplify a meaning while removing a possible doubt, as stated in *State of Tamil Nadu vs. P. L. Malhorta*, 37 STC 319 (SC). This would show that nut is regarded as an illustration of what legislature thought about the expression "dry or preserved fruit". It is however urged that unless a particular kind of nut be dry or preserved food as ordinarily understood, the same would not be assessable to tax under this item.

6. Shri Konwar appearing for the department has referred us to "the dictionary

meaning of "betel nut" as finding place in Webster's New International Dictionary which has stated that it is so called from its being chewed with betel leaves. The learned counsel then brings to our notice the definition of "nut" as given in the aforesaid dictionary where it has been defined to mean "a hardshelled dry fruit or seed having more or less a distinct separable rind or shell and anterior kernel or meat". Mention has been made of hazelnut and chestnut in this connection. By relying on these definitions Sri Konwar has urged that a betel nut has also to be regarded as a dry fruit. As against this, Shri Bhattacharjee has referred to the meaning of "betel nut" as given in Chambers 20th Century Dictionary wherein it has been defined to mean "arecanut". The definition of "arecanut" has been given as "the nut of Areca Catch e chewed by the Malays, Southern Indians etc with lime in a betel pepper leaf". This being the definition of betel nut as given in this dictionary Shri Bhattacharjee submits that the betel nut cannot be regarded as a dry fruit. Before leaving the dictionary meanings given to various words it would be appropriate to point out that the word "nut" has been defined in the Chambers' Twentieth Century Dictionary as "any fruit with seed in a hardshell".

"7. From what has been stated above, it may be stated that if we confine our attention only to the dictionary meanings one could say that betel nut could be a fruit if the definition of nut is taken superficially. But on a closer look of the definition of "nut" as given in the aforesaid two dictionaries it would seem that for a nut to be a fruit there must be a seed in a hard shell or the nut to be a fruit must have more or less a distinct separable ring or shell and anterior kernel or meat. Betel nut does not satisfy these requirements and as such we would hesitate to call betel nut a fruit dry or preserved, even in the sense the word is defined in the dictionaries. There is, however, another stronger reason for us not to accept the contention of the department because, as stated above, it is not the technical or dictionary meaning which has to prevail but the common sense view or the popular sense in which the word or expression is understood In common parlance betel nut would never be taken as a fruit. The householder would never accept betel nut as a fruit. The word "betel nut" cannot be understood, according to us, in the trade or by the dealer or consumer as a fruit.

8. In view of the above, we would state that we would not accept the contention of the Revenue that betel nut is assessable to Sales Tax under the Act. We may point out here that the State Government itself by notification of even No. dated 21st September, 1978 (AnnexureV) exempted all the dealers from liability to pay tax on any sale of betel nut made by them to any person, Shri Konwar has stated that grant of this exemption under section 3(3) of the Act may not influence us to answer the main point urged by the petitioner because the power under section 3(3) deals with exemption in respect of any tax payable under the Act which shows that according to the Government, tax was payable on betel nut, but due to representations made to it by the dealers as stated in para 11 of the petition they were exempted from paying tax on this article. Though there is force in this contention of Shri Konwar, but as already stated we are not satisfied

if the betel nut can be, in popular sense of in common parlance, be understood as dry or preserved fruit.

9. The petition is, therefore, allowed and the Rule is made absolute.