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**(1962) 03 KL CK 0009**

**In the High Court Of Kerala**

**Case No : O.P. No"s. 767 of 1959 and 542 of 1960**

Krishna Iyer

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision : 06-03-1962**

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 2(b)

**Citation : (1962) 13 STC 838**

**Hon'ble Judges : M.S. Menon, C.J;T.K. Joseph, J;P. Govindan Nair, J**

**Bench : Full Bench**

**Advocate : T.N. Subramonia Iyer and S. Subramonia Iyer, for the Appellant;  
M.U. Isaac, The Government Pleader, for the Respondent**

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## **Judgement**

P. Govindan Nair, J.—The first question for consideration in these petitions is whether "green ginger" is liable to taxation under the General Sales Tax Act, 1125, Both the petitions are by the same person.

2. The period covered by the assessment order challenged in O.P. 767 of 1959-Exhibit A-is the period from 1st October, 1957 to 31st March, 1958, and the period covered by the assessment order challenged in O.P. 542 of 1960-Exhibit A-is the period from 1st April, 1958 to 31st March, 1959.

3. Counsel for the petitioner relies on two notifications of the Government in support of the non-liability to taxation claimed in respect of "green ginger", one dated 15th June, 1950, and issued by the Travancore-Cochin Government, and another dated 25th March, 1958, and issued by the Government of Kerala. Both the notifications were issued u/s 6 of the Act. The item exempted was described as follows :

Vegetables including tapioca except its manufactured product." This exemption applied for the period 1st October, 1957 to 1st October, 1958. Though the earlier notification dated 15th June, 1950, insisted on a licence being taken for claiming the benefit of exemption, the notification dated 25th March, 1958, did not

impose any such condition. The implications of this will be dealt with later in this judgment. With effect from 1st October, 1958, the above item was omitted by a subsequent notification dated 23rd September, 1958, and on the same day another notification was issued allowing the exemption subject to the condition that a licence should be taken. The effect of these notifications also will be considered later.

4. The main question for consideration is whether "green ginger" can be considered as coming under the entry "vegetables including tapioca except its manufactured product." We have come to the conclusion that it can and should be so considered.

5. "Green chillies" and "green ginger" go together in the culinary art of Malabar. It is common ground that the Department has treated the petitioner's turnover in respect of "green chillies" as exempt from taxation on the ground that "green chillies" are within the description of "vegetables". If such is the case, we see no reason why "green ginger" also should not be considered as coming within the purview of that exemption. There is a specific averment in the affidavits accompanying the petitions that "green ginger" is a "vegetable" and hence exempt from taxation. No counter-affidavit has been filed on behalf of the Department challenging the correctness of this statement.

6. There is no doubt that "green ginger" is a vegetable if we go by the dictionary meaning of the word "vegetable" as it definitely comes within that great division of organic matter distinguished from the other division of animals. The meaning of the word given in the Chambers' Dictionary is:

An organism belonging to the great division distinguished from animals by being unable to deal with solid food, commonly but not necessarily fixed in position—a plant: a plant or part of one used for food, other than those reckoned fruits.

Black's Law Dictionary defines the word "vegetable" as follows :

A part or the whole of a herb used chiefly for culinary purposes, but also frequently for feeding domestic animals. In a comprehensive sense, any living organism not possessed of animal life ; a plant of any kind.

7. But it is not the dictionary meaning of the term that will invariably prevail in the construction of a statute. The rule of interpretation applicable to such cases is well recognised. It is the rule that particular words used by the Legislature in the denomination of article should be understood according to the common commercial understanding of the term used and not in their scientific or technical sense, for, as stated in 9 Wheaton U. S. 435, the Legislature does not suppose our merchants to be naturalists, or geologists, or botanists. In 1951 Canada Law Reports (Exchequer Court) 122 the question as to whether salted peanuts and cashewnuts fell within the category of "fruit" or "vegetable" for the purpose of the Excise Act, Ch. 179, R.S.C. 1927, came up for consideration and the question was answered in the negative in spite of the evidence of the botanists that both

the peanut and the cashewnut are vegetables in the wider meaning of that word, that each is a fruit and that neither is a nut. The Court said :

Counsel for the plaintiff suggested a test which I think apposite. Would a householder when asked to bring home fruit or vegetable for the evening meal bring home salted peanuts, cashewnuts or nuts of any sort ? The answer is obviously "No".

8. In *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer, Akola* [1961] 12 S.T.C 286 the Supreme Court had to decide whether "betel leaves" can be considered as vegetables. It said that it cannot be so considered and observed :

Reliance was placed on the dictionary meaning of the word "vegetable" as given in Shorter Oxford Dictionary where the word is defined as "of or pertaining to, comprised or consisting of, or derived, or obtained from plants or their parts". But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it."

The Supreme Court referred to the Canadian decision above mentioned as well as to the decision of the High Court of Madhya Pradesh in *Madhya Pradesh Pan Merchants' Association, Santra Market, Nagpur v. The State of Madhya Pradesh* [1956] 7 S.T.C. 99 wherein that Court said :

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.

The above test has been applied by the Supreme Court in two more cases, *Ram Bux Chaturbhuj v. State of Rajasthan* [1961] 12 S.T.C. 330 and *Motipur Zamindary Co. (Private) Ltd. v. State of Bihar* [1962] 13 S.T.C. 1.

9. " "Vegetables" in taxing statutes", it is stated, "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". Applying the above test, we must hold that "green ginger" is a vegetable. But it is contended on behalf of the Department, that with effect from 1st October, 1957, "ginger" was included as a specific item (item 27) in Schedule I to the Act and that the term "ginger" in the Schedule will include "green ginger" and that "green ginger" having been made specifically taxable should not be taken to have been exempted by the notifications referred to by the use of the comprehensive term "vegetables". Reliance has also been placed on a notification dated 10th December, 1960, by which an explanation was added after the entry "vegetables including tapioca except its manufactured product". The explanation is in the following terms :

For the purpose of this notification, the term "vegetable" shall not include any goods of the description given in Schedule I of the General Sales Tax Act, 1125 (Act XI of 1125) and yam, potatoes, sabola or lime.

It is urged that this explanation is merely a clarification of the intention behind the above two notifications, and, therefore, we must hold that "green ginger" was not intended to be exempted by the use of the term "vegetables" in the notifications of 15th June, 1950 and 23rd September, 1958.

10. We think that the contention that "green ginger" is included in the term "ginger" in Schedule I is well-founded. The Supreme Court in Commissioner, Sales Tax Department, Government of Hyderabad v. Messrs B. Kishenlal Oil Mills, Hyderabad Civil Appeal No. 377 of 1956, dealing with Sub-rule (2) of Rule 5 of the Hyderabad General Sales Tax Rules reading,

In the case of the undermentioned goods the turnover of a dealer for the purpose of these rules shall be the amount for which the goods are bought by the dealer :

(a) Groundnut...

held that "groundnut" mentioned in the above rule would include both shelled and unshelled groundnut. "Green ginger" must, therefore, be taken to be included in the term "ginger" in Schedule I of the Act. Even so, it is open to the Government to exempt from taxation any of the goods mentioned in the Schedule as well. The real question, therefore, for consideration is whether "vegetables" mentioned in the notifications dated 15th June, 1950, and 23rd September, 1958, will take in "green ginger" also. We think it will. It appears to us that the explanation added by the notification dated 10th December, 1960, is really a proviso though termed an explanation. A proviso, no doubt, is usually introduced by the word "provided" ; but the absence of the word is not conclusive. The substance and not the form will control the interpretation. The mere styling of a provision as an "explanation" is not decisive of its character. An explanation should only explain or clarify. If it excepts, excludes or restricts, it is not an explanation but a proviso, and should be considered as operative only from the date of its introduction. From the date this explanation was added, there will be no exemption regarding the turnover relating to "green ginger" since we have held that "green ginger" is included in the term "ginger" in item 27 of Schedule I of the Act. But before the above date "green ginger" being comprised in the term "vegetables" stood exempted. We, therefore, hold that "green ginger" was exempted from taxation by the notifications dated 15th June, 1950, and 23rd September, 1958.

11. The petitioner, however, will not be entitled to any relief regarding the imposition of tax for the period covered in O. P. 767 of 1959-1st October, 1957, to 31st March, 1958-since admittedly he has not applied for and obtained a licence as enjoined by the notification dated 15th June, 1950. For the period from 1st April, 1958, to 1st October, 1958, he will be entitled to exemption from

tax on the turnover of "green ginger" since the notification dated 25th March, 1958, did not impose any restriction that the exemption was subject to the condition of obtaining a licence. From 1st August, 1958, to 31st March, 1959, the question whether he is entitled to exemption, will depend on the further question whether he is entitled to obtain a licence for which, we are informed, he has applied. The result is, we maintain the order Exhibit A in O. P. 767 of 1959, and quash Exhibit A in O. P. 542 of 1960 in so far as it imposes a tax on the turnover relating to "green ginger". We also direct the 2nd respondent to consider the question. whether the petitioner is entitled to a licence for the period 1st October, 1958, to 31st March, 1959, and to determine his liability to taxation for the turnover relating to "green ginger" for that period depending on his finding whether he is entitled to a licence or not.

12. In both these cases, the petitioner's turnover in respect of "green ginger" was assessed to tax under the Central Sales Tax Act, Act 74 of 1956, as well. The order of assessment under that Act Exhibit B challenged in O. P. 767 of 1959 covers the period from 1st October, 1957, to 31st March, 1958, and the order of assessment in O. P. 542 of 1960-Exhibit B-covers the period from 1st April, 1958, to 31st March, 1959.

13. It is not disputed that Sub-section (1) of Section 8 has no application ; but the contention on behalf of the Department is that even if "green ginger" is exempt from taxation under the General Sales Tax Act, 1125, it is still liable to tax under the Central Sales Tax Act, 1956, in view of Sub-section (2) of Section 8 of that Act. That sub-section as it stood up to 1st October, 1958, reads as follows :-

The tax payable by any dealer in any case not falling within Sub-section (1) in respect of the sale by him of any goods in the course of inter-State trade or commerce shall be calculated at the same rates and in the same manner as would have been done if the sale had, in fact, taken place inside the appropriate State, and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

By Act 31 of 1958, the above sub-section was deleted and the following new Sub-sections (2) and (2A) were introduced. They came into force from 1st October, 1958 :

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within Sub-section (1)-

(a) in the case of declared goods, shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated at the rate

of seven per cent, or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher ; and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(2A) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than one per cent, (whether called a tax or fee or by any other name), the tax payable under this Act on his turnover in so far as the turnover or any part thereof relates to the sale of such goods shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation-For the purposes of this sub-section, a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods.

14. The liability for taxation under the Central Sales Tax Act has, therefore, to be considered for the period up to 1st October, 1958, and thereafter separately.

15. Two of us had occasion to consider the effect of Sub-section (2) of Section 8 as it stood up to 1st October, 1958, in *Deputy Commissioner of Agricultural Income Tax and Sales Tax, South Zone, Quilon v. K. Gopalan* ILR (1962) Ker. 595. In that case, the Appellate Tribunal had come to this conclusion :

In the instant cases all the commodities are taxed on the purchase point, i.e., under the State law the sales of these commodities cannot be taxed. Therefore the sales of such commodities, coming within the ambit of Sub-section (2) of Section 8, cannot be taxed.

16. The Bench that decided the above cases held that the wording of Sub-section (2) of Section 8 justified the conclusion reached by the Tribunal and remarked:

What the sub-section directs is to treat the inter-State sales as intra-State sales and assess them on the basis of the State enactment. It follows that if there is no liability under the State enactment, there can be no liability under the Central Act either.

The argument advanced on behalf of the Department that the latter portion of Sub-section (2) of Section 8 which says

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law

makes a transaction liable to tax under the Central Act even if it is not liable to tax under the State Act, was not accepted. It was held in that case that to place such an interpretation on the latter part of Sub-section (2) of Section 8 "will amount to saying that the second part of the sub-section annihilates the first, a calamity which no Legislature could possibly have intended for its progeny".

It was further said :

"Any such dealer" in Sub-section (2) of Section 8 must mean a dealer as defined in Section 2(b) of the Central Sales Tax Act, 1956, that is, any person who carries on the business of selling goods inclusive of a Government which carries on such business. A person coming within this definition of the Central Act need not necessarily be a dealer as defined in the Sales Tax Act of a State. And even if he is a dealer under both the enactments, he may be liable to taxation under the Central Act and not liable to taxation under the State enactment.

For example, the General Sales Tax Act, 1125, provides a minimum turnover for the liability to taxation. A similar immunity from taxation for dealers with a turnover below a prescribed figure does not obtain in the Central Sales Tax Act, 1956.

This, and this alone, must be the reason for saying that the inter-State dealer in cases covered by Sub-section (2) shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State "notwithstanding that he, in fact, may not be so liable under that law."

17. We confirm the conclusion reached in the above cases and hold that the petitioner is not liable to be taxed under the Central Sales Tax Act, 74 of 1956, for the period up to 1st October, 1958, since there was no sales tax on the sale of the particular commodity under the State Act. The result is that Exhibit B-order in O. P. 767 of 1959 has to be quashed in so far as it imposes a tax on the turnover relating to "green ginger" for the period 1st October, 1957, to 31st March, 1958, and we accordingly quash that order to that extent.

18. As far as Exhibit B-order in O. P. 542 of 1960-is concerned, the assessment of "green ginger" to tax under the Central Sales Tax Act, 74 of 1956, for the period up to 1st October, 1958, has to be quashed and we do so. But for the period from 1st October, 1958, in view of the wording of the substituted Sub-section (2) of Section 8 and the wording of Sub-section (2A) and the explanation to that sub-section, we have come to the conclusion that tax can be imposed under the Central Sales Tax Act even when the tax imposed by the State Act is only a purchase tax. There is no general exemption from taxation under the State Act and even if a licence was obtained under the State Act which gives the benefit of exemption to the assessee, the same will not be a general exemption as contemplated in Sub-section (2A) of Section 8 and the explanation to that sub-section. The tax imposed on the turnover of "green ginger" under the Central Sales Tax Act, 74 of 1956, for the period 1st October, 1958, to 31st March, 1959, is therefore justified. The respondent will determine the turnover for the above

period and assess the petitioner on that turnover.

19. We dispose of the two original petitions in the above terms, but, in the circumstances of the case, make no order as to costs.