

(1971) 09 CAL CK 0015

In the Calcutta High Court

Case No : Civil Revision Case No. 5805 (W) of 1970

Lalchand Agarwalla and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-09-1971

Acts Referred:

West Bengal State Legislature (Delegation of Powers) Act, 1970 — Section 3

Citation : 76 CWN 120

Hon'ble Judges : Anil Kumar Sen, J

Bench : Single Bench

Advocate : Nani Coomar Chakraborty and Bhagabati Prosad Banerjee, for the Appellant; S.C. Das Gupta and S.N. Dutt, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar Sen, J.—In this Writ petition an interesting question of law, as to whether groundnuts as such are liable to any levy under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1970 (hereinafter referred to as the Entry Tax Act), has come up for consideration. The said Entry Tax Act was enacted by the President of India in exercise of his powers u/s 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1970. It is an Act providing for levy of taxes on the entry of goods of certain kinds into the Calcutta Metropolitan Area for consumption, use or sale therein. This Act came into force on November 16, 1970. The eight petitioners before this Court are dealers in groundnuts. In course of their business, they import within the Calcutta Metropolitan Area, groundnuts from different States in India for resale. Such groundnuts are used for the purpose of manufacturing groundnut oil which is one kind of edible oil. They are licensed dealers under the provisions of West Bengal Edible Oil Seed Dealers Licensing Order, 1965. The petitioners' grievance made out in this Writ petition is to the effect, that although importation of such groundnuts as oil seeds is not subjected to any levy under provisions of the said Entry Tax Act, their goods are being subjected to such levy by the authorities

incharge of different check posts. They further claim that even in the matter of imposition of the levy the authorities at the different check posts are not acting in any uniform manner. While some are assessing the groundnuts at 6% ad valorem, others are doing so either at 1% ad valorem or Re 1/- per quintal. Being aggrieved by such imposition they have moved this Court with the above Writ petition on which this Rule has been issued. Their prayer is for a mandate upon the respondents not to impose any tax on the groundnuts imported by them into Calcutta Metropolitan Area and refund the tax so far collected from them.

2. The Rule is being contested by the respondents. An affidavit-in-opposition has been filed off their behalf and the learned Government Pleader is appearing to contest the Rule.

3. Mr. Chakraborty appearing in support of this Rule has very strongly contended that the impugned levy is beyond the sanction of law. According to him groundnuts are used primarily as oil seeds of edible oil. Petitioners are dealers in groundnuts as oil seeds under licences issued under the West Bengal Edible Oil Seeds Dealers Licensing Order, 1965. The Schedule to this Licensing Order clearly specifies groundnuts as oil seeds for edible oil. Oil seeds had not been brought under the incidence of the tax imposed by the Entry Tax Act and as such the imposition is wholly unauthorised. Without conceding this point Mr. Chakraborty has alternatively contended that if it be held that groundnuts are subject to levy under the said Entry Tax Act, no levy beyond 1% ad valorem is permissible under the Act read with the notification issued thereunder.

4. Mr. Dasgupta on the other hand, has contended that groundnuts come under the incidence of the levy under the Entry Tax Act as nuts and has further contended whether it should be assessed at 6% or 1% is an issue which should be left to be adjudicated in the proceeding for assessment under the Act and need not be gone into in this Rule.

5. The real question therefore is as to whether groundnuts as such irrespective of whether they are imported as oil seeds or not had been made taxable under the Act on importation into the Calcutta Metropolitan Area. In deciding this issue, we shall have to refer to the relevant provisions of the Statute. Section 6(1) provides that: "Save as otherwise provided in this Chapter, there shall be levied and collected, for the purposes of this Act, a tax on the entry of every specified goods into the Calcutta Metropolitan Area (for consumption, use or sale therein) from any place outside that Area, at such rate, not exceeding the rate specified in the corresponding entry in column 3 of the Schedule as the State Government may, by notification, specify."

6. "Specified goods" in this section means goods specified in column 2 of the Schedule. The Schedule enumerates the different articles which have been brought under the impact of the levy and also prescribes the maximum quantum of the levy. Articles enumerated are classified into different classes and sub-

classes. Material portion of the Schedule is set out hereunder:

The Schedule

(See Sections 2 and 6)

Serial No.

Specified goods

Rate of tax

1

2

3

Class I ? Articles of food and drink

* * * **

* * *

4. Edibles?

* * * *

* * *

(1) fruits, dried or preserved, excluding fresh fruits

6 percent ad valorem (1? ad valorem for dry fruits)

* * * *

* * *

(t) nuts, (excluding betel nuts) "

?Do

(u) oilman stores (except edible oils)

* * * *

?Do

(z) all kinds of food or drink not specifically provided for, other than food exclusively meant for babies, not being fresh fruits, vegetables or uncanned fish

..Do

* * * *

* * *

Class III ? Articles for industrial use and articles used for fuel, lighting, washing

and polishing.

* * * *

* * * *

B - Articles used for lighting.

21. Inedible vegetable oils

... Rs. 2 per 50 kilograms (Rs. 1. 50 per 50 kilograms for Castor oil)

22. Oilseeds of inedible oils

... 50 paise per 50 kilograms

* * *

* * * *

7. These are the only relevant provisions in the statute which need consideration for deciding the issues raised. By a notification dated November 12, 1970 the Governor specified the rate at which these different articles are to be assessed. Such specification sanctions levy to the maximum limit permitted by the statute in respect of the material articles but this notification also provides that edible oils are liable to nil levy.

8. On the scheme of the statute the incidence is limited only to articles specified by the statute itself and whatever is not so specified is not subject to any levy whatsoever. Therefore, we are to find out whether groundnuts as such irrespective of whether they are imported as oilseeds or not come within any of the categories of specified articles. It is not in dispute that if they do not come within any of such categories they are not liable to be taxed. If at all groundnuts may be said to come within either of the three clauses (1), (t) or (z) above referred to and let us consider if they irrespective of whether they are imported as oilseeds come within any of these three specifications. These will not come within fruits, dried or preserved because then they would come within species nuts. Mr. Dasgupta appearing for the State, also concedes that groundnuts unless taken as nuts and fruits do not come under the category "any kind of food". Groundnuts when imported as oilseeds, do not themselves constitute a kind of food though they may be used in manufacturing edible oil. It is not in dispute that neither edible oils nor the oilseeds for such oils are subjected to any levy under the Act. Mr. Dasgupta accordingly has very strongly contended that as groundnuts answer the description "nuts" in clause (t) above referred to, these would be subject to the incidence of the imposition. I am, however, unable to accept this contention of Mr. Dasgupta.

9. The Statute by the entry 4(t) of the Schedule has brought nuts as one category of edibles under the incidence of taxation. This again is under the heading articles of food. There can be no dispute that there are various kinds of such nuts and even if groundnuts are excluded therefrom the entry would not

become surplus and it would still have its effect. I may accept the contention of Mr. Dasgupta to this extent namely that groundnuts if and when imported as nuts edibles may be subjected to levy under the Statute. But I am unable to accept his contention that this entry by itself authorises imposition of tax on all groundnuts imported into the Calcutta Metropolitan Area irrespective of the consideration as to whether such importation is as nuts edibles or oil seeds. The Statute under consideration is a taxing statute and its provisions would be strictly construed so that its incidence is not extended beyond the sanction of the law. It is also well settled that in case of doubt such interpretation should be preferred which benefits the persons who have been made liable to the incidence. In my view the entire difficulty has been created by the fact that groundnut may answer both the descriptions of being edible nuts as also oil seeds for edible oils.

10. The Statute under entry 4(t) of the Schedule has no doubt brought nuts under the incidence of taxation. The word "nuts" must be read along with the head entry edibles. This again is under the heading articles of food. So on a fair reading of the entry as a whole it appears clear to me that what was sought to be taxed was only nuts as one species of edibles. There can be no dispute that there are various kinds of nuts used as edibles and groundnuts to the extent they are used as edibles may come within the specification. But the question is does this entry also cover groundnuts if and when they are imported not as edibles but as oil seeds. I must confess the difficulty or the doubt that has been raised is due to the fact that the term "groundnut" may answer both the descriptions of being nuts used as edibles as also oil seeds for edible oils. The term "nut" so far as it covers groundnut thus becomes susceptible of meaning different things and the true meaning has to be found out upon proper construction of the Statute.

11. In going to construe the material provisions of this taxing statute, we should keep in view two well accepted principles. Firstly, intention to impose a charge must be shown by clear and unambiguous language and by a plain declaration; such declaration again must be found out looking fairly at the language used. Reference may be made to (1) *Oriental Bank v. Wright* (1880) 5 A.C. 842 (56), (2) *Dock Co. at Kingston-upon-Hull v. Browne* (1831) 2, B and A d 43(58) and (3) *Cape Brandy Syndicate v. I.R.C.* (1921) 1, K.B., 64(71). This principle was laid down still earlier by Lord Ellenborough in the case of (4) *Warrington v. Furber* (1807) 8 East 242. To quote his words :

I think that where the subject is to be charged with a duty, the cases in which it is to attach ought to be fairly marked out and we should give a liberal construction to words of exception confining the operation of the duty.

12. This was approved by the Privy Council in the case of (5) *Caroline M. Armytag and others v. Frederick Wilkinson* (1878) 3, A.C. 355. Secondly, if the provision is susceptible of two meanings, "the courts will prefer that meaning more favourable to the subject" (6) *I.R.C. v. Ross and Coulter and others* (1948)

1, A.E.R. 616(25).

13. A near similar problem arose for consideration in the case of *Rein v. Lane and others* (1867) L.R. 2 Q.B., 144. There the language of the Schedule of a statute imposing stamp duty was ambiguous. Though intended to impose duties upon charterparties, the language was such as could be read to cover agreements subsidiary to the charterparty. But on construction, it was held that the subsidiary agreements did not really come under the levy. Blackburn, J. observed:

But that is not what is meant. We must construe the words of the statute imposing the duty according to the intention which those words express when used in such a statute for such a purpose.

It was further observed that general rule of construction requires "that you are not only to look at the words, but you are to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under such circumstances."

14. Interpreting the statute now under consideration in the above light I find that on a fair reading of section 6 read with the Schedule on the relevant entries the legislature intended and imposed the levy on nuts imported as edibles and not to cover such nuts as are imported as oil seeds. It is the specific case of the petitioners that groundnuts are primarily used as seeds for extracting edible oil. Such oil again forms the main constituent of Vanaspati. The report of the Government of India on agricultural marketing in India clearly establishes that more than 73 percent of the total production goes for oil extraction and a minor percentage of 7 percent goes for use as edibles. This position is not disputed by the respondents. That groundnuts are in use primarily as oil seeds for edible oil was not unknown to the legislature when the statute under consideration was enacted. As a matter of fact, two statutory orders viz., the West Bengal Edible Oil Seed Dealers Licensing Order, 1965 and the West Bengal Edible Oil Dealers Order, 1965 framed under the Essential Commodities Act, 1955 clearly recognise groundnuts as oil seeds for edible oil. Entries under Class SB of the Schedule to the statute under consideration clearly shows that oil seeds were brought under the incidence of taxation but not the oil seeds of edible oil. On the other hand, the entries in Class I read with the Government Notification dated November 12, 1970 clearly established that edible oils were exempted from the levy. It is also not disputed by the respondents that all oil seeds as such for edible oil are beyond the incidence of taxation under the statute under consideration. Taking all these factors into consideration, I have no manner of doubt in my mind that under entry 4(t) of the Schedule the legislature intended to tax nuts when imported as edibles and not nuts imported as oil seeds. The real use of nuts like the groundnuts were not unknown to the legislature and if it had any intention to tax importation of such oil seed nuts it would have specified the same in no uncertain terms. The entry under consideration in my view admits of only one

fair construction to mean nuts imported as edibles and articles of food. Mr. Dasgupta suggested that we should construe the term "nuts" independent of the heading "Articles of food" or "Edibles" and so construed the oil seed nuts would also come within the purview of the Act. Such suggestion is unworthy of acceptance as that would not be fair construction at all. The term "nuts" is sub-classification of the term Edibles which is part of the specification contemplated by section 6. On the collocation the term "nuts" cannot be read independently of the term edibles. Mr. Dasgupta next suggested that we need not look into the use to which the groundnut may be put after importation and if such nut be capable of use as edibles, it should be brought under the incidence of the tax under entry 4(t). But that in my view would not also be proper reading of the statute. If we go by the possible use then we should invoke the more prevalent and known use of the articles as oilseed and exclude it from the incidence on the language of the statute. The specification made in the Schedule is not based on the possibility or the capability of a particular user. On the other hand, the statute provides that on entry the nuts must be articles of food and edibles - it must enter as edibles and not as oilseeds. On the statute, the term "Edible" has been used as a noun to mean an article of food. To accept this suggestion is to extend by interpretation the statute to cover oilseeds which it never intended to cover.

15. I think, we would reach the same conclusion if we apply the second principle of construction above referred to. Ambiguity in the specification should be resolved in a manner more favourable to the citizen. Such construction would also be in consonance with the spirit and intention of the statute.

16. On the conclusions as above, I must accept the contention of Mr. Chakraborty that the respondents have no authority to tax groundnuts imported by the petitioners irrespective of the consideration as to whether they are imported as oil seeds or not as it has been and is being done by the respondents and levy so far made was not in accordance with law. On this conclusion, the other point as to rate raised by Mr. Chakraborty need not be considered. Further on the view already taken, I thought it unnecessary to go into other issues about constitutional validity of the provisions of the statute also raised in the writ petition.

17. The application accordingly succeeds. The Rule is made absolute. Let a Writ in the nature of Mandamus do issue directing the respondents not to impose any levy under the provisions of the Tax on Entry of Goods into Calcutta Metropolitan Area Act, 1970 on the groundnuts imported by the petitioners until and unless it is found and established that such importation is of groundnuts to be used as edibles as such and not as oil seeds. Let there be a further mandate upon the respondents directing them to refund all taxes realised under the said Act on groundnuts imported by the petitioners into the Calcutta Metropolitan Area. The petitioners are entitled to costs of hearing of this Rule which is being assessed at ten gold mohurs.