(1977) 08 CAL CK 0019

In the Calcutta High Court

Case No : Appeal No. 459 of 1976

M.P. Agarwalla and Co. — APPELLANT

Vs

Director of Entry Tax and Others — RESPONDENT

Date of Decision : 10-08-1977

Acts Referred:

Taxes on Entry of Goods into Calcutta Metropolitan Area (Amendment) Ordinance, 1972 — Section 2(iv)

Citation : (1978) 41 STC 258

Hon'ble Judges : R.N. Pyne, J;Ghose, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ghose, J.—This appeal is directed against the judgment and order dated 3rd December, 1976, of Dipak Kumar Sen, J. By and under the said judgment his Lordship was pleased to dismiss an application made by the appellant for quashing levy of entry duty into the Calcutta Metropolitan Area of almond and pistachio at 6 per cent ad valorem under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972. His Lordship was pleased to hold that both pistachio and almond were nuts and not dry fruits as defined in the said Act. In such cases, the law is well-settled that the thing or the commodity should be taken as it is understood by the public in general and traders or commercial people in particular. Pistachio is denned in Webster''s 3rd New International Dictionary amongst others as nut. It also means, according to the said dictionary, a small tree of southern Europe and Asia Minor having leaves with 3 to 5 broad leaflets, greenish brown paniculata flowers and a large fruit-the edible green seed of pistachio tree is really called pistachio-in Greek it is called pistakion and in Persia it is called pista. In our country, this word has been imported from Persia as pista and is known as pista and the seed or the nut is known as pista in common or trade parlance. The same word "pista" is described or defined in the Oxford Dictionary as tree yielding nut with greenish edible kernel. Thus it appears to us that both ordinarily in common parlance as well as in commercial parlance pistachio or pista is known as an edible nut. It should be noted that both in common parlance and in commercial parlance also almond is known as a kind of nut. In the judgment under appeal, the learned Judge of the court of first instance was pleased to hold that both the above articles, i. e., pistachio and almond were nuts within the meaning of the said Act, i. e., the West Bengal Act 5 of 1972-the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972. During the pendency of the appeal from the abovementioned judgment of the court of first instance of Dipak Kumar Sen, J., an Ordinance was promulgated and published in the Calcutta Gazette on 27th April, 1977. In Clause (iv) of Section 2 of the said Ordinance, it has been stated that:

(iv) in item (u), for the existing entry in column 2, the following entry shall be, and shall be deemed always to have been substituted, namely:-

nuts including groundnuts, almonds, badam, pista, anardana, badamgiri, cashewnuts, walnuts and all other varieties of nuts not elsewhere specified in the Schedule but excluding betel nuts.

2. Thus it appears to us apart from the fact that the said judgment under appeal was rightly decided, in our view, by the learned Judge of the court of first instance, the amendment brought into existence by the Taxes on Entry of Goods into Calcutta Metropolitan Area (Amendment) Ordinance, 1977, clearly and unambiguously brings almond and pistachio within the mischief of the expression "nuts" as defined in the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972. The amendment further by way of a legal fiction makes these goods "nuts" apart from anything else from the date when the said impugned Act came into operation.

3. On both the grounds, therefore, we are of the view that the appeal has no merit and must fail and is hereby dismissed. In the facts and circumstances of the case, there shall, however, be no order as to costs.

R.N. Pyne, J.

4. I agree.

