

(1983) 12 MAD CK 0036

In the Madras High Court

Case No : T.C. No's. 505 to 512 of 1978 (Revision No's. 152 to 159 of 1978 respectively)

M.R. Arumuga Nadar and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 13-12-1983

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 17, 38, 7A

Citation : (1984) 56 STC 53

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : V. Ramachandran, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ratnam, J.—In these tax revision cases u/s 38 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the Act), as the instance of different assesseees for the assessment year 1975-76, the common question that arises for consideration and decision is whether "red ripe or fruit chillies" purchased by the assesseees would be "vegetables" within the meaning of notification in G.O. Ms. No. 1764, Revenue, dated 5th April, 1960, issued u/s 17 of the Act as amended subsequently. The petitioners, who are dealers in chillies in Sankarankoil, Tenkasi and Shencottah, purchased "red ripe or fruit chillies" from agriculturists, dried them and sold them as "dry chillies" on consignment basis outside the State of Tamil Nadu. Some of them also purchased small quantities from other dealers and sold them in the same manner. The assessing authority was of the view that they were liable to pay tax u/s 7A of the Act in respect of their purchases of "red ripe or fruit chillies", which they ultimately sold and proposed to levy tax on such purchases. The dealers contended that what they purchased were "vegetables" falling within the exemption granted under the notification issued by the Government in G.O. Ms. No. 1764. This contention was rejected by the assessing authority on the ground that "red ripe or fruit chillies" are not "vegetables". On appeal, the Appellate Assistant Commissioner also dismissed the appeals, on the

ground that "red ripe or fruit chillies" are not considered or recognised in common parlance as "vegetables". On further appeal by the dealers to the Tribunal contending that "red ripe or fruit chillies" can be regarded as "vegetables", the Tribunal, on a consideration of this question, found that only green chillies, if at all, could be treated as "vegetables" and not "red ripe or fruit chillies" and dismissed all the appeals.

2. Before this Court also, the learned counsel for the petitioners reiterated the same contention that "red ripe or fruit chillies" purchased by the petitioners would fall within the ambit of the expression "vegetables" in the notification in G.O. Ms. No. 1764, Revenue, dated 5th April, 1960. Strong reliance was also placed by the learned counsel for the petitioners on the decision in Mangulu Sahu Ramahari Sahu Vs. The Sales Tax Officer, Ganjam, as concluding the question in favour of the petitioners. On the other hand, the learned Additional Government Pleader contended that the word "vegetables" occurring in the notification ought not to be considered and interpreted in any technical or botanical sense, but should be read and understood as normally understood in common parlance and if so understood, would denote classes of vegetable grown in the kitchen garden or in a farm and used for the table and as "red ripe or fruit chillies" are not ordinarily considered and treated as a vegetable or used for the table, the authorities below were justified in declining to grant the benefit of the exemption to the petitioners. Our attention in this connection was also drawn to the decision in Madhya Pradesh Pan Merchants Association, Santra Market, Nagpur v. State of Madhya Pradesh (Sales Tax Department) [1956] 7 STC 99, Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, , Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar, , Tarsem Lal Sham Lal v. Assessing Authority, Jullundur [1977] 39 STC 47 and State of West Bengal and Others Vs. Washi Ahmed and Others, .

3. Neither in the Act nor in the Rules, there is anything to indicate what is intended to be comprehended within the scope of the expression "vegetables" and in its absence, the word "vegetables", being a word in every day common use, must be read, understood and construed not in a technical sense or botanical sense, but as ordinarily understood in common parlance. That this principle of construction would apply, even in relation to the words used in a taxing statute, had been accepted in Grenfell v. Inland Revenue Commissioners (1876) 1 Ex D 242 (where) Pollock, B., pointed out that "if a statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words "popular sense", that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." Similarly, in Planters Nut and Chocolate Co. Ltd. v. The King (1952) 1 DLR 385, the Supreme Court of Canada, interpreting the words "fruit" and "vegetables" in the Excise Act, observed thus :

"They are ordinary words in every day use and are, therefore, to be construed according to their popular sense."

Story J., in 200 chests of tea (1824) 9 Wheaton (US) 430 at 435 has forcibly drawn attention to this rule of construction by observing "the particular words used by the legislature in the denomination of articles are to be understood according to the "common commercial understanding of the terms used, and not in their scientific or technical sense", for "the legislature does not suppose our merchants to be naturalists, or geologists, or botanists"". In *Madhya Pradesh Pan Merchants Association, Santra Market, Nagpur v. State of Madhya Pradesh* [1956] 7 STC 99, Hidayatullah, C.J., as he then was, while considering the question whether betel leaves would be "vegetables", pointed out that 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". Again, considering the question whether betel leaves would be "vegetables" and exempt from tax under the provisions of the C.P. and Berar Sales Tax Act (21 of 1947), in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, Supreme Court, repelling the reliance place on the dictionary meaning of the word "vegetable", laid down the rule of construction by stating that that word had not been defined in the Act, but being a word of every day use, it should be construed not in any technical sense or from the botanical point of view, but as understood in popular parlance and in "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it" and therefore, the word "vegetables" would denote the class of vegetables grown in a kitchen garden or in a farm and used for the table. To similar effect is the decision of the Supreme Court in *Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar*, , where the court had to consider whether "sugarcane" is green vegetables" and exempted from sales tax. In pointing out that sugarcane cannot be regarded as "vegetable", the Supreme Court applied the rule of construction laid down in *Madhya Pradesh Pan Merchants Association, Santra Market, Nagpur v. State of Madhya Pradesh (Sales Tax Department)* [1956] 7 STC 99 and *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, and held that sugarcane would not fall within the expression "vegetables". In *State of West Bengal and Others Vs. Washi Ahmed and Others*, , the Supreme Court had to consider whether green ginger is included in the expression "vegetables" in item 6 of Schedule I to the Bengal Finance (Sales Tax) Act, 1941. After referring to the decisions in *Madhya Pradesh Pan Merchants Association v. State of Madhya Pradesh* [1956] 7 STC 99 and *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, and *Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar*, , the Supreme Court emphasised that the construction of the word "vegetables" should be as understood in common parlance and be given its popular sense meaning and if so construed, would denote those classes of vegetables grown in a kitchen garden or in a farm and

used for the table. Applying the rule of construction so laid down in the cases referred to above, it is at once obvious that "red ripe or fruit chillies", though grown in a kitchen garden or in a farm, are never used for the table. Certainly, it is not used either as a principal or even as a subsidiary item in a meal. It is also not a commodity normally and ordinarily sold by a vegetable vendor. More than this, the housewife desiring to make purchases of "vegetables" in a market would not regard "red ripe or fruit chillies" as "vegetables". Equally, the vegetable vendor, who every day deals in vegetables, would not consider "red ripe or fruit chillies" as "vegetables". There can, therefore, be no doubt that "red ripe or fruit chillies" cannot appropriately be included within the meaning of "vegetable", as understood in common parlance.

4. We now proceed to consider the decision in *Mangulu Sahu Ramahari Sahu Vs. The Sales Tax Officer, Ganjam*, strongly relied on by the learned counsel for the petitioner. In that case, the question that arose for consideration and decision by the Supreme Court was whether "chillies and lemons" are "vegetables" under the provisions of the Orissa Sales Tax Act. After referring to *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, regarding the construction to be put upon the word "vegetables", the Supreme Court pointed out that there can be no dispute that "chillies" and lemons" are grown in kitchen gardens or at any rate in farms and are used for the tables and in common parlance, "chillies and lemons" are known as "vegetables" and have always been considered as such. In that view, the Supreme Court quashes the impugned assessments. On a careful reading of the decision of the Supreme Court, it is obvious that the court was dealing with "chillies" commonly or popularly called the "green chilly" grown in the gardens and used for the kitchen. It does not appear from the judgment that the Supreme Court was dealing with "red ripe or fruit chillies", as in these cases, which are not sold in the vegetable market nor used at the tables. Indeed, in *Tarsem Lal Sham Lal v. Assessing Authority, Jullundar* [1977] 39 STC 47 the High Court of Punjab and Haryana, after referring to the decision of the Supreme Court in *Mangulu Sahu Ramahari Sahu Vs. The Sales Tax Officer, Ganjam*, , pointed out that the Supreme Court in that case was dealing with "chillies" used for the tables and regarded those chillies as "vegetables" and the judgment is no authority for the proposition that "dry chillies" or other kinds or varieties of "chillies" sold by the grocers can also be regarded as "vegetables". In the absence of anything in the judgment to indicate that the Supreme Court in *Mangulu Sahu Ramahari Sahu Vs. The Sales Tax Officer, Ganjam*, was dealing with such a variety of "chillies" as under consideration in these cases, that decision cannot be pressed into service by the petitioners in support of their claim for exemption on the ground that even "red ripe or fruit chillies" would be "vegetables" within the meaning of the notification referred to earlier.

5. A consideration of the history behind the notifications making available the exemption to "vegetables", which can also be taken into account, as stated in *Deputy Commissioner of Commercial Taxes, Tiruchirapalli v. Hameed Trading Company* [1973] 32 STC 228, would also disclose that "red ripe or fruit chillies"

were farthest from the contemplation of the authorities. Originally, G.O. No. 710 Revenue, dated 25th March, 1954, issued u/s 6(1) of the Madras General Sales Tax Act, 1939, exempted "all sales of handloom cloth, eggs, meat and fish (other than canned, preserved, dried or dehydrated fish and meat), flowers, vegetables and fruits (other than potatoes, onions, nuts, coconuts, dehydrated vegetables, canned, preserved, dried or dehydrated fruits) from the tax payable". This was amended in G.O. Press No. 1913, Revenue, dated 16th May, 1956, by which for the words and brackets "vegetables and fruits (other than dehydrated fruits)", the words and brackets "ginger", green chillies, vegetables and fruits (other than sweet potatoes, yam and tapioca, garlic and other similar varieties of vegetables which are used as spices and condiments and not as substantial articles of food, nuts, coconuts, dehydrated vegetables, canned preserved, dried or dehydrated fruits)" were substituted. These notifications were operative till the 1959 Act was passed. But, subsequently, in G.O. No. 1764, Revenue, dated 5th April, 1960, with effect from 1st April, 1960, exemption was granted on "all sales of vegetables, fresh fruits, betel and plantain leaves, flowers, eggs, meat and fish (other than canned meat and fish) and the purchases of potatoes" from the levy of sales tax under the Act. By yet another G.O. No. 5274, Revenue, dated 22nd December, 1960, a further amendment was introduced by inserting after the word "vegetables" the following words "(other than dried and dehydrated vegetables)". It is thus seen that G.O. Press No. 1913, dated 16th May, 1956, treated green chillies as a distinct and separate item from "vegetables". In other words, "green chillies" were understood as different from vegetables and exemption was given only to "green chillies", along with "vegetables", but not to any other variety of chillies. Subsequently, under the Act, in G.O. Ms. No. 1764, dated 5th April, 1960, all sales of vegetables, fresh fruits, betel and plantain leaves, flowers, eggs, meat and fish (other than canned meat and fish) and the purchases of potatoes were exempted from the tax payable under the Act. Whatever might be the position with reference to "green chillies", at no point of time "red ripe or fruit chillies" were ever considered as "vegetables" and it is therefore manifest that "red ripe or fruit chillies" would not fall within the expression "vegetables", even on a consideration of the history of the notifications granting the exemption. Thus, looked at from any point of view, "red ripe or fruit chillies" would not be comprehended within the scope of the expression "vegetables" occurring in the notification granting exemption. Under those circumstances, the authorities below were quite correct in declining to countenance the claim for exemption put forth by the petitioners. Consequently, the tax revision cases are dismissed. There will be, however, no order as to costs.