

(1981) 09 CAL CK 0012
In the Calcutta High Court
Case No : Matter No. 385 of 1979

Netai Mohan Saha

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 23-09-1981

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Constitution of India, 1950 — Article 301

Citation : (1983) 52 STC 329

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : Gopal Chakraborty, Udayan Chakrabarti and Sanjukta Bhattacharya, for the Appellant; Samarendra Nath Dutt, for the Respondent

Final Decision : Allowed

Judgement

T.K. Basu, J.—The petitioner is the proprietor of a business carried on under the name and style of Messrs. Krishna Traders at 30, Hara Chandra Mullick Street, Calcutta. The petitioner is also a member of the Calcutta Kirana (Spices) Merchants Association. The business of the petitioner consists inter alia of wholesale dealing in turmeric, black pepper, chilli, cinnamon, cardamom, ginger, cloves, mustard, rapeseeds and similar items.

2. According to the petition, the petitioner has to bring most of these items from other States of India for the purpose of its business and has to bring them into what is known as the Calcutta Metropolitan Area either by road or by rail.

3. In the year 1972 the West Bengal Legislature passed an Act known as Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 (hereinafter referred to as the Act). Section 6 of the Act is the charging section and provides as follows :

Levy and collection of taxes:—(1) 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.

(2) Subject to such rules as may be made by the State Government in this behalf, no tax shall be levied and collected under this Act on the entry of any specified goods into the Calcutta Metropolitan Area if such goods are brought into that area--

(a) as personal luggage by a passenger and the value or the number or quantity thereof does not exceed the prescribed amount or limit, as the case may be, or

(b) in such circumstances and subject to such conditions and restrictions as may be prescribed.

4. As will appear from the above section taxes can be imposed only on specified goods (i.e., those that are specified in the Schedule). In 1979 the Schedule was amended and item 10(a) after its amendment in 1979 is the item we are concerned with which provides as follows :

10. (a) Baking powder, curry powder, spices and powders thereof.

5. According to the petitioner, since the above amendment of item 10(a) in 1979 the respondents have been subjecting the petitioner to illegal and arbitrary assessment of tax under the Act and it is this allegedly illegal assessment which is the subject-matter of the present application.

6. Mr. Gopal Chakraborty who appeared on behalf of the petitioner contended in the first place that the specified goods for the purpose of imposition of tax under the Act in the item 10(a) which I have quoted above is "spices". It was Mr. Chakraborty's contention that under the generic item of "spices" the respondents were not competent to impose entry taxes under the Act on certain items which may or may not form a species of the genus "spices".

7. This argument is really very closely interconnected with the next argument which may now be noted. It was contended by Mr. Chakraborty that the items which are brought into the Calcutta Metropolitan Area by the petitioner and some of which have been mentioned above are not necessarily "spices".

8. My attention was drawn in this connection to the various dictionary meanings of the word "spices". In Shorter Oxford Dictionary, 4th Edition, at page 1213, "spices" means "aromatic or pungent vegetable substances used to flavour food". In other dictionaries "spices" means "various strongly flavoured or aromatic substances of vegetable origin, obtained from tropical plants commonly used in condiments, etc.". "Condiment" means "anything of pronounced flavour used as a relish or to stimulate the appetite". According to the Children's Dictionary "spice" means "a vegetable preparation used to flavour food".

9. On the strength of the above dictionary meanings of the word "spices" it was

Mr. Chakraborty's contention that when the legislature, in its wisdom brought in the expression "spices" into the Schedule to the Act, it intended to bring into the tax net under the Act only those items which are used as a flavouring agent for food. It was submitted however that the items which the petitioner brings in from the other States as aforesaid like turmeric, chillies, black or white pepper, cinnamon, cardamom, ginger, mace, fenugreek, coriander seed, mustard, rape, cummin seed, saffron, aniseed, fennel, tejpat, celery seed, etc., are not only used as spice in the sense mentioned above but they are also used to other purposes such as medicinal, dyeing, as pan masala and for toilet and skin food preparations. Reference was made in this connection to the widely publicised cosmetic known as "Vicco Turmeric Vanishing Cream" for demonstrating that turmeric which undoubtedly can be used as "spices" in the sense mentioned above is also used in a large way for a well-known cosmetic preparation.

10. Mr. Gopal Chakraborty drew my attention to a decision of this Court in the case of *Lalchand Agarwalla v. State of West Bengal* reported in (1972) 76 CWN 120. In that decision on a construction of the provisions of the identical Act which is before me, it was held by A. K. Sen, J., that on the scheme of the statute under consideration 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. It was further held that the present statute is a taxing statute and its provisions should be strictly construed so that its incidence is not extended beyond the sanction of the law. It was further held that it is well-settled that in case of doubt such interpretation should be preferred which benefits the persons who have been made liable to the incidence.

11. It was further held in the above case that in going to construe the material provisions of this statute, two well accepted principles should be kept in view. Firstly, the 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. Secondly, if the provision is susceptible of two meanings, the court will prefer that meaning more favourable to the subject.

12. The above decision went up on appeal and the decision of the appellate court presided over by S. P. Mitra, C. J. (as His Lordship then was), and A. K. Janah, J., in *State of West Bengal v. Lalchand Agarwalla* reported in (1973) 77 CWN 910. The appellate court held that in construing oil-seeds, the court is not to look into dictionaries but to the meaning which is given to the term in commercial parlance. Groundnuts are considered in commercial parlance as oilseeds from which edible oil is prepared and not as edible nuts as such. Oil-seeds for edible oil, not being specified in the Schedule to the said Act, is not liable to entry tax under the said Act. In that view of the matter the appeal was dismissed.

13. On the basis of the above two decisions, Mr. Chakraborty for the petitioner contended that the ratio of the decision of A. K. Sen, J., has not been pronounced upon at all by the court of appeal which decided the appeal on an

entirely different point, viz., the meaning of a particular term as understood in commercial parlance. Hence it was submitted that the ratio of A. K. Sen, J., in the above case was still good law.

14. My attention was next drawn by Mr. Chakraborty to a decision of the Supreme Court in the case of *The State of Orissa Vs. Dinabandhu Sahu and Sons*, . In that decision it was held that dhania (coriander seed), jeera (cummin seed), panmohuri, postak (poppy seed) and methi (fenugreek) are oil-seeds falling within Section 14(vi) of the Central Sales Tax Act, 1956. I do not see how this decision is of any assistance in the present case.

15. Reliance was also placed on a decision of the Orissa High Court in the case of *Jagabandhu Sahu v. State of Orissa* reported in [1969] 24 STC 240. In that case, it was held that although ginger is not used for the primary purpose of food, it is used to give flavour or taste to the food , and as ginger is grown in the kitchen garden and is used for the table, it is a vegetable and therefore not taxable under the Orissa Sales Tax Act, 1947. It was further held that what may be a vegetable in Kerala may not be a vegetable in Orissa.

16. Reference was made to another decision of the Supreme Court in the case of *State of West Bengal and Others Vs. Washi Ahmed and Others*, . In that case it was held that green ginger is included within the meaning of the words "Vegetables commonly known as sabji, tarkari or sak" in item 6 of Schedule I to the Bengal Finance (Sales Tax) Act, 1941, and, therefore, its sales are exempt from tax u/s 6 of the Act. It was further held that the word "vegetables" in item 6 of Schedule I to the Act must be construed as understood in common parlance and it must be given its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it", and so construed, it denotes those classes of vegetables which are grown in a kitchen garden or in a farm and are used for the table. Green ginger is generally regarded as included within the meaning of the word "vegetable" as understood in common parlance.

17. Reference was also made to another decision of the Supreme Court in the case of *Mangulu Sahu Ramahari Sahu Vs. The Sales Tax Officer, Ganjam*, . In that case it was held that lemons and chillies are "vegetables" within the meaning of item No. 5 of the Schedule to the Orissa Sales Tax Act, 1947, and their sales are exempt from sales tax.

18. Mr. S. N. Dutt appearing for the respondents placed considerable reliance on some of the above cases which I have dealt with for the proposition that a word in a taxing statute must be construed or understood in a way in which it is understood in common parlance.

19. Mr. Dutt in this connection referred to a recent decision of a Division Bench of this Court in the case of *Director of Entry Taxes v. Sricol Chemicals Industries* reported in (1979) 83 CWN 68. In that case it was held by Division Bench of S. P. Mitra, C. J. (as His Lordship then was), and S. K. Datta, J., that in interpreting a

word used in a statute which has a technical meaning but has also acquired a popular meaning in trade and commerce, the popular meaning will prevail in the absence of any indication that the word has been used in its technical sense.

20. Relying on the above observation Mr. Dutt strenuously contended that in common parlance turmeric, and other items which I have mentioned above are known as "spices". Therefore although the expression "spices" may be a generic term, turmeric, cardamom, cloves and the items mentioned above are comprehended within the meaning of the expression "spices".

21. In my view, the contention of Mr. Chakraborty is sound and should be accepted. The expression "spice" in my view, whether we take the dictionary meaning of that expression or the meaning that is understood in common or commercial parlance, the result is the same. In other words, both by its dictionary meaning and by the meaning in which the common man understands it, "spices" are nothing but an ingredient which adds flavour to food.

22. I am in respectful agreement with the view taken by A. K. Sen, J., in the case of Lalchand Agarwalla v. State of West Bengal reported in (1972) 76 CWN 120. According to the ratio of that decision, the subject cannot be made liable to tax under a fiscal statute except by means of an item which is specifically and without any manner of doubt applicable.

23. Coming to the question whether the various items like turmeric, cardamom, cloves, etc., which the petitioner brings into the taxable territory under the Act are liable to tax under the Act or not, the expression "spices" which is a taxable item is in my view too general and vague as an item to include the articles which are brought by the petitioner into the taxable territory. To take one example, the item turmeric, in my view, is today as much a flavouring agent for food as an ingredient for the manufacture of a face cream.

24. Mr. Dutt for the respondents laid considerable emphasis on the proposition that an item should be construed in the way as it is understood in commercial parlance. Speaking for myself, in these days of ever expanding role of mass-media like radio, television, etc., I am not sure whether to the new generation who have their ears and eyes glued to these organs of mass-media, turmeric is known to be an ingredient of "Vicco Turmeric Vanishing Cream" or a flavouring agent for adding flavour and colour to the food that he or she consumes.

25. It would be necessarily followed that, in my view, without turmeric being a specific taxable item it is not open to the respondents to impose entry tax under the Act on turmeric under the generic head "spice". The contention of the petitioner on this point therefore succeeds.

26. I also accept the contention of Mr. Chakraborty for the petitioner that if an item like turmeric enters the taxable territory under the Act, there is to be a determination at the point of entry whether that quantity of turmeric is going to be used as an ingredient for the manufacture of vanishing cream or as a

flavouring agent for food. In my view that would be an impossible situation which is not envisaged by the Act. Consequently, in my view, unless there is the specific item of turmeric as a taxable item under the Act it is not open to the State to impose entry tax on turmeric under the generic item "spices".

27. Mr. Chakraborty also urged that imposition of entry tax is in violation of Article 301 of the Constitution of India. In my view, having regard to my finding on the other question it is not necessary to express any opinion on this contention. Certain authorities were also cited by Mr. Chakraborty on this point. In the view that I have taken, I refrain from dealing with these authorities.

28. In the result this application succeeds, and the rule is made absolute. There will be a writ in the nature of certiorari quashing these assessment orders dated 22nd, 23rd, 24th and 26th April, 1975, which are annexure A to the petition and a writ in the nature of mandamus directing the respondents to forbear from giving effect thereto in any manner "whatsoever. There will also be a writ in the nature of mandamus directing the respondents to refund the monies collected from the petitioner as entry tax in respect of the items brought by the petitioner into the taxable territory. There" will be a writ in the nature of prohibition restraining the respondents, their servant and agents from making the petitioner liable to tax under the Act in respect of the items brought by him into the taxable territory under the generic head "spices".

29. There will be no order as to costs.