(1985) 07 SC CK 0025

In the Supreme Court Of India

Case No : Civil Appeal No''s. 1434-35 of 1973 and 1003 of 1973

P.A. Thillai Chidambara Nadar APPELLANT

Vs

Addl. Appellate Asstt. Commissioner, Madurai and Another
P.A. Thillai Chidambara Nadar Vs State of Tamil Nadu RESPONDENT

Date of Decision : 29-07-1985

Acts Referred:

Citation : AIR 1985 SC 1644 : (1985) 2 SCALE 291 : (1985) 4 SCC 30 : (1985) 2 SCR 339 Supp : (1985) 60 STC 80 : (1986) 1 UJ 368

Hon'ble Judges : V. D. Tulzapurkar, J;Sabyasachi Mukherjee, J;Ranganath Misra, J

Bench : Full Bench

Advocate : J. Ramamurthy, for the Appellant; S.T. Desai and A.V. Rangam, for the Respondent

Final Decision : dismissed

Judgement

V.D. Tulzapurkar, J.—Whether a coconut (neither tender nor dried but a ripened coconut with or without husk) is a "fresh fruit" or a "vegetable" so as to earn exemption from the levy of sales tax under G.G. No. 1764 dated 5.4.1960 as amended on 22.12.1960 issued under the Tamil Nadu General Sales Tax Act, 1959 is the question raised in these appeals.

2. The High Court has held that under the aforesaid notification the Government had exempted "all sales of vegetables (other than the dried and dehydrated vegetables) fresh fruits, betal and plantain leaves, flowers, eggs, meat and fish (other than canned meat and fish)" from the levy of sales tax under the 1959 Act but since a ripened coconut in which the appellant was dealing as a grocer, could not be regarded as a "fresh fruit" or a "vegetable" the appellant's sales turn over in coconuts in each of the Assessment Years 1967-68, 1968-69 and 1969-70 was liable to sales tax and includible in his taxable turnover. It is this view of the High Court which has been challenged before us by counsel for the appellant-assessee.

3. The canon of construction to be invoked in these types of statutes has been repeatedly enunciated in several decisions of this Court but it is not necessary to refer to all of them. In Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh, , this court ruled thus:

It is well-settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted.

4. If regard be had to this rule of construction, the question raised will have to be answered against the appellant. On the first aspect of the question it can not be disputed that a coconut would be a 'fruit' in the botanical sense but unless it can be said to be a 'fresh fruit' it will not fall within the exemption notification. Similarly a coconut may be available in a vegetable market but because of that it does not become a 'vegetable'. It is well-known that the kernel of the coconut is used as an ingredient in the culinary preparations for adding taste to the food but it is hardly used as a substantial article of food on the table. The concerned articles namely, 'fresh fruits' and 'vegetables' being household articles of everyday use for the table these will have to be construed in their popular sense meaning the sense in which every householder will understand them. Viewed from this angle, the most apposite test would be the one adopted in the case of His Majesty the King v. Planters Nut and Chocolate Company Limited [1951] C.L.R.122 (which decision was approved by this court in Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, . Would a house holder when asked to bring home some 'fresh fruit' and some 'vegetable1 for the evening meal bring coconut? Obviously, the answer is in the negative.

5. Counsel for the appellant sought to rely upon the legislative history by referring some of the earlier exemption notifications issued by the State Government under the earlier Madras General Sales Tax Act, 1939 which were operative till the Tamilnadu General Sales Tax Act, 1959 was passed but in our view such reliance is of no avail to the appellant. In the first place all these earlier notifications clearly show that coconut was always subject to sales tax till G.O. No. 1764 dated 5.4.1960 was issued under the 1959 Act and there is no material to show that the Government had changed its view and exempted coconut from taxation under the 1959 Act. Secondly, under the. earlier notifications merely 'fruits' had been exempted from levy of sales tax and since coconut would have come within the category of fruits the same as expressly excluded from the exemption thereby making the sale thereof liable to tax. The legislative history, therefore, is of no assistance to the appellant. Similarly, how

coconut was dealt with under the amendment introduced by the Tamil Nadu Act 2 of 1970 by which coconut was brought under single point taxation would be immaterial.

6. In view of what is stated above we feel that the High Court was right in its conclusion that the appellant's sales turnover in coconut was not exempt from the levy of the sales tax. The appeals are, therefore, dismissed with no order as to costs.

Sabyasachi Mukharji, J.

7. Under G.O. No 1764 dated 5.4.1960, as amended on 22.12.1960, issued under the Tamilnadu General Sales Tax Act, 1959, 'fresh fruit' and 'vegetable' are exempt from the levy of sales tax. Whether ripened coconut with or without husk, can be considered to be 'vegetable' is the question in these appeals.

8. I respectfully agree with my learned brother Tulzapurkar J. that principles to be adopted in deciding that question are well-settled i.e. in interpreting items in statutes whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms of the expressions used, but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. Fresh 'fruit or vegetable' has not been defined in the Act.

9. My learned brothers have come to the conclusion that it cannot be 'disputed that ripened coconut will not be a 'fresh fruit' in terms of the said notification, I respectfully agree. But my learned brothers have also found that ripened coconut cannot be considered to be 'vegetable', I am not so sure on this aspect. Whether ripened coconut can be considered to be a 'vegetable? or 'fruit' in any part of India will depend upon the evidence available. Tastes vary, habits differ and food served, prepared and consumed at the tables in different parts of the country also vary. Therefore, it is safer not to rest our decision on our subjective ideas, if possible. I, however, respectfully agree with the conclusion reached by my learned brothers that the appeals should be dismissed.

10. It is well-settled that it is for the assessee who claims exemption to adduce evidence that a particular article is an exempted item and if he cannot or if he fails to do so, then the revenue may proceed on its basis. In such a situation, the assessee should have such an opportunity. We cannot foreclose such an opportunity. We cannot categorically say that ripened coconut could never be considered to be 'vegetable'. But in this case the assessee has adduced no evidence. In the premises, the assessee must fail and I respectfully agree with the order proposed by my learned brothers.