(1991) 04 MAD CK 0015

In the Madras High Court

Case No : Tax Case No. 96 of 1982 (Revision Petition No. 34 of 1982)

State of Tamil Nadu APPELLANT

Vs

K.V. Dhanuskodi Nadar RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 17, 6

Citation : (1991) 04 MAD CK 0015

Hon'ble Judges : Raju, J;A.S. Anand, J

Bench : Division Bench

Advocate : Lokapriya, for the Appellant; R. Venkataraman, for the Respondent

Judgement

Raju, J.—The Revenue has come up in revision aggrieved against the order of the Tribunal holding that the sales turnover relating to the sale

of chicory and chicory seeds are eligible for exemption under the exemption notification made by the Government in exercise of its powers u/s 17

of the Tamil Nadu General Sales Tax Act, 1959, in G.O. Ms. No. 1982 Revenue dated April 22, 1960 which read thus :

In exercise of the powers conferred by section 17 of the Madras General Sales Tax Act, 1959 (Madras Act 1 of 1959), the Governor of Madras

hereby exempts, with effect on and from the 1st April, 1960 the sales of vegetable seeds, fruit, plants, flower seeds and flower plants, from the tax

payable under the said Act.

2. The assessee was a manufacturer and dealer in tin containers. It is not in dispute that he had also dealings in chicory. The sales turnover of such

chicory seeds during the assessment year 1978-79 was to the tune of Rs. 1,46,921.43. After examination of the accounts, the respondent/assessee was assessed on a total and taxable turnover of Rs. 13,78,571.21 which was inclusive of the sales of chicory seeds and

penalty u/s 12(3) of the Act was also levied. On appeal before the Appellate Assistant Commissioner, the assessment on the turnover relating to

the sales of chicory seeds at 4 per cent. was sustained, but the levy of penalty u/s 12(3) of the Act was set aside. The assessee pursued the matter

further before the Tribunal which came to the conclusion that the sales of chicory seeds will be sales of vegetable seeds coming within the scope of

the exemption notification referred to supra and, therefore, stood exempt from the levy of sales tax. The Tribunal was of the view that chicory,

though not used as a principal item of the meal, its contents are used for mixing with coffee powder which forms a subsidiary meal item, and,

therefore, it satisfies the terms of the exemption notification.

3. Mr. R. Lokapriya, the learned Government Advocate appearing on behalf of the Revenue contended that the sales of chicory seeds cannot be

considered to be sales of ""vegetable seeds"" and consequently the turnover in respect thereof is not entitled to the exemption under the notification

referred to supra. Learned counsel further contended that the Tribunal misdirected itself as to the true scope and meaning of the words ""vegetable

seeds"" contained in the notification in question and that the approach of the Tribunal is opposed to the decision of the Supreme Court as well as

this Court in the matter of construction of such entries. Mr. R. Venkataraman, learned counsel appearing for the assessee, reiterated the reasoning

of the Tribunal and submitted that the view of the Tribunal is unexceptionable and no interference is called for.

4. Learned counsel for the department referred to the decisions reported in State of West Bengal and Others Vs. Washi Ahmed and Others, ;

M.R. Arumuga Nadar and Others Vs. The State of Tamil Nadu, and P.A. Thillai Chidambara Nadar Vs. Addl. Appellate Asstt. Commissioner,

Madurai and Another, . In State of West Bengal v. Washi Ahmed [1977] 39 STC 378, the apex Court was concerned with the question as to

whether green ginger will fall within the word ""vegetable"" as found in item 6 of the First Schedule to the Bengal Finance (Sales Tax) Act, 1941.

After discussing about the approach that is to be adopted in the matter of construction of similar words which are not by themselves defined under the Act, the apex Court held as follows :

It will, therefore, be seen that the word ''vegetable'' 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.

Now, obviously green ginger is a vegetable grown in a kitchen garden or in a farm and is used for the table. It may not be used as a principal item

of the meal but it certainly forms part of the meal as a subsidiary item. It is an item which is ordinarily sold by a vegetable vendor and both the

vegetable vendor who everyday use deals in vegetables and the housewife who daily goes to the market to purchase vegetables would

unhesitatingly regard green ginger as vegetable. The assessee in fact placed evidence before the sales tax authorities showing that the railway

authorities also treated green ginger as vegetable for the purpose of railway tariff and charged for the carriage of green ginger at the reduced rate

applicable to vegetables and even the Corporation of Calcutta included green ginger in the category of vegetable in the market bulletin published by

it fortnightly showing the rates in the municipal market. There can, therefore, be little doubt that green ginger is generally regarded as included

within the meaning of the word ''vegetable'' as understood in common parlance. That apart, we find that item 6 speaks not simply of vegetables but

''vegetables-commonly known as ""sabji, tarkari or sak""'' and the Division Bench of the High Court held green ginger to fall within the meaning of

the words ''sabji, tarkari or sak''. We should certainly be very slow to disturb a meaning placed on these words in Bengali language by two Judges

of the High Court who may reasonably be expected to be quite conversant with that language. We are accordingly of the view 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 and its sales must be held

to be exempt from tax u/s 6 of the Act.

5. In M. R. Arumuga Nadar v. State of Tamil Nadu [1984] 56 STC 53, a Division Bench of this Court had an occasion to consider the question

as to whether ""red ripe or fruit chillies"" can be considered to be ""vegetables"" in respect of a similar exemption notification in G.O. Ms. No. 1764,

Revenue, dated April 5, 1960. The Division Bench, after referring to the earlier case law on the subject and that too of the decisions of the apex

Court, held thus :

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. Stare 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 ''vegetables'', as understood in

common parlance.

6. In Thillai Chidambara Nadar v. Additional Appellate Assistant Commissioner [1985] 60 STC 80, the apex Court was considering the

exemption notification in G.O. Ms. No. 1764, Revenue, dated April 5, 1960 in the context of the position of ""ripened coconuts"". The appeal

before the Supreme Court was one arising under the provisions of the Tamil Nadu General Sales Tax Act, 1959, from a judgment of this Court.

That was a case in which the assessee, a dealer in groceries, claimed that his sales turnover of ripened coconuts was exempt under the notification referred to above which gave exemption in respect of sales of ""fresh fruits"" or ""vegetables"" in addition to certain other items also. The apex Court

once again considered about the construction to be adopted in such a case and laid down the following principles :

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 rules 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.''

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

cannot 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] CLR (Ex) 122 (which decision was approved by this Court in Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan

Singh, . Would a householder when asked to bring home ''fresh fruit'' and some ''vegetable'' for the evening meal bring coconut ? Obviously, the answer is in the negative.

7. Considering the point in issue before us in the light of the consistent and categorical declaration of law by the apex Court, we are of the view that

the sales of chicory seeds in question can by no stretch of imagination be equated to or characterised as sales of ""vegetable seeds"" within the

meaning of the notification in question. In our view, unless an approach from the botanical point of view is adopted, chicory cannot be considered

to be a ""vegetable"" and its seeds cannot be deemed to be ""vegetable seeds"". ""Vegetable"" and ""vegetable seeds"" are words of everyday use and

they have to be construed ascribing to them the meaning attributable to them in common parlance and in the sense in which every house-holder will

understand them. It is not only improbable but would be too artificial to assume that when in an ordinary day-to-day use, vegetable is asked to be

purchased, chicory can substitute its place and one is asked to get vegetable seeds, the purchase of chicory seeds will answer the demand or

requirement of the common man. Consequently, except by doing violence to the language as well as transgressing the object of the use of the word

vegetable seeds"" in the notification in question, chicory seeds cannot be brought within its meaning. We are of the view that the object of the

notification appears to be to exempt plants of the specified variety as well as seeds of vegetables, fruits and flowers and the notification cannot be

so construed as to bring within it the whole gamut of seeds of vegetables in the botanical sense of the term. Neither it appears to be the intention of

the notification nor in our view the language adopted or the terms of the notification warrant such a construction being placed on the words

carefully thought of and deliberately used therein. An exemption notification is required to be strictly and not loosely construed.

8. That apart, the Tribunal, in our view, really misdirected itself and misconstrued the scope of the word ""vegetable"" and ""vegetable seeds"". This is

obvious from the observation that ""it may not be sold as vegetable by a vegetable vendor in India, but it is treated as vegetable seeds in foreign

countries"". It is only on the basis of such assumptions and certain literature pertaining to the import from the international market of the seeds in

question that the Tribunal has chosen to come to such a conclusion. This, in our opinion, is the practice which the Supreme Court has often deprecated and advocated as the one to be avoided. The test should be as to how those in public in this country in their normal day-to-day

activities deal with and handle a particular commodity. The construction in a popular or commercial sense means going by the meaning ascribed by

those who everyday use or deal in such commodity in this country. Thus viewed, we are unable to persuade ourselves to subscribe to the view

taken by the Tribunal identifying and equating the chicory or chicory seeds with either ""vegetable"" or ""vegetable seeds"". We hold that the sales

turnover of chicory seeds will not be eligible for exemption as ""vegetable seeds"" within the meaning of the notification contained in G.O. Ms. No.

1982, Revenue dated April 22, 1960. Consequently, we are of the view that the order of the Tribunal cannot be allowed to stand and is, therefore,

liable to be set aside and it is accordingly set aside.

9. In the result, this tax revision case is allowed; but in the circumstances, there will be no order as to costs.

10. Petition allowed.

