
(1987) 04 CAL CK 0027

In the Calcutta High Court

Case No : Appeal No. 355 of 1981 and Matter No. 385 of 1979

State of West Bengal

APPELLANT

Vs

Nitai Mohan Saha

RESPONDENT

Date of Decision : 22-04-1987

Acts Referred:

West Bengal Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 —
Section 2, 6

Citation : AIR 1989 Cal 23 : (1989) 74 STC 221

Hon'ble Judges : Satya Brata Mitra, J; Bimal Chandra Basak, J

Bench : Division Bench

Advocate : Chakraborty, for the Appellant; Dutt, for the Respondent

Final Decision : Allowed

Judgement

Bimal Chandra Basak, J.—This appeal is directed against a judgment and order passed by the learned trial Court whereby the writ petition filed by the respondent was allowed and the Rule was made absolute. This is one of a series of writ petitions filed by several traders.

2. The petitioner in the main writ petition challenged certain orders of assessment under the West Bengal Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 as amended by the Act of 1979. (hereinafter referred to as the said Act).

3. The sole question before us is whether the Assessing Authority who taxed the goods under the heading "spices" was justified in doing so or not. There was no entry tax on spices till 19th April, 1979. By an amendment to the said Act, the schedule prescribed under the Act was amended and in the said schedule at serial No. 10(a) "spices and powders thereof were added in addition to other items. According to the petitioner he is a dealer in turmeric, black pepper, chilli, cinnamon, cardamom, cloves, ginger, mustard, rapeseeds and many other like items. According to the petitioner he imported within the Metropolitan City of Calcutta

certain turmeric, black pepper etc. The petitioner was assessed to an entry tax under the heading "spices" which has been challenged by the petitioner in this writ petition.

4. While allowing the writ petition the learned Judge held as follows : --

"In my view, the contention of Mr. Chakraborty is sound and should be accepted. The expression "spice" in my view is a generic term which means a flavouring agent for food. 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.

I am in respectful agreement with the view taken by A.K. Sen, J. in the case of Lalchand Agarwalla and Others Vs. State of West Bengal and Others, 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.

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 were brought by the petitioner into the taxable territory. In my view, it is today as much a flavouring agent for food as an ingredient for the manufacture of a face cream.

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 common or 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.

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 "spices". The contention of the petitioner on this point: therefore succeeds.

I also accept the contention of Mr. Chakraborty for the petitioner that if 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 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".

5. So far as Article 301 of the Constitution is concerned, the learned Judge observed that having regard to his finding on the other question, it was not necessary to express any opinion on this contention, and accordingly, the learned Judge refrained from dealing with the authorities cited relating to this point.

6. Being aggrieved by the same, the State of West Bengal has preferred this appeal. Though in this appeal the State seeks to have the Trial Court's order set aside but having regard to the fact that the argument sought to be made on its behalf was not clear and as the appeal is a rehearing of the main matter, we called upon the respondents, who were the writ petitioners, to support the judgment appealed from and to argue their case in support of the writ petition first, so that we may call upon the State to answer the same.

7. Mr. Chakraborty appearing on behalf of the writ petitioners submitted that under the heading "spices", only those items which are used as flavouring agent for food can be taxed but not those which may be used for other purposes. In this connection he has relied on certain averments made in the writ petition which are set out hereinbelow :

"That the petitioner states that the said Act in its original form or in the amended form with its Rules do not define the ambit of spices and powders thereof. It does not say which items are included in it. The result is that the respondents and their agents may run amok and do include within the definitions of spices any commodity arbitrarily according to the whims and caprice of each individual officer and their servants and/or agents." (para 8) "That the petitioner further submits that where a word is not defined in a statute, its dictionary meaning should be employed to interpret it. It is well known rule of Courts of law that the words should be taken to be used in this ordinary sense which one could only borrow from the dictionaries. There is another rule of interpretation that particular words used by the legislature in the denomination of articles should be understood as it is understood in common parlance and not in their scientific or technical sense; for the legislature does not suppose the businessmen to be naturalists or geologists or botanists." (para 9)

"That the petitioner states that the word "spices" has been defined in the dictionary and the meaning given to it in the dictionary is the same as one finds in the common parlances. The meaning given to the word "spices" in the following dictionaries is as follows :--

Concise Oxford Dictionary 4th Edition page -- 1213.

Spices -- Aromatic or pungent vegetable substances used to flavour food.

Shorter Oxford English Dictionary Third Edition Page - 1968, 364.

Spice -- 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.

The Children's Dictionary Page - 296.

Spice -- A vegetable preparation used to flavour food." (Para 10)

"That from the aforesaid dictionary meaning of the word "spices" it appears that in common parlance the word is used in this sense. As such the utility of the spice as a flavouring substance for food was uppermost in the mind of the legislature. The legislature while amending, this Act was oblivious of the fact that turmeric, chillies, black or white pepper, cinnamon, cardamom singer, Mace, Fenugreek, Coriander seeds, Mustard, rape, Cumin Seed, Saffron, Aniseed, Fennel, Tejpat, Calary seed, Garlic cassia and Nutmeg which have not only use as spice are also used for other purposes such as medicinal dyeing and/or Pan Masalla and/or for toilet and/or skin food preparation."

(Para 11)

"That the petitioner states that a large number of commodities and a huge quantity or portion thereof on which entry tax is being levied and collected in the name of spice may not be entering into the Calcutta Metropolitan Area to be used as spice and in fact did not enter into the said area to be used or consumed as spice. A bulk of said commodities had been used and utilised in the manufacture of medicines, dyeing stuff and Pan-masalla. Pan (Betel leaf) is not used in this country as food although it is one of the spices of vegetable not grown in the kitchen garden to be used for the table. This view has been emphasised by different judgments of Courts of law and it has been said that betal leaves are not to supplement food It is used after taking a "meal as masticatory for helping digestion. Pan-masalla is therefore a different class, not meant for food. The petitioner craves leave to refer to the texts and/or authorities to show which items are used for medicines, Dyes and/or Pan Masala at the time of hearing of the petition, Dry ginger, Garlic and chillies may be treated as spice but the same thing when green are declared by the Court to be vegetables used for the table" (para 12).

"It is, therefore, clear that all the items of goods which fall within the category Spice do not go to the Consumer to be used as spice. As such the Entry Tax Authorities are not competent to tax them as spice and items which are not used as spice cannot be taxed under the Act. The tax at the entry point on these goods, not used ultimately as spice, is therefore without jurisdiction, unwarranted, illegal, incurably bad and void. It is wholly an arbitrary action and hence discriminatory."

(Para 13)

8. These averments have been dealt with in the affidavit-in-opposition which are

set out hereinbelow: --

"I deny the allegations made in paragraph 8 of the petition and I state that spices would include these commodities which in common parlance are known to be spices. In this connection I state that in trades and businesses as also to common people certain items of goods are known to be included in the word spices. In this connection I state that in India Trade Classification Group 075 is in respect of spices and it contains names of various commodities which come within the said group called spices. I state that there are provisions for appeal and revision. If any particular officer acts arbitrarily or whimsically, the appellate and/or Revisional Authority will rectify the mistake if any." (Para 9).

"In reply to the statements made in para 9 of the petition I state that the Highest Court of the country in various decisions has stated, that in the circumstances as in the present case the meaning as known in common parlance should be given to the word which is sought to be interpreted. I deny all statements which are contrary to or inconsistent with the statements made herein," (para 10).

"In reply to the statements made in paras 10, 11, 12, 13 and 14 of the petition I state that the statements are misconceived I state that goods, as these are known in common parlance at the time or point of entry into Calcutta Metropolitan Area is the criteria and if the goods as those are at the point of entry, fall within a category specified in the Schedule to the taxes on Entry of Goods into Calcutta Metropolitan Areas Act, 1972 (as amended by the Amendment Act, 1979) would be taxable at the rate prescribed by the State Government (within the rate prescribed in the schedule)" (para 11).

9. In support of his contention Mr. Chakraborty has relied on Lalchand Agarwalla and Others Vs. State of West Bengal and Others, which went on appeal and which is reported in State of West Bengal and Others Vs. Lalchand Agarwala and Others, being a Division Bench judgment of this Court. He has also relied on the cases of Mangulu Sahu Ramahari Sahu Vs. The Sales Tax Officer, Ganjam, , The State of Orissa Vs. Dinabandhu Sahu and Sons, , State of West Bengal and Others Vs. Washi Ahmed and Others, .

10. The second submission of Mr. Chakraborty was that items must be specific. Specified items must be stated. In this particular case class or category of goods have been specified; specific goods have not been specified. Spice is a generic term, but what type of spices are being taxed have not been specified. Accordingly, it is not "specified" within the meaning of the Act. In this connection Mr. Chakraborty has relied on the decisions of the single Judge and the Division Bench in Lalchand Agarwalla's case (ibid).

11. The third submission of Mr. Chakraborty was that this was an arbitrary assessment and in this context he relied on para 17 of the petition. We ought to point out that this paragraph has been dealt with in para 13 of the affidavit-in-opposition.

12. The last submission of Mr. Chakraborty was that this was in violation of Article 301 of the Constitution. In this context he has relied on para 21 of the petition. We may point out that this has been dealt with in paragraph 16 of the affidavit-in-opposition.

13. Mr. Ghosh has appeared in support of this case. We are sorry to state that we have not received much assistance from the learned Advocate appearing for the State. Only some broad and vague submissions were made without elaboration or clarification of the same. It was broadly submitted that each item need not be specified; that the officer will take the decision; that if the goods were brought for consumption that is sufficient. He did not deal with the contentions raised by Mr. Chakraborty specifically. He has referred to Rule 12(2), India Trade Classification. Excepting producing a photostat copy of a front page and one other page of such alleged publication, nothing was shown before us. Accordingly we cannot rely on such copy. On the question of Article 301 of the Constitution Mr. Ghosh has referred to Article 304.

14. In reply Mr. Chakraborty has sought to rely on Director of Entry Taxes and Another Vs. Sricol Chemicals Industries, . Reliance was placed on paras 4, 14, 21 and 27 thereof.

"This publication by the Union Ministry of Foreign Trade and Supply appears to us to, be of considerable significance for purposes of this appeal In allowing import of chemicals from abroad the Government of India makes a distinction between "Dyes Intermediates" and "Aromatic Chemicals". In the trade, therefore, all aromatic chemicals are not treated as "Aromatic Chemicals". Some of them are grouped as "Dyes Intermediates" although from the point of view of organic chemistry they may be aromatic chemicals. This is a distinction which the Central Government has made and we cannot ignore this distinction in disposing of this appeal or in construing the said item 49(a) in the Schedule to the West Bengal Act V of 1972 which is an Act relating to trade and commerce. In Riegel's "Industrial Chemistry", 5th Edition at page 580 there is a discussion in Chapter 27 on the manufacture of "Dyes Intermediates" Riegel, inter alia, says :

The group of synthetic compounds called intermediates is the starting point for the manufacture of dyes; they form the raw materials for the dye industry; to put it still another way the intermediates are the foundations of the dye construction. The name is certainly appropriate, for they are the intermediate compounds between benzene, naphthalene and anthracene, on the one hand, and the brilliant and varied dyes on the other.

In Craies "Statutory Interpretation" published by Butterworths, London, in 1976 at page 57 it is stated ; "nothing need be said at this stage about the distinction between an ordinary and technical meaning, but something must be said about "fringe meaning" and the cognate problem of the restrictions to be placed on the interpretation of general words. Problems of fringe meaning are sometimes spoken of as problems of the penumbra, the point being that in the case of a

great many words, there is no doubt about the hard core of their meaning, but different views may well be taken on the question whether the word is applicable to things or situations" outside that hard core. No one doubts that a chair is furniture, but what about linoleum ? A fully (assembled) motor car is certainly a vehicle, but what if the engine and wheels are removed? Is a bicycle a carriage? Different minds may take different views concerning the answer to these and countless similar questions. In a great many cases the answer will of course vary according to the context in which the problem arises and the Courts will be guided by the object of the legislation they are considering, but very frequently the Judge can do little more than say that a line has to be drawn somewhere and that he has decided to draw it beyond on short of the facts of the case before him.

We agree with the conclusion of the learned trial Judge that the goods imported as Dyes Intermediates are not known in the trade as Armetic Chemicals and do not fall within item 49(a) of the schedule to the Taxes on Entry of Goods into the Calcutta Metropolitan Area Act. 1972."

15. Mr. Chakraborty sought to make out a new case, in his reply, to the effect that in respect of the assessment in question the assessing authority has sought to add some items which are arbitrary. No such point has been specifically taken in the petition and we did not allow him to agitate the same before us for the first time.

16. Before dealing with the respective contentions raised before us we shall set out the relevant provisions of the Act and the Rules and the provisions of the Constitution of India.

ACT.

Section 2(g) -- Prescribed means prescribed by rules made under this Act.

h) Schedule means the Schedule to this Act.

i) Specified goods means the goods specified in column 2 of the Schedule.

Section 6(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 of the number or quantity thereof does not exceed the prescribed amount of limit, as the case may be, or

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

Section 10 -- The tax levied under this Act shall be payable by the dealer in relation to the specified goods.

Section 13 -- Every dealer of specified goods shall, on or before the entry of such goods into the Calcutta Metropolitan Area, deliver, at a notified place to the prescribed Authority a declaration (in such form and containing such particulars as may be prescribed) relating to such goods.

Provided that no such declaration shall be required to be made in relation to any specified goods which are exempted by Sub-section (2) of Section 6, Section 7 or Section 8 from the payment of any tax leviable under this Act.

Section 16 -- If the dealer omits or fails to pay the whole or any part of the tax assessed under Sub-sections (1), (2) or (3) of Section 14 or the amount of penalty imposed under Sub-section (2) or Sub-section (3) of that Section, the prescribed authority may seize the specified goods in relation to which payment has been so evaded.

Section 27 -- (1) Any dealer, deeming himself aggrieved by any order passed under this Act, may in the prescribed manner and within one month from the date of such order, appeal therefrom to such officer of Government as may be prescribed.

Provided that no appeal shall be entertained by. such officer, unless he is satisfied that an amount equal to fifty per cent of the tax assessed under this Act or such lesser amount as such officer may, after considering all the circumstances of the case, fix, has been deposited by the appellant.

(2) The officer of Government to whom the appeal is made may, after giving the parties an opportunity of being heard and after making such further inquiry, if any, as he deems fit, pass any order, confirming, altering or annulling the order appealed against and may also pass any interim order if he thinks such interim order to be necessary :

Provided that no such order in appeal shall have the effect of subjecting any person to any greater penalty than has been adjudged against him in the order appealed from.

Section 29 -- The prescribed authority may of its own motion or otherwise, call for and examine the record of any proceeding for the assessment of any tax or imposition of any penalty under this Act where no appeal has been preferred or any appeal, having been preferred, has been disposed of for the purpose of satisfying itself as to the correctness legality or propriety of such assessment or imposition of penalty and may pass such order thereon as it thinks fit

Provided that no assessment of tax or imposition of penalty shall be varied under this section so as to prejudicially affect any person unless such person --

(a) has, within a period of two years from the date of such assessment or imposition of penalty, received a notice to show cause why such assessment or penalty shall not be varied; and

(b) has been given a reasonable opportunity of making a representation and, if he so desires, of being heard, in his defence.

Section 30 -- Clerical or arithmetical mistakes in any assessment or imposition of penalty or errors arising therein from any accidental slip or omission may, at any time be corrected by the prescribed authority either of its own motion or on the application of the dealer.

Rules.

Rule 12(2) -- If the appropriate Assessing Officer is satisfied about the reasonableness of such value quoted in the document submitted on behalf of the dealer he shall accept the same and levy tax accordingly. If the value is not ascertainable on account of non-availability or non-production of the bill or invoice or consignment note issued by the consignor or other document of like nature or other documents showing other charges, duties and fees, or if such Assessing Officer is not satisfied about the reasonableness of the value shown or declared by the dealer, such Assessing Officer shall determine the approximate saleable value of such goods in the Calcutta Metropolitan Area to the best of his judgment and shall levy tax accordingly."

17. So far as the first submission on behalf of the petitioner is concerned, we are unable to accept the same. We are unable to accept the proposition that only those spices which are used for the purpose of flavouring foods, but not those which may be used for other purposes, can be taxed. The Act makes no such distinction. If it comes within the category of "spices" then it is to be taxed. The ultimate use thereof is of no consequence. As it is made clear in Section 6 itself that tax is levied on the entry of every specified goods into the Calcutta Metropolitan Area for consumption, use or sale therein. If it is otherwise a "specified goods" and if it is for consumption or use or sale in the Calcutta Metropolitan area, that is sufficient. The main question is if it comes within the category of goods specified in column 2 of the Schedule. If it is a "specified goods" then it does not matter whether it is used for flavouring foods or otherwise. In this context it may be pointed out that it is not the petitioner's case that the goods which were taxed could not be used for flavouring foods but it was to be used or utilised solely for the manufacture of medicine or anything else as it is sought to be made out before the trial Court and before us.

18. We shall deal with the cases cited by the learned Advocates. In the case of Lalchand Agarwalla and Others Vs. State of West Bengal and Others, it was a judgment of a single Judge of this Court. The principle of interpretation of Taxing Statute was laid down regarding which there cannot be any controversy. In that case the assessment was sought to be made relying on the entry 4(t) of the schedule which brings nuts as one category of edibles under the incidence of

taxation. This is under the heading articles of food. There can be no dispute that there are various kinds of such nuts other than the groundnuts which are used for manufacturing edibles. Having regard to the different provisions of the said Act and schedule, the learned Judge held that on a fair reading of section 6 read with the schedule on the relevant entries, the legislature intended and imposed the levy on nuts imported as edibles and not to cover such nuts as are imported as oil seeds. The learned Judge found that the groundnuts are primarily used as seeds for extracting edible oil, and therefore, the learned Judge held that under entry 4(t) of the Schedule the legislature intended to tax nuts when imported as edibles and not nuts imported as oil seeds. Before the learned Judge it was not disputed by the respondents that oil seeds for edible oils were beyond incidence of taxation under the statute under consideration.

19. We need not further deal with the said judgment as there was an appeal preferred against the said judgment before the Division Bench which is reported in (1973) 77 Cal WN 910. The Division Bench held therein as follows:

"Upon going through the above provisions of the Entry Tax Act it appears that only the goods which have been specified are taxable. The goods not specified are excluded from the operation of the Act Secondly, the clear intention of the legislature is that edible oils or oil seeds for edible oils would not be liable to any tax".

"In Avadh Sugar Mills Ltd. Vs. The Sales Tax Officer, Sitapur and Another, , the Supreme Court was construing some of the provisions of the U.P. Sales Tax Act It has been stated that in finding out the true meaning of "oil seeds" found in the Sales Tax Law, the Court should not refer to dictionaries but ascertain the meaning ascribed to it in commercial parlance. The Supreme Court says that there can hardly be any doubt that in commercial circles groundnut is dealt with as an oil seed, and groundnut is mostly used for manufacture of groundnut oil. According to the Supreme Court groundnut is, therefore, "oil-seed" for the purpose of this purchase tax under the U.P. Sales Tax Act, 1948. Delivering the Supreme Court's judgment Hegde, J. has observed at page 470 (of STC) : (at p. 2441 of AIR) as follows : --

"We shall now proceed to consider whether groundnuts are seeds and further whether they are oil-seeds. In finding out the true meaning of the term "oil-seeds" found in the sales tax law in question, we are not to refer to dictionaries. We are to find out the meaning ascribed to that term in commercial parlance. (See the decision of this Court in Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, There can hardly be any doubt that in commercial circles groundnut is dealt with as an oilseed. The commercial journals and newspapers while quoting the market price of oil-seeds list groundnuts as one of the species of oil seeds. From this, it is clear that in commercial circles groundnut is treated as oil-seed.

A seed is one which germinates. It is not disputed that the groundnut

germinates. Hence it is undoubtedly seed. The next question is whether it is generally used for manufacture of oil. Here again, there can hardly be any doubt that groundnut is mostly used for the manufacture of groundnut oil which issued in the manufacture of dalda and other cooking media. Groundnut is none of the items which is mostly used in this country for the manufacture of cooking media."

These observations of the Supreme Court make it abundantly clear that groundnut in the commercial world is considered as an oil seed and not edible nuts as such."

"These statutory provisions also indicate that groundnuts are treated as oil-seeds in mercantile transactions and the legislature in enacting the provisions of the Entry Tax Act was certainly aware of this commercial connotation. Since the tax under the Entry Tax Act can be levied only on specified goods, if the intention was to include groundnuts within the purview of the Act it should have been specifically mentioned in the schedule. In the context of the intention of the legislature, already referred to, we are unable to accept the argument of the learned Advocate for the appellants that "nuts" in the widest sense include groundnuts and, therefore, they are taxable under the Entry Tax Act. We have no doubt that the legislature wanted to exclude oil-seeds for edible oils in order that edible oils manufactured in West Bengal can compete with edible oils manufactured elsewhere. And that is why groundnuts have not been included in the Schedule to the Entry Tax Act". "We are, therefore, in agreement with the conclusions of the trial Judge and we dismiss this appeal. The judgment and order passed by the Court below are affirmed. There will be no order as to costs."

It is quite clear that the said decision does not help the writ petitioner herein as the Division Bench found that the clear intention of the legislature was that edible oils or oil seeds for edible oils would not be liable to any tax. This decision was in respect of a different item. In the facts of that case and in the light of the other items under Class-III of the schedule as specified in the judgment, the Division Bench came to the conclusion that edible oils or oil seeds for edible oils would not be liable to any tax and accordingly oil seeds for preparing edible oil would not come within the item "nuts". We cannot come to the conclusion, in this case, that the expression "spices" means only those spices which are used for the purpose of flavouring food and not for the purpose of manufacture of any other articles. It is nobody's case that the same thing cannot be used for both the purposes. In that case it was further held that the groundnuts were treated as oil-seeds in mercantile transactions and accordingly the legislature, in enacting the provisions of the Entry Tax Act, was certainly aware of the Commercial Tax law. In the case before us there is no material to show that in mercantile transactions spices mean only those kind of spices which are used for the purpose of consumption as such but not for the purpose of manufacture. In the facts of that case the Division Bench came to the conclusion that the legislature wanted to exclude oil-seeds for edible oils in order that edible oils manufactured in West Bengal can compete with edible oils manufactured

elsewhere. No similar conclusion can be drawn in the present case. In this context it may be pointed out that the finding of the learned Judge was based on a decision of the Supreme Court in *Avadh Sugar Mills Ltd. Vs. The Sales Tax Officer, Sitapur and Another*, There the Supreme Court was concerned with the true meaning of the expression oilseeds and stated that it should not be referred to dictionaries but ascertain the meaning ascribed to it in commercial parlance. The Supreme Court observed that there can hardly be any doubt that in commercial circles groundnut is dealt with as an oilseed, and groundnut is mostly used for manufacture of groundnut oil. The passage quoted by the Division Bench is noted hereinbelow :

"In *Avadh Sugar Mills Ltd. Vs. The Sales Tax Officer, Sitapur and Another*, the Supreme Court was construing some of the provisions of the U.P. Sales Tax Act. It has been stated that in finding out the true meaning of "oil seeds" found in the Sales Tax Law, the Court should not refer to dictionaries but ascertain the meaning ascribed to it in commercial parlance. The Supreme Court says that there can hardly be any doubt that in commercial circles groundnut is dealt with as an oilseed, and groundnut is mostly used for manufacture of groundnut oil. According to the Supreme Court groundnut is, therefore, "oil-seed" for the purpose of the purchase tax under the U.P. Sales Tax Act, 1948. Delivering the Supreme Court's judgment, Hegde, J. has observed at page 470 (of STC): (at p. 2441 of AIR) as follows : --

"We shall now proceed to consider whether groundnuts are seeds and further whether they are oil seeds. In finding out the true meaning of the terms " oil seeds" found in the Sales Tax law in question, we are not to refer to dictionaries. We are to find out the meaning ascribed to that terms in commercial parlance. (See the decision of this Court in *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, . There can hardly be any doubt that in commercial circle groundnut is dealt with as an oilseed. The commercial journals and newspapers while quoting the market price of oil-seeds list groundnuts as one of the species of oil-seeds. From this, it is clear that in commercial circles groundnut is treated as oil-seed

A seed is one which germinates. It is not disputed that the groundnut germinates. Hence it is undoubtedly seed. The next question is whether it is generally used for manufacture of oil. Here again, there can hardly be any doubt that groundnut is mostly used for the manufacture of groundnut oil which is used in the manufacture of dalda and other cooking media. Groundnut is none of the items which is mostly used in this country for the manufacture of cooking media."

These observations of the Supreme Court make it abundantly clear that groundnut in the commercial world is considered as an oil seed and not edible nuts as such."

The next case cited was *Mangulu Sahu Ramahari Sahu Vs. The Sales Tax Officer, Ganjam*, In that case the question was whether 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. In that case the Supreme Court held that a word which is not defined in the Act but which is a word of every day use must be construed in its popular sense. The Court took the view that the word "vegetables" should be understood as denoting the class of vegetables which are grown in kitchen garden or in a farm and are used for the tables. The Court came to the conclusion that both chillies and lemons are grown in kitchen gardens or at any rate in farms and they are used for the tables. It should be pointed out that in that case it was contended on behalf of the State of Orissa that in Orissa chillies and lemons are not used as articles of food. The learned Judge rejected the contention and stated that even if a section of Orissa have a dislike for chillies and lemons, they do not cease to be vegetables for that reason. In common parlance chillies and lemons are known as vegetables.

20. In the present case, spice in common parlance is clearly known to all. Therefore, even if in a given case something which amounts to spice in common parlance, is brought inside the metropolitan area for manufacture of some other goods, it does not cease to be "spice" within the meaning of the said Act. As already pointed out, it is nobody's case that in this particular case the articles brought in cannot be used for consumption but they can only, be used for the purpose of manufacture of any other goods or that it is mainly used for commercial purposes. Accordingly, the cases cited are of no assistance to the writ petitioner.

21. The next case cited was *The State of Orissa Vs. Dinabandhu Sahu and Sons*, There the Supreme Court held that Jeera, Dhania, Panmohuri, Methi and Postak are "oil-seeds" within the meaning of Section 14(vi) of the Central Sales Tax Act, 1956. After recording the submissions made, the Supreme Court observed as follows :

"These appeals arise out of a decision in a reference u/s 24 of the State Act under Art 136 of the Constitution and we have to consider whether it is a fit case for interference with the order of the High Court when it held that the Sales Tax Tribunal was right in its conclusion. It is true the High Court has rightly observed that the aforesaid notification of the Government of India has no statutory force and as such is not binding on the Sales Tax Officer. It cannot however, be denied that the Ministry of Finance, Department of Economic Affairs, is intimately conversant not only with the policy of legislation for the purpose of implementation of the provisions of the Central Act but is also familiar with the nature and quality of the commodities as also their use from time to time. If, therefore, such an authority issued a notification including certain commodities under the head of "oil seeds", as defined under the Central Act, it cannot be said that the Tribunal and the High Court were not right in preferring such an opinion of the Government as good evidence for its conclusion to the opinions relied upon by the Andhra Pradesh High Court on which great reliance has been placed by the appellant. A perusal of the contents of the letters referred to in the

judgment of the Andhra Pradesh High Court would indicate that the opinions cannot be said to be very firm or even final. Apart from this, it is not known whether all the uses which are mentioned in the definition of "oil-seeds" were brought to the notice of the National Chemical Laboratory, Poona, and of the Central Food Technological Research Institute, Mysore, in rendering their opinions. If, therefore, the Tribunal in the facts and circumstances of the case held that the particular commodities came within the definition of Clause (vi) of Section 14 of the Central Act it is not possible to hold that it was not right. The answer to the first question by the High Court is, therefore, rightly in the affirmative.

We do not also see anything wrong in the High Court's answering the second question in the way it did. The appeals, therefore, fail and are dismissed. There will be no order as to costs.

In our opinion, this case does not assist the writ petitioner.

22. The next case cited was State of West Bengal and Others Vs. Washi Ahmed and Others. There the question was whether the 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. In this context, the learned Judge held that the word "vegetable" is not defined in the Act but it is well settled as a result of several decisions of this Court that this word, being a word of every day use, must be construed not in any technical sense, not from any botanical point of view, but as understood in common parlance. It was held that 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 was pointed out that it is an item which is ordinarily sold by a vegetable vendor and both the vegetable vendor who every day deals in vegetables and the housewife regard green ginger as vegetable. Accordingly we reject the first submission of Mr. Chakraborty.

23. Regarding the second submission in support of the writ petition, as we have already stated, it was submitted that only the word "spice" has been used and not any particular kind of spice. We are unable to accept such contention u/s 6 of the said Act the tax is imposed on every specified goods brought into the Calcutta Metropolitan Area from any place outside that area "Specified goods" as defined u/s 2(i) means the goods specified in column (2) of the Schedule and under this the word "spice" has been insisted. In our opinion, the impression is "specified goods" and not "specific goods" The intention of the legislature was to tax those goods which are specified It was not the intention of the legislature that only particular specific goods are to be taxed. Some particular class or group of goods are to be taxed The expression "spices" may form a genus of which there may be various species, but it cannot be said that under the Act only "species" could be taxed and not genus. To put it otherwise, it cannot be said that only a particular "species" of "spices" can be taxed but not "spices" in

general as "genus". In any event, we are to point out that this has been introduced by an amendment and the amendment Act has not been challenged before us. The case cited in support of the same does not support the petitioner. In *State of West Bengal and Others Vs. Lalchand Agarwala and Others*, relied upon is as follows: ;

"These statutory provisions also indicate that groundnuts are treated as oil-seeds in mercantile transactions and the legislature in enacting the provisions of the Entry Tax Act was certainly aware of this commercial connotation. Since the tax under the Entry Tax Act can be levied only on specified goods, if the intention was to include groundnuts within the purview of the Act, it should have been specifically mentioned in the Schedule. In the context of the intention of the legislature, already referred to we are unable to accept the argument of the learned Advocate for the appellants that "nuts" in the widest sense include groundnuts and, therefore, they are taxable under the Entry Tax Act. We have no doubt that the legislature wanted to exclude oil-seeds for edible oils in order that edible oils manufactured in West Bengal can compete with edible oils manufactured elsewhere. And that is why groundnuts have not been included in the Schedule to the Entry Tax Act".

In our opinion, this has nothing to do with the question involved in the present case. Accordingly we reject the second contention of the writ petition.

23A. So far as the third submission of the petitioner is concerned, we have set out hereinbefore the nature of the allegation. It does not appear that any such point was specifically taken before the lower Court. However, in any view of the matter, we accept the explanation given in the affidavit-in-opposition on behalf of the State. In our opinion there is no merit in this contention.

24. In his reply, Mr. Chakraborty contended that the assessment in the present case was arbitrary on another ground, that is, in the assessment order some additional amounts have been added without giving any reason. No such point was specifically taken in the petition and no opportunity was given to the State respondents. In any view of the matter, in such cases the petitioner had adequate remedy provided in the statute by way of appeal and/or revision and accordingly we cannot allow the assessee to raise this point for the first time in the appeal

25. So far as the contention based on Article 301 is concerned, in pur opinion, this is clearly misconceived. The cases cited have no application. On the other hand, the relevant cases are *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, : *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, , *Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan*, . It is quite clear that where the alleged interference is not direct particularly in the case of taxation, it does not attract the provisions of Article 301. In any event, it is protected by Article 304(b).

26. For the aforesaid reasons we are of the opinion that the learned Judge was

not right in allowing the application or making the rule absolute. Accordingly, we allow the appeal and set aside the judgment and order of the learned trial Judge below. So far as the writ petition is concerned, the same will stand dismissed and the rule discharged. There will be no order as to costs. Interim order, if any, is vacated.

27. Before we conclude we must point out that on the preliminary question of limitation which was raised on behalf of the respondents but not seriously pressed, much material has been disclosed regarding the handling of this appeal by the State appellant. We have specified the same by our orders made from time to time which will speak for themselves. The Government lost this case and about 20 other cases on the same point before the trial Court. Though loss of revenue was involved the State did not take prompt steps in the matter. Near about six years had passed before this appeal along with 20 others came up for hearing in the usual course.

When the matters were first called submission was made on behalf of the State appellant that the Paper Books in all these cases were not available. The appellants before us submitted that 20 sets of Paper Books i.e. altogether about 60 volumes have been "eaten away by white-ants" in the office of the State's Advocate on Record. Affidavit was directed to be filed to that effect. No affidavit was filed. Accordingly we would have in the ordinary course dismissed the appeals particularly having regard to the breach of undertaking given while obtaining leave to file the Memorandum of Appeal without certified copy of the same, according to the usual practice of the Original Side of this Court. In view of the revenue involved, opportunity was given to file Paper Book upon payment of costs. Even so, lesson was not learnt. Still thereafter there were lapses on part of those who are responsible for the conduct of these appeals on behalf of the State. Proper steps were not taken for obtaining certified copy. An affidavit was caused to be affirmed by an employee of the office of the Advocate-on-record which later on was admitted to have contained wrong statements. Details of these would be found out from our orders made from time to time. We express our regret that the Court cases are conducted in such a negligent fashion by those who are responsible for the same on behalf of the State.

28. Let a copy of the operative portion of this judgment along, with our observations, be sent to the learned Advocate General for his information and necessary action.

29. Prayer for stay of the operation of the order is rejected.

30. Oral prayer is also made for a certificate under Article 134A of the Constitution. This is not a fit and proper case where, in our opinion, the question involved need be decided by the Supreme Court. Accordingly, the same is rejected.

Satya Brata Mitra, J.

31. I agree.