

(2005) 09 AHC CK 0114
In the Allahabad High Court
Case No : Trade Tax Revision No. 1552 of 1998

The Commissioner, Trade Tax

APPELLANT

Vs

Vinod Trading Co.

RESPONDENT

Date of Decision : 24-09-2005

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2005) 09 AHC CK 0114

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 23.06.1998 for the assessment year 1992-93.

2. Short question involved in the present revision is whether the unripened (kachi) imli is covered under the entry of "green vegetable" and exempted from tax under the notification no.ST-II-7038/X-7(23)/83-U.P. Act XV/48-Order-85, dated 31.01.1985. Tribunal has treated it as vegetable and accordingly, exempted from tax.

3. Heard learned counsel for the parties.

4. Learned Standing Counsel submitted that unripened imli is normally used in a very small quantity to change the taste and it is never treated as green vegetable. He submitted that in common parlance unripened imli is never treated as green vegetable. In support of his contention, he relied upon the decision of the Apex Court in the case of P.A.Thillai Chidambaram Nadar v. Additional Appellate Assistant Commissioner, Madurai and Anr. reported in 1985 UPTC 1141 in which the watery coconut has not been treated as "Vegetable". Learned counsel for the Dealer/opposite party (hereinafter referred to as "Dealer") submitted that

unripened imli is normally available in a vegetable shop and therefore, it is vegetable. The entry of notification reads as follows:

"Fresh fruits and green vegetable"

5. In the case of P.A.Thillai Chidambaram Nadar v. Additional Appellate Assistant Commissioner, Madurai and Anr., (supra) the question before the Apex Court was whether unripened coconut though available in vegetable market is a vegetable. Apex Court held that it is not a vegetable. Relevant part of the judgment is quoted below:

"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 appropriate test would be the one adopted in the case of His Majesty the King v. Planters' Nut and Chocolate Company Limited 1951 CLR 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 some "fresh fruit" and some "vegetable" for the evening meal bring coconut ? Obviously, the answer is in the negative."

6. Unripened imli in common parlance never treated and known as green vegetable. It is not used as a meal. For the aforesaid reasons, the view of the Tribunal treating unripened imli as green vegetable is set aside.

7. In the result, revision is allowed and order of Tribunal is set aside.