(1955) 09 BOM CK 0027

In the Bombay High Court

Case No : Civil Reference No. 9 of 1955

The State of Bombay — APPELLANT

Vs

R.S. Phadtare — RESPONDENT

Date of Decision : 08-09-1955

Acts Referred:

Sales Tax Act, 1946 — Section 7

Citation : AIR 1956 Bom 496 : (1956) 7 STC 495

Hon'ble Judges : Chagla, C.J;Tendolkar, J

Bench : Division Bench

Advocate : A.G. and V.T. Gambhirwala, for Government Pleader, for the Appellant; V.S. Desai and M.B. Kadam, for the Respondent

Judgement

Chagla, C.J.—This is a reference under the Sales Tax Act and the short question that arises for our determination is whether sugar-cane is a fresh vegetable which is exempted from the provisions of the Sales Tax Act. We are concerned with the Act V of 1946, and u/s 7 goods which were specified in the first column of Schedule II were exempted from the sales tax, and when we turn to this Schedule, item 8 is "fresh vegetables" and item 9 is "fresh fruits", and the contention of the assessee was that "sugar-cane" was a "fresh vegetable" and therefore exempted from the tax. The Sales Tax Tribunal has accepted this contention, and the State has come on this reference.

2. "Vegetable" is not defined in the Act and therefore it is possible to put upon that expression one of two constructions; either we might put upon "vegetable" a construction which is consistent with the plain and natural meaning in the English language or we might put a construction which would give to that expression a special meaning and look upon the expression as a term of art. In its plain and natural meaning a "vegetable" clearly is wide enough to cover "sugar-cane"; but what is urged by the Advocate-General is that we must not give it that wide meaning but must give it the popular meaning as understood by people who deal in vegetables or eat vegetables, and it is urged that from that narrow and

restricted point of view sugar-cane is not vegetable. This is a taxing statute and if two constructions are possible we must lean in favour of that construction which gives relief to the subject. That was exactly the approach of the Sales Tax Tribunal and in our opinion that approach was a very proper one.

3. Our attention has been drawn to two pieces of legislation which are in pari materia. One is the Central Statute which is Act LII of 1952, (LII of 1952), and that Act declared certain goods as essential to the life of the community, and in the Schedule is mentioned fresh and dried fruits, sugar-cane, cocoanuts, vegetables, vegetable and flower seeds, etc. and it is contended that when the Legislature wanted to refer to sugarcane, it did so expressly and sugar-cane was not covered by the expression "vegetables". We are unable to accept this contention. It is by no means plain that sugar-cane and vegetables are mutually exclusive terms. Even though sugar-cane may fall in the category of vegetables, the Legislature for greater caution may expressly refer to sugar-cane. Same is the position with the Amending Act III of 1953. Under this Act in the exemption provision sugar-cane is expressly mentioned as item 40, and it is therefore urged that when the Legislature wanted to exempt sugar-cane it expressly did so. But there are innumerable instances where the Legislature for greater caution or greater clarity refers to an article which is already covered by the wider category mentioned in the earlier part of the section, and therefore we are not at all satisfied that the Legislature in mentioning sugar-cane in item 40 in Schedule A to the Amending Act necessarily referred to an item which did not already fall in item 24 which is the item of fresh vegetables and edible tubers. In any view of the case, the matter is not free from doubt or ambiguity, and if that is the position, the doubt or ambiguity must be resolved in favour of the subject and not in favour of the State.

4. The result is that the reference fails and must be dismissed. No order as to costs. Our answers to all the three questions will be in the affirmative.

5. Reference answered in the affirmative.