(1982) 01 OHC CK 0003

In the Orissa High Court

Case No : Special Jurisdiction Cases No''s. 162 and 163 of 1977

The State of Orissa — APPELLANT

Vs

Bhagawandas Ashok Kumar — RESPONDENT

Date of Decision : 21-01-1982

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 24(2)(b)

Citation : (1982) 51 STC 74

Hon'ble Judges : R.N. Mishra, C.J;B.K. Behera, J

Bench : Division Bench

Judgement

R.N. Mishra, C.J.—At the instance of the Revenue on the applications made u/s 24(2)(b) of the Orissa Sales Tax Act, 1947, this Court directed the Member, Sales Tax Tribunal, Orissa, to state a case and refer the following common question for the opinion of the court:

Whether the Member, Sales Tax Tribunal, is correct in law to hold that garlic is a vegetable and accordingly free from sales tax ?

2. The Tribunal came to the conclusion that garlic was vegetable. The Tribunal referred to the decision of the Supreme Court in the case Mangulu Sahu Ramahari Sahu Vs. The Sales Tax Officer, Ganjam, where it was held that lemon and chilli were vegetables.

It has also been held that ginger is vegetable. Entry 5 of the schedule of taxable (sic) goods, as amended by the relevant notification with effect from 1st October, 1974, read thus :-

Vegetables green or dried, other than medicinal preparation, ginger, garlic, lemon and chillies.

That vegetables would no more include garlic is made clear by the Government notification. Having used a common-place term such as vegetable and then excluding certain named items from its fold is indicative of the fact that the State

Government was of the view that the generic term "vegetables" would have included garlic. Therefore, the exception was provided. The exception covered items like lemon and chilli which the Supreme Court has held to be vegetables. This Court held ginger to be vegetable. The four items were, therefore, excepted from the term "vegetables". This goes a long way to support the view that but for the exception, garlic would have been covered by the term "vegetables".

3. It is difficult indeed to lay down a common standard to determine what exactly would be included in the term "vegetables". Ordinarily, what is grown in the kitchen garden goes in the classification of vegetables and it is common experience that very often garlic finds place in the kitchen garden. That was the logic applied for holding chilli to be vegetable. That was also the reasoning advanced for treating ginger to be vegetable. If exception was not made in the Government notification, possibly by the same logic, garlic would have continued to be a vegetable also for the purpose of sales tax. We are inclined, therefore, to agree with the Tribunal that garlic should go under vegetable until by specific notification the Government excluded it for the purpose of exemption. At the relevant time the entry was different and the Tribunal, in our view, therefore, rightly came to the conclusion that garlic continued to be in the classification of vegetables. We would accordingly answer against the revenue. As there is no appearance for the other side, there would be no order for costs.

B.K. Behera, J.

4. I agree.

