(1967) 05 CAL CK 0009

In the Calcutta High Court

Case No : Civil Revision Case No''s. 173 (W) of 1966 to 176 (W) of 1966

Wazi Ahmed APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 08-05-1967

Acts Referred:

Citation : (1967) 20 STC 254

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Ranadeb Chowdhury, Naresh Chandra Ganguli and Sib Kumar Majumdar, for the Appellant;N.C. Chakravarti and Sunil Kumar Bose II, for the Respondent

Judgement

D. Basu, J.—These cases raise a tempest, not in a tea pot but in a pot of ginger. The point that we have to decide is whether green ginger is covered by item No. 6 of the Schedule to the Bengal Finance (Sales Tax) Act, 1941, which contains an enumeration of the items which are exempted from liability to pay sales tax under the Act. Before entering into an analysis of that entry it may be mentioned that in all these cases the petitioners who are dealers of ginger were assessed to sales tax after rejecting their objection that they were exempted under the entry referred to and their appeal before the next higher authority, who is opposite party No. 2, has also been rejected.

2. The relevant item in the Schedule is "vegetables, green or dried, commonly known as sabji, tarkari or sak". It is to be noted that the words "commonly known as sabji, tarkari or sak" were added to this entry by the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Bengal Act 19 of 1954). There is an exception to this item in column 2 of the Schedule as follows : "Except when sold in sealed containers." This means that in order to claim exemption under this item the article must be in its natural form and not contained in a sealed container. We are of course not concerned with that because in these cases ginger was not sold in sealed containers but in its natural form. The word

"vegetable", as such, had come up for interpretation in several cases.

3. The earliest Supreme Court case on this point is Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, : In that case the Supreme Court pointed out that the dictionary meaning of the word "vegetable" was very wide and would include anything which was obtained from plants or their parts. But the entries in the Sales Tax Act did not use this word either in the dictionary sense or any other technical sense, but in its popular sense, meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." The court accepted the meaning given to the word "vegetable" in the popular sense as given by the High Court of Madhya Pradesh in Madhya Pradesh Pan Merchants'' Association v. State of Madhya Pradesh AIR 1956 Nag. 54 as follows :

The term ''vegetables'' is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table.

4. In this case the court was determining the nature of betel leaves and, applying the popular test, the court excluded betel leaves because even though technically they were parts of a plant they could not be grown in a kitchen garden nor were they meant to be used for the table. In another case decided about the same time, the same popular test was applied: Ram Bux Chaturbhuj v. State of Rajasthan [1961] 12 S.T.C. 330.

5. The question of interpretation of the term "vegetable" again came up before the Supreme Court in Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar, : In this case also the same test was applied by the Supreme Court to exclude sugarcane from the connotation of the term "vegetable" on the ground that it was a kind of grass which was used as the source of unmanufactured sugar, even though in the dictionary meaning the word "vegetable" was wide enough to cover even sugarcane as was held in the Bombay High Court in , case of State of Bombay Vs. R.S. Phadtare, : The two tests that we have to gather from the Supreme Court decision so far cited, in order to bring an article within the term "vegetable" are, therefore, (a) whether it is capable of being produced in a kitchen garden or a farm and (b) whether it can be used for the table. These two tests were applied , by a Full Bench of the Kerala High Court in Krishna Iyer Vs. State of Kerala, , a decision on which the petitioners rely very much, because it is a direct decision where it was held that green ginger is included within the item exempted in a notification issued under the General Sales Tax Act, 1125, of Kerala which was as follows :-

Vegetables including tapioca except its manufactured product.

6. It is to be known that the word "vegetable" in this item was not qualified in any way. The Kerala High Court held that since "green chillies" and "green ginger" go together in the culinary art of Malabar and since they can be produced in a kitchen garden or farm, both green ginger and green chillies would come

within the ambit of the term "vegetable" as it was understood in common parlance in that State.

7. It has been argued on behalf of the respondents, however, that the interpretation of the word "vegetable" as such, as given in the cited decisions would not apply to the interpretation of the term "vegetable" in item 6 before us in the Bengal Act inasmuch as that term has been explained by the Legislature itself by the 1954 amendment, by adding the words "commonly known as sabji, tarkari or sak" and it has been urged by the learned Government Pleader that , none of the articles like chillies, garlic, onion or ginger would enter into the scope of the words "sabji, tarkari or sak", which are Bengali words and their meaning should be found from the meaning which is imputed in common parlance to these words in Bengal. Reference has been made to the statement of objects and reasons of the Amending Act 19 of 1954 which says-

The object of the Act is to make certain amendments in the Bengal Finance (Sales Tax) Act, 1941, either to remove certain doubts or to stop certain loop-holes through which evasion has been found to be going on.

8. In the Schedule, two amendments were made, one in item 6 with which we are concerned and the other one was in item No. 18 where "tobacco for hookah" was sought to be burdened by the addition of the words "that is to say, tobacco-paste ready for use in hookah." It may be conceded that the addition of the words made by this amendment was meant to restrict the widest ambit of the entries as they stood before the amendment. But still then we have to find out what is the common meaning referred to by the Legislature by using the words "sabji, tarkari or sak." In this case, we have not the advantage of having any evidence as to the meaning of these words as generally understood by the public in Bengal; nor would it be proper for a Judge to supply his own ideas. It would, however, be presumably necessary to refer to such literature as is generally accepted to be an authority on spoken Bengali. One of these books which was readily available is the dictionary called "Chalantika" by Sri Raj Sekhor Basu which is a reputed dictionary of spoken words as current in modern Bengal. The three words referred to in 1954 amendment are explained in this book as follows :-

(a) Sak is interpreted as meaning any edible part of a plant including its leaves, stalk, fruits, flowers and root and it is also indicated that one of the synonymous of sak would be sabji.

(b) Turning now to the next word "sabji", it seems to be a generic term which is explained as meaning sak, anaj and tarkari. In other words, the word "sabji" would not only include sak but also anaj and tarkari. But the word "anaj" means again sak, sabji and katcha tarkari. If this be so, it is not quite clear why the words sak and sabji were separately used by the Legislature in 1954 amendment.

(c) Tarkari according to the dictionary means anaj and any part of a plant like its fruits and root as well as sak which is edible by cooking.

9. If that be so, the two tests which were laid down by the Supreme Court in the cited cases, namely, production in kitchen garden or farm and capable of being used in a table, that is, as a food-stuff, whether green or cooked, as it might be, are not displaced by the Bengali meaning of sabji or tarkari as applied to ginger.

10. It has been argued by the learned Government Pleader that ginger or onion as such, or things of that nature, cannot be used as food by themselves but that they could be used only by way of adding flavour or taste to the food. This, however, is not a conclusive test inasmuch as there are certain types of sak which cannot be taken by themselves but which can be used only for flavour. Illustrations in Bengal may not be rare to find but we can only mention things like dhania, fata and pudina. It has further been argued that when this Court, in a previous case in Dharmadas Paul Vs. Commissioner of Commercial Tax, West Bengal and Another, : dealt with the question of betel leaf, the Court had before it the unamended entry No. 6 and the observations made by the Court in that case as to the interpretation of the term "vegetable" must be understood with reference to the entry as it then stood. The learned Government Pleader is correct in saying that the words "sabji, tarkari and sak" or the effect of the amendments introduced by those words were not considered in that decision. It was of course contended by Mr. Majumdar on behalf of the Government in that case that the result -of the additional words was to make it clear that the Legislature wanted to give the restricted meaning to the word "vegetable", namely, "only such vegetables as are used for food". But that does not solve the problem before us unless of course we take the test to be that the particular article must go into the preparation of an independent, item of food. I am also not unmindful of the fact that there is a separate entry No. 7 which deals with cooked food, but the item which is sought to be taxed here is not the sale of cooked food. The word "tarkari" has got a double meaning and even in the Chalantika referred to earlier, the secondary meaning is given as banjan which means a cooked dish. But the meaning which is in the mind of the Legislature in item No. 6 is not the cooked stage of the vegetable, but the stage preparatory to cooking. If the meaning of "tarkari" be wide enough to include all parts of a plant which are edible, then naturally, it would include also roots. It may also be that nobody would think of preparing an independent dish of chillies or ginger, but if these articles are edible parts of a plant and then go to the table that would enter into the Bengali word "tarkari" as understood in Bengal, according to the popular dictionary, and would also be consonant with the interpretation of the word "vegetable" as given by the Supreme Court decisions which the West Bengal Legislature had no opportunity of seeing in 1954, when the amendment was made. In my opinion, the insertion of the words "sak, sabji or tarkari" are ineffective to exclude articles like ginger or onion. If the Legislature wants to include them then express exclusion of these items, as has been made in some of the corresponding entry in other States, may be resorted to by further amendments.

11. The fact that in some of the Sales Tax Acts of other States onion and garlic

have been mentioned apart from the word "vegetable" do not go to show conclusively that in common parlance the word "vegetable" would not include the items, onion or ginger. Schedules in each of the Sales Tax Acts must be examined and dealt with separately in the context of the language used in each of them respectively. The fact, therefore, that onion or garlic has been separately treated by another Legislature is not conclusive in the matter of interpretation of the word "vegetable" in the Act before me. Above all, if the words "sabji" and "tarkari" are capable of including green ginger or even if the connotation of these words be doubtful, the petitioner is entitled to the benefit of such doubt, because the statute is fiscal.

12. As I have held that green ginger is included or capable of being included in the exempted item No. 6 of the Schedule not only the appellate order but the entire proceedings for assessment of the sale of green ginger in these cases must fail.

13. The Rules are made absolute but without any order as to costs in view of the nature of the problem raised.

14. Let the operation of this order remain stayed for a period of two months from date as prayed for by the respondents.