

Brahmanand vs The State Of Uttar Pradesh And Anr. on 24 November, 1955

Equivalent citations: [1956]7STC206(ALL)

ORDER

Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution.

2. The only question that arises for decision in the present petition is whether betel leaves come within the meaning of the words "green vegetables". The question arises in this way. The U.P. Sales Tax Act was passed by the Legislature in 1948. The taxing section is Section 3 and Section 4, as originally framed, made exceptions in cases of a number of articles and these could not be made the subject-matter of taxation under Section 3. It specified itself a number of articles and also certain associations and further left it open for the State Government to include certain other associations also in the exemption. Section 4 was subsequently amended some time in 1950 and the amended section divides Section 4 into two sub-sections. Sub-section (2) is not relevant and, as far as Sub-section (1) goes, it lays down that no tax shall be payable on the articles mentioned in Clause (a) of that sub-section and also with respect to the goods of the associations mentioned in Clause (b). The Government has been given a right under both the clauses to exempt certain other articles or goods from taxation as also other associations or class of persons. After the coming into force of the Act in 1948, a notification was issued by the State Government which is dated the 7th June, 1948, and which was published in the U. P. Gazette on the same day. In this notification a number of goods have been mentioned as being made exempt from the payment of sales tax. There are altogether 21 items and item No. 4 is the relevant one which is "green vegetables and fresh fruits." This notification is still in force but reference may also be made to a subsequent notification which modifies the above notification in one matter. The subsequent notification is dated the 12th of July, 1954, and by this notification the Governor of U. P. has ordered that with effect from 1st July, 1954, the provisions of Section 3 of the Act shall not apply to the sale of betel leaves other than prepared pans.

3. It appears that after the passing of the Act no notice was issued to the petitioner by the Sales Tax Officer for the levy of sales tax on his turnover for a long time, and it was as late as the 24th of February, 1955, that a notice was issued to the petitioner requiring him to appear before the Assistant Sales Tax Officer on 16th March, 1955. The petitioner appeared before the Assistant Sales Tax Officer and that officer passed an order on 30th March, 1955, whereby he estimated the total turnover of the petitioner for the assessment year, 1951-52, at a sum of Rs. 40,000 and levied a tax of Rs. 625. It is said that the petitioner urged before the Sales Tax Officer that betel leaves came within the meaning of the words "green vegetables" and were consequently not taxable, but the

officer concerned did not accept this contention. Notices have also been issued against the petitioner under Section 21 of the U. P. Sales Tax Act as it is proposed to levy sales tax on the petitioner's turnover for the assessment years 1952-53 and 1953-54 as well. The petitioner made an application to the Commissioner of Sales Tax, Lucknow, asking him to instruct the Sales Tax Officer not to proceed with the assessments against the petitioner, but nothing came out of the application. Another notice was issued to petitioner on 10th May, 1955, asking him to declare his turnover and deposit the tax due without undue delay. It is, as a result of this assessment order and the notices that the present petition was filed praying that a writ of certiorari may be issued quashing the assessment order dated 30th March, 1955, and that a writ of prohibition may be issued commanding the Assistant Sales Tax Officer not to proceed further with the proceedings for the levy of sales tax or for the recovery of the same, from the petitioner.

4. The only point, as already stated for consideration is whether betel leaves are included in the meaning of the expression "green vegetables" because if they are so included they were exempt from the payment of sales tax by the notification issued in 1948. If they are not included within the meaning of that expression, then there is no exemption from the payment of tax with respect to the sale of betel leaves. A suit was filed by some of the betel leaf sellers in which the same question arose. But the suit was dismissed by the learned Civil Judge and a first appeal has been filed in this Court, numbered as First Appeal No. 43 of 1954, which is still pending. It further appears that a sales tax reference on the point is also pending decision in this Court.

5. The first point urged against the petitioner is that he should have filed an appeal against the order of assessment already passed and may file appeals against other assessments that may be made in future and, in due course, he may have the matter referred to this Court, under the provisions of the U. P. Sales Tax Act. But that is obviously a procedure which is a dilatory one and cannot be said to be an adequate and efficacious remedy because several years may elapse before this Court is able to decide the reference, and, in the meantime, the petitioner would have to pay all the amounts assessed on him and thus might be hampered in his fundamental right of carrying on the trade, if the tax is not legally leviable. I therefore overrule the preliminary objection taken on behalf of the respondents that the petition is not maintainable as another remedy is open to the petitioner.

6. Coming to the merits of the case I have no doubt that in ordinary parlance and according to the use that is generally made of betel leaves in the State, it cannot be said that betel leaves are green vegetables. In one sense the word vegetation covers a very wide field and covers the entire vegetable kingdom. It would cover all kinds of fruits and also other crops in general, including the crops of wheat, barley etc. But that is not the sense in which the word has been used in the notification dated the 7th of June, 1948. This appears to be clear from the fact that the notification mentions cereals and pulses, edible oils, tobacco leaves and groundnuts under different items. It is, therefore, obvious that the word "vegetable" has not been used in this wider sense. The learned counsel for the petitioner, however, argues that, even in the narrower sense, the expression "green vegetables" would include "betel leaves". Reference may be made to the essay of betel nuts in Encyclopaedia Britannica. In the essay it is said that betel nut is used after wrapping round it betel leaf and adding a little shell lime, and that it is used as a masticatory. Murray's Dictionary also practically says the same thing. The learned counsel referred to the meaning of the word "vegetable" as given in

different dictionaries and there can be no doubt that some of those meanings would cover any kind of leaves or stems of plants. I think the definition that should be accepted in the present case is the definition given in the Oxford Dictionary, according to which "vegetable" is leaf or fruit of plant cultivated for food and eaten along with other principal articles of food. Vegetables are those varieties of produce of plants which are eaten along with the other principal articles of food, like meat and cereals. Betel leaves are not used in that manner and they are taken only after the meals are over and not during the course of the meals. I think when the State Government used the words "green vegetables" under the notification of 1948 it was using that expression in the above sense.

7. The matter came up for consideration before a Division Bench of the High Court at Patna in the case of Kokil Ram v. Province of Bihar¹. The Government of Bihar had also issued a notification exempting certain articles from sales tax and the relevant item is item No. 6 which is as follows :-

Vegetables, green or dried other than medicinal preparations.

8. Both green and dried vegetables were exempted from the payment of the tax and the question arose whether betel leaves were included within the expression or not. The learned Judges after referring to certain dictionary meanings of the expression held:-

Pan is certainly not a food-stuff. It is a masticatory (see the article on 'betel' in the Encyclopaedia Britannica). Some hold that it is also a digestive. But, even so, it is not a food. It is not eaten for its food value, but at the highest as an aid to digestion. It is not served as a part of a meal, but as a supplement to it. As a digestive agent, it might perhaps be considered a medicinal preparation, but the notification is careful to provide that in exempting vegetables, green or dried, medicinal preparations are not included.

9. I respectfully agree with the above decision of their Lordships and hold that betel leaves do not come within the meaning of the expression "green vegetables" as used in the notification of the U. P. Government dated 7th June, 1948. The relevance of the subsequent notification of 1954 is only this that the State Government has now with effect from 1st July, 1954, exempted betel leaves from the payment of sales tax, but "prepared pans" will be subject to the payment of tax.

10. For the above reasons this petition fails and is dismissed with costs.