

State Of West Bengal & Ors vs Washi Ahmed Etc on 7 March, 1977

Equivalent citations: 1977 AIR 1638, 1977 SCR (3) 149, AIR 1977 SUPREME COURT 1638, 1977 2 SCC 246, 1977 TAX. L. R. 2042, 1977 (1) SCWR 604, 1977 SCC (TAX) 278, 1977 UPTC 296, 1977 3 SCR 149, 39 STC 378, 1977 2 SCJ 222, 1977 U J (SC) 268

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, Syed Murtaza Fazalali

PETITIONER:

STATE OF WEST BENGAL & ORS.

Vs.

RESPONDENT:

WASHI AHMED ETC.

DATE OF JUDGMENT 07/03/1977

BENCH:

BHAGWATI, P.N.

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BHAGWATI, P.N.

FAZALALI, SYED MURTAZA

CITATION:

1977 AIR 1638

1977 SCR (3) 149

1977 SCC (2) 246

CITATOR INFO :

R 1979 SC 300 (3,4)

RF 1986 SC 626 (12)

F 1989 SC 622 (4)

R 1992 SC 224 (10)

ACT:

Taxing statute--Principles of construction of words in a taxing statute--Bengal Finance (Sales Tax) Act, 1941, Schedule I, Item 6--"Green ginger", whether means a "vegetable" falling within the category of goods described as "vegetables, green or dried commonly known as subji, tarkari or sak" and thus exempt from tax liability.

HEADNOTE:

Section 6(1) of the Bengal Finance (Sales Tax) Act 1941 exempts from tax liability "vegetables, green or dried commonly known as subji, tarkari or sak" when not sold in sealed containers. The Sales Tax Authorities levied sales tax on "green ginger" sold by the respondents, taking the view that inasmuch as green ginger is used to add flavour and taste to food, it is not "vegetable commonly known as subji, tarkari or sak". A writ petition challenging the validity of the orders of assessment was allowed by the Calcutta High Court which held that green ginger is vegetable within the meaning of that expression as used in Item 6 of the First Schedule to the Bengal Finance (Sales Tax) Act, 1941.

Dismissing the State appeals by Special Leave the Court,

HELD: (1) Green ginger is included within the meaning of the words "vegetables---commonly known as subji, tarkari or sak" in Item 6 of Schedule I and its sales are exempt from tax under s. 6 of the Bengal Finance (Sales Tax) Act, 1941. [152 D]

(2) The word "vegetable" though not defined in the Act, being a word of every day use, must be construed not in any technical sense, nor from any botanical point of view but as understood in common parlance i.e. denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. The word "vegetable" in Item 6 of Schedule I to the Act, so construed, by giving its popular sense meaning, "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it" denotes those classes of vegetables which are grown in a kitchen garden or in a farm and are used for the table. Green ginger obviously is a vegetable grown in a kitchen garden or in a farm and it is used for the table. It may not be used as a principal item of the meal, but it certainly forms part of the meal as a subsidiary item. Green ginger is generally regarded as included within the meaning of the word "vegetable" as understood in common parlance. 1[150 F-H, 151 G-H, 152 A]

Ramavatar Badhaiprasad v. Assistant Sales Tax Officer Akola, A.I.R. 1961 S.C. 1325; M/s. Motipur Zamindary Co. Ltd. v. State of Bihar A.I.R. 1962 S.C. 660, applied.

Madhya Pradesh Pan Merchants' Association, Santra Market, Nagpur v. State of Madhya Pradesh 7 S.T. Cases 99 at 102, referred to.

Grenfell v. I.R.C. (1876) 1 Ex. D. 242 at 248; Planters Nut and Chocolate Co. Ltd. v. The King (1951) 1 D.L.R. 385; 200 Chests of Tea (1824) 9 Wheaton (U.S.) 430, at 438 quoted with approval.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1546- 1551 of 1971.

(From the Judgment and Order dated 20-12-1968 of the Calcutta High Court in Appeals from Original Orders Nos. 556-559, 571 and 572 of 1967) Lal Narain Sinha, Sol. General and G.S. Chatterice, for the appellants.

Purushottam Chatterjee and Ratbin Des, for the respondents. The Judgment of the Court was delivered by BHAGWATI, J.--The short question which arises for determination in these appeals is whether green ginger falls within the category of goods described as "vegetables, green or dried, commonly known as "sabji, tarkeri or ask" in Item (6) of Schedule I to the Bengal Finance (Sales Tax) Act, 1941. If it is covered by this description, it would be exempt from sales tax imposed under the provisions of that Act. The Sales Tax authorities held that green ginger is used to add flavour and taste to food and it is, therefore, not vegetable commonly known as sabji, tarkeri or ask". The orders of the Sales Tax authorities were challenged in a writ petition filed under article 226 of the Constitution and a Single Judge of the High Court who heard the writ petition disagreed with the view taken by the Sales Tax authorities and held that green ginger is vegetable within the meaning of that expression as used in Item (6) of the First Schedule to the Act. This view of the learned Single Judge was affirmed by a Division Bench of the High Court on appeal under clause (15) of the Letters Patent. Hence the present appeal by the State with special leave obtained from this Court.

The Bengal Finance (Sales Tax) Act, 1941 levies sales tax on the taxable turnover of a dealer computed in accordance with the provisions of that Act. Section 6, sub-section (1) provides that no tax shall be payable under the Act on the sale of goods specified in the first column of Schedule I, subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and Item (6) of Schedule I specifies in the first column "vegetable, green or dried, commonly known as "Sabji, tarkari or ask" so that no tax is payable on the sale of goods falling within this category, subject to the exception set out in the second column, namely, that they would be liable to bear tax "when sold in sealed containers." It was common ground in the present case that green ginger was not sold by the assessee in sealed containers and the only question which, therefore, requires to be considered is whether green ginger can be regarded as vegetable commonly known as 'sabji, tarkari or sak'. Now, the word 'vegetable' is not defined in the Act but it is well settled as a result of several decisions of this Court of which we may mention only two, namely, *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Kola*(1) and *M/s Motipur Jamindary Co. Ltd. v. State of Bihar*(2)) that this word, being a word of every day use, must be construed not in any technical sense, nor from any botanical point of view, but as understood in common parlance. The question which arose in *Ramavatar's* case (supra) was whether betel leaves are "vegetables" (1) A.I.R. 1961 S.C. 1325.

(2) A.I.R. 1962 S.C. 660.

and this court held that they are not included within that term. This Court quoted with approval the following passage from the judgment of the High Court of Madhya Pradesh in *Madhya Pradesh Pan Merchants' Association, Santra Market, Nagput v. State of Madhya Pradesh*(1):

"In our opinion, the word "vegetables"

cannot be given the comprehensive meaning the term bears in natural history and has not been given that meaning in taxing statutes before. 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.", and observed that "the word 'vegetable' in taxing statutes is to be understood as in common parlance i.e. denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table". This meaning of the word 'vegetable' was reiterated by this Court in Motipur zamindari case (supra) where this Court was called upon to consider whether sugarcane can be regarded as vegetable and it was held by this Court that sugarcane cannot be said to fall within the definition of the word 'vegetable'. It is interesting to note that the same principle of construction in relation to words used in a taxing statute has also been adopted in English, Canadian and American courts. Pollock B. pointed out in *Grenfell v. I.R.C.*(2) that "if a statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, of course, by the words "popular sense" that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." So also the Supreme Court of Canada said in *Planters Nut and Chocolate Co. Ltd. v. The King*,(3) while interpreting the words 'fruit' and 'vegetable' in the Excise Act:

"They are ordinary words in every day use and are, therefore, to be construed according to their popular sense".

The same rule was expressed in slightly different language by Story, J., in *200 Chests of Tea*(4) where the learned Judge said that "the particular words used by the Legislature in the denomination of articles are to be understood according to the common commercial understanding of the terms used, and not in their scientific or technical sense, for the Legislature does "not suppose our merchants to be naturalists, or geologists, or botanists" ". It will, therefore, be seen that the word 'vegetable' in Item (6) of Schedule I to the Act must be construed as understood in common parlance and it must be given its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it" and so construed, it denotes those classes of vegetables which are grown in a kitchen garden or in a farm and are used for the table. Now, obviously green ginger is a vegetable (1) 7 S.T.C. 99 at 102.

(2) (1876) 1 Ex. D. 242 at 248.

(3) (1951) 1 D.L.R. 385.

(4) (1824), 9 Wheaton (U.S.) 430 at 438.

11--240SCI/77 grown in a kitchen garden or in a farm and is used for the table. It may not be used as a principal item of the meal but it certainly forms part of the meal as a subsidiary item. It is an item which is ordinarily sold by a vegetable vendor and both the vegetable vendor who every day deals in vegetables and the housewife who daily goes to the market to purchase vegetables would unhesitatingly regard green ginger as vegetable. The assessee in fact placed evidence before the Sales Tax authorities showing that the Railway authorities also treated green ginger as vegetable for the

purpose of railway tariff and charged for the carriage of green ginger at the reduced rate applicable to vegetables and even the Corporation of Calcutta included green ginger in the category of vegetables in the market bulletin published by it fortnightly showing the rates in the municipal market. There can, therefore, be little doubt that green ginger is generally regarded as included within the meaning of the word 'vegetable' as understood in common parlance. That a part, we find that Item (6) speaks not simply of vegetables but "vegetables--commonly known as sabji, tarkari or sak" and the Division Bench of the High Court held green ginger to fall within the meaning of the words "sabji, tarkari or sak". We should certainly be very slow to disturb a meaning placed on these words in Bengali language by two judges of the High Court who may reasonably be expected to be quite conversant with that language. We are accordingly of the view that green ginger is included within the meaning of the words "vegetables--commonly known as sabji, tarkari or sak" in Item (6) of Schedule I and its sales must be held to be, exempt from tax under section 6 of the Act. The result is that the appeals fail and are dismissed with costs. Costs will be only in one set.

S.R.

Appeals dismissed.