

M/s. Motipur Zamindary Co. (P.) Ltd.

Vs

The State of Bihar

Civil Appeals Nos. 185 to 187 of 1961

(CJI B. P. Sinha, J. L. Kapur, M. Hidayatullah, J. C. Shah, J. R. Mudholkar JJ)

20.11.1961

JUDGMENT

KAPUR, J. –

The principal question raised in these appeals and petitions under Art. 32 of the Constitution is whether sugar cane falls within the term "green vegetables" and is therefore exempt from sales tax under the exemption given by the notification dated August 28, 1947, issued under s. 6 of the Bihar Sales Tax Act, 1947, (Bihar 19 of 1947), hereinafter called the 'Act'. After hearing the arguments in these appeals and petitions we announced our decision dismissing them with costs and we now proceed to give our reasons for the same.

The three appeals by special leave are brought by the assessee and relate to assessment of sales tax for three years, 1950-51, 1951-52 and 1952-53 for which the amount of sales tax levied was Rs. 28,866, Rs. 23,383 and Rs. 23,298 respectively. Besides the three appeals the assessee company has filed three petitions under Art. 32 challenging the constitutionality of the assessments. In this judgment the appellant and the petitioner is a private limited company and it will be termed "appellant" and the State of Bihar which is respondent will be termed the "respondent".

The appellant took an objection to the assessment and filed appeals to the Deputy Commissioner of Commercial taxes and then a revision to the Board of Revenue and then at its instance the following question was referred by the Board of Revenue to the High Court for opinion :-

"Whether sugar cane is a green vegetable within the meaning of item 6 of notification No. 9884-FT dated 28-8-47 and as such exempt from taxation."

The High Court answered the question against the appellant and held that "sugar cane" was not included in the term "green vegetables" and it is the correctness of that answer which has been canvassed before us. In the petitions under Art. 32 of the Constitution it was contended that the appellant being a producer of sugar cane was not a "dealer" within the meaning of the Act and therefore no tax was payable on sale of sugar cane by it.

The exemption under the Act is provided under s. 6 of the Act which, at the relevant time, was as follows :-

S. 6 "No tax shall be payable under this Act on the sale of any goods or class of goods specified in this behalf by the (State) Government by notification in the Official Gazette, subject to such conditions as may be mentioned in the notification :

Provided no notification shall be issued under this section without giving in the Official Gazette such previous notice as the State Government may consider reasonable, of its intention to issue such notification."

Under s. 6 of the Act the notification relied upon was issued on August 28, 1947. This was notification No. 9884-FT which was in the following terms :-

"In exercise of the powers conferred by section 6 of the Bihar Sales Tax Act, 1947 (Bihar Act XIX of 1947), and in supersession of all the previous notifications on the subject the Governor of Bihar is pleased to direct that no tax shall be payable under the said Act on the sale of goods specified in the second column of the schedule hereto annexed subject to the exceptions, if any, set out in the corresponding entry in the third column thereof.

THE SCHEDULE
Serial Description Exception subject to which the No. of goods.
exemption has been allowed. 1.2.3.4.5.
.....6. Green vegetables Except when sold in sealed other than potatoes.
containers....."##

The question raised is that sugar cane falls within the term "green vegetables" in entry 6 of the Schedule and is therefore exempt from assessment to Sales Tax. In support of this contention counsel for the appellant relied upon a judgment of the Bombay High Court, *The State of Bombay v. R.S. Phadtara* [[1956] 7 S.T.C. 495] where it was held that sugar cane is "fresh vegetable" and is therefore exempt from sales tax under a similar notification issued under the Bombay Sales Tax Act. Chagla C.J., there observed at page 496 as follows :-

"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 relies to the subject. That was exactly the approach of the Sales Tax Tribunal and in our opinion that approach was a very proper one."

This observation is not in accord with the opinion given by this Court in *Ramaytar Badhriprasad v. Assistant Sales Tax Officer, Akola* [A.I.R. [1961] S.C. 1325] in which under an almost identical entry it was held that "betel leaves" is not included in the term "vegetables". After quoting with approval a passage from the judgment of the Nagpur High Court, *Madhya Pradesh Pan Merchants Association v. State of Madhya Pradesh* [[1956] 7 S.T.C. 99] this court said :

"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."

If that is the meaning of the word "vegetables" sugar cane cannot fall within entry 6 which relates to green vegetables. In Webster's dictionary "sugar cane" has been defined as "a grass extensively grown in tropical and warm regions for its sugar" and in Oxford dictionary it is defined as "a tall perennial grass cultivated in tropical and sub-tropical countries and forming the chief source of

unmanufactured sugar". Therefore it cannot be said that sugar cane falls within the definition of the words "green vegetable".

The second question which was raised before us and which arises in the petitions under Art. 32 is that the appellant company is not a "dealer" within the meaning of the word as defined in s. 2(c) of the Act which is as follows :-

"dealer" means any person who sells or supplies any goods (including goods sold or supplied in the execution of a contract) whether for commission, remuneration or otherwise and includes any firm or a Hindu joint family, the Government and any society club or association which sells or supplies goods to its members."

The words of this sub-section are very wide and cover the case of the appellant and therefore this point is also without substance and must be rejected. But it was argued that the definition of the word "dealer" in the Act which was amended by Bihar Annual Finance Act 1950 is applicable only for the financial year beginning April 1, 1950, and not for subsequent years and for that aid was sought from the preamble to the Bihar Annual Finance Act 1950. That preamble is as follows:-

"Whereas it is expedient to amend the Bihar Sales Tax Act, 1947, and the Bihar Agricultural Income Tax Act, 1948, to levy a tax on passengers and goods carried by public service vehicles and public carriers and to lay down rates on Sales Tax payable under Bihar Sales Tax Act 1947 to fix limit of taxable agricultural income to lay down rates of agricultural Income tax Act and Super Tax chargeable under Bihar Agricultural Income Tax Act, 1948 for the financial year beginning on the 1st day of April 1950 and to make further provisions in connection with the finance of this State of Bihar".

The preamble cannot limit or change the meaning of the plain words of s. 2(c) of the Act which apply to the case of the appellant and therefore the amended section is applicable to the present case. It is an erroneous approach to the question to say that because of the words "for the financial year beginning on the first of April 1950" in the particular context in the preamble, the definition of the word "dealer" was amended only for one year. Nothing has been shown indicating that section (2)(i) of Bihar Annual Finance Act intended to effect a temporary amendment in the previous definition of the word "dealer" in cl(c) of s. 2 of the Act. The contention is therefore repelled.

It was also submitted that the assent of the President was not given to the Bihar Annual Finance Act 1950. In our opinion that submission is equally without force because tax on sale of good is a matter entirely within entry 54 of the State List and the amendment made in the definition of the word "dealer" in the Act did not require the assent of the President.

In our opinion the appeals and the petitions under Art. 32 are without merit and the therefore dismissed with costs. One hearing fee.

Appeals and writ petitions dismissed.

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