

State of West Bengal & Ors.

Vs

Washi Ahmed & Ors.

Civil Appeal Nos. 1546-1551 of 1971

(P. N. Bhagwati, Syed M. Fazal Ali JJ)

07.03.1977

JUDGMENT

BHAGWATI, J. -

1. 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, tarkari or sak 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, tarkari or sak". 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 (5) 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.

2. 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 sak" 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 vs. Assistant Sales Tax Officer, Akola and M/s Motipur s. State of Bihar that this word, being a word of every day use, must be construed not in any technical sense, not from any botanical point of view, but as understood in common parlance. The question which arose in Ramavatar's case was whether betel leaves are "vegetables" 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 Merchant's Association, Santra Market, Nagpur vs. State of Madhya Pradesh :

"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 where this Court was called upon to consider whether sugarcane can be regarded as vegetable and it was held by this Court that sugar cane cannot be said to fall within the definition of the word 'vegetable'.

3. 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 J. pointed out in Grenfell vs. I.R.C. 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 Chowlate Co. Ltd. vs. The King 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 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".

4. It will, therefore, be seen that the word 'vegetable' in Item(6) of Schedule 1 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 kitchen garden or in a farm and are used for the table. Now, obviously green ginger is a vegetable 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 house-wife who daily goes to the market to purchase vegetable 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 apart, 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.

5. The result is that the appeals fall and are dismissed with costs. Costs will be only in one set.

</html