

PATNA HIGH COURT

Kokil Ram

Vs

Province of Bihar

Misc. Judicial Case No. 3 of 1947

(Manohar Lall and Meredith, JJ.)

26.01.1949

JUDGMENT

Meredith, J.

1. This is a case stated by the Board of Revenue under Section 21 (3), Bihar Sales Tax Act, 1944. The question referred is :

"Whether green-betel leaves called pan are taxable articles within the meaning of Section 6, Bihar Sales Tax Act, 1944, read with Notfn. No. 7567-F, dated 8-7-1944 issued by the Government of Bihar in the Finance Department."

2. The assesseees are 13 dealers in betel leaves used in making up pan. It was found that they had been importing betel leaves from outside the Province of Bihar, and had been carrying on this business for a long time, with an annual gross turnover exceeding Rs. 5000 in the case of each of them during the financial year 1943-44, but they had failed to apply for registration under Section 7 of the Act. Accordingly, the Sales Tax Officer issued notices upon them on 14-3-1945, under Section 10 (5) of the Act calling upon them to file necessary returns for the quarter ending 31-12-1944. Instead of filing returns, the assesseees filed objection petition on the ground that betel leaves come within the category of green vegetables and as such were exempted from the levy of sales tax by Notfn. No. 7567 dated 8-7-1944, issued by the Government under Section 6 of the Act. Subsequently they filed before the Commissioner of Sales Tax, Chota Nagpur Division, a joint petition for determination of the question whether any tax was payable in respect of the sale of betel leaves. The Commissioner took the view that the notification in question was not intended to exclude betel leaves from taxation, and that the word "vegetables" in the notification was used in the ordinary popular sense of "a plant cultivated for food". He accordingly dismissed the petition. The assesseees then moved the Board of Revenue in revision, but the Board took the same view. The assesseees then filed an application under Section 21 (1) of

the Act which has resulted in the present reference.

3. The notification referred to direct that no tax shall be payable on the sale of a number of classes of goods specified. Item 6 is "vegetables, green or dried other than medicinal preparations". Hence the question for decision is whether the word "vegetables" must be taken to include betel leaves. The word "vegetable" "is used in two different senses: first, in a wide sense, as for example, when we speak of "the vegetable kingdom". According to this usage, it would include all plants. The second sense, and the more common usage, is as connoting only "herbaceous plants cultivated for food" (see Webster's Dictionary). It is perfectly clear from the notification that Government used the word in the more limited sense in accordance with the common usage. The notification includes 25 items, many of which are not food-stuffs, but all the items up to 8 are food-stuffs, and item 6, which we are considering, thus comes in the midst of the list of food-stuffs. Secondly, it is impossible to suppose that Government meant to exclude the entire vegetable kingdom. Lastly,-and this is most convincing-item 1 is

"cereals and pulses including all forms of rice, gram, peas, moong, arhar, masur, khesari, millet, bajra, and jowar, wheat, oats, barley, maize, powdered or broken pulses, sago, besan and sattu, sold loose or in unsealed cardboard or paper containers."

Item 3 is "flour including atta, maida, suji and bran". Item 8 is "gur, sugar and molasses". If the word "vegetables" had been used in a comprehensive sense to include all plants and their products, then items 1 and 8 would not have been separately specified. There can, therefore, in my opinion, be no doubt that Government by "vegetables" meant plants cultivated for food.

4. In this limited sense, will pan be included? 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.

5. For these reasons I am satisfied that the view taken by the Board of Revenue is the correct one, and I would, therefore, answer the question in the affirmative. Betel leaves are taxable, and have not been exempted under the notification. The assessee must pay the costs of the reference. Hearing fee Rs. 100.

Manohar Lall, J.

6. I agree.

Answer in the affirmative.

