

## RAMAVATAR BUDHAIPRASAD ETC.

v.

ASSISTANT SALES TAX OFFICER, AKOLA

(S. K. DAS, J. L. KAPUR, M. HIDAYATULLAH,  
J. C. SHAH and T. L. VENKATARAMA AIYAR, JJ.)

*Sales Tax—'Betel leaves', if taxable—'Vegetables', Meaning of—Central Provinces and Berar Sales Tax Act, 1947 (C. P. XXI of 1947), s. 6(1)(2), Second Schedule, Items Nos. 6 and 36.*

The petitioners who were dealers in betel leaves were assessed to sales tax by the Assistant Sales Tax Officer under the provisions of the C. P. and Berar Sales Tax Act, 1947. The contention of the petitioners was that under s. 6 read with the second schedule of the Act betel leaves were not taxable. Under s. 6 of the Act articles mentioned in the said Schedule were exempt from Sales Tax and articles not mentioned were taxable. There were two items in the Schedule, namely, item 6, "vegetables", and item 36, "betel leaves", but subsequently item No. 36 was omitted by an amendment of the Act.

*Held*, that the use of two distinct and different items i.e., "vegetables" and "betel leaves" and the subsequent removal of betel leaves from the Schedule were indicative of the Legislature's intention of not exempting betel leaves from taxation. The word "vegetable" must be interpreted not in a technical sense but in its popular sense as understood in common language i.e., denoting a class of vegetables which are grown in a kitchen garden or on a farm and are used for the table.

*Planters Nut Chocolate Co. Ltd. v. The King*, (1952) 1 Dom. L.R. 385, *Madhya Pradesh Pan Merchants' Association, Santra Market, Nagpur v. The State of Madhya Pradesh (Sales Tax Department)*, [1956] 7 S.T.C. 99, *Bhairondon Tolaram v. The State of Rajasthan*, [1957] 8 S.T.C. 798, *Kokil Ram & Sons v. The State of Bihar*, [1949] 1 S.T.C. 217 and *Dharam Das Paul v. The Commissioner of Commercial Taxes*, [1958] 8 S.T.C. 194, considered.

*Brahma Nand v. The State of Uttar Pradesh*, [1956] 7 S.T.C. 206 and *Firm Shri Krishna Chaudhry v. Commissioner of Sales Tax*, [1956] 7 S.T.C. 742, referred to.

ORIGINAL JURISDICTION: Petitions Nos. 4, 36 and 37 of 1958.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

*R. Ganapathy Iyer and K. L. Hathi*, for the petitioners.

*C. K. Daphtary, Solicitor-General of India, B. R. L. Iyengar and T. M. Sen*, for the respondents.

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1961. March 14. The Judgment of the Court was delivered by

KAPUR, J.—These are three petitions under Art. 32 of the Constitution challenging the imposition of sales tax on betel leaves by the Sales Tax Officer, Akola. The question raised in all the three petitions is the same and can conveniently be disposed of by one judgment.

The petitioners in the three petitions are dealers in betel leaves at Akola, now in the State of Maharashtra and at the relevant time in the State of Madhya Pradesh. The Assistant Sales Tax Officer at Akola assessed the petitioners under the provisions of the C. P. & Berar Sales Tax Act, 1947 (Act XXI of 1947), hereinafter termed the "Act" to the payment of sales tax as follows:

Writ Petition No.	Period	Amount
W.P. No. 4/58	7-11-53 to 26-10-54. & 27-10-54 to 14-11-55.	Rs. 1882-9-0 Rs. 1885-13-0
W.P. No. 36/58	27-10-54 to 26-10-55.	Rs. 1890-3-0
W.P. No. 37/58	27-10-54 to 14-11-55.	Rs. 3530-4-0

The petitioners in W. P. Nos. 4 and 36 did not appeal under s. 22 of the Act but the petitioner in W. P. No. 37 did appeal under that section. As he did not deposit the amount of tax the petition was dismissed. He then filed a petition under Art. 226 in the High Court of Nagpur but that petition was withdrawn and therefore no decision was given on the merits of the case. In all the petitions the submission of the petitioners is that the order demanding tax was without authority of law inasmuch as betel leaves were not taxable under s. 6 read with the second Schedule of the Act. The imposition of the tax, it is alleged, is an infringement of the petitioners' right to carry on trade

or business guaranteed under Art. 19(1)(g) of the Constitution and the prayer is for the issue of a writ of *certiorari* quashing the order of the Assistant Sales Tax Officer and for *prohibition*.

Section 6 of the Act under which the exemption is claimed provides:

S. 6(1) "No tax shall be payable under this Act on the sale of goods specified in the second column of Schedule II, subject to the conditions and exceptions, if any, set out in the corresponding entry in the third column thereof.

(2) The State Government may, after giving by notification not less than one month's notice of their intention so to do, by a notification after the expiry of the period of notice mentioned in the first notification amend either Schedule, and thereupon such Schedule shall be deemed to be amended accordingly."

Thus under the Act all articles mentioned in the Schedule were exempt from Sales Tax and articles not so specified were taxable. In the Schedule applicable there were originally two items which are relevant for the purposes of the case. They were items Nos. 6 and 36:

Item 6 Vegetables—Except when sold in sealed containers.

Item 36 Betel leaves.

The Schedule was amended by the C. P. & Berar Sales Tax Amendment Act (Act XVI of 1948) by which item No. 36 was omitted. It is contended that in spite of this omission they were exempt from Sales Tax as they are vegetables. The intention of the legislature in regard to what is vegetables is shown by its specifying vegetables and betel leaves as separate items in the Schedule exempting articles from Sales Tax. Subsequently betel leaves were removed from the Schedule which is indicative of the legislature's intention of not exempting betel leaves from the imposition of the tax. But it was submitted that betel leaves are vegetables and therefore they would be exempt from Sales Tax under item 6. Reliance was placed on the

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dictionary meaning of the word "vegetable" as given in Shorter Oxford Dictionary where the word is defined as "of or pertaining to, comprised or consisting of, or derived, or obtained from plants or their parts". But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject matter with which the statute is dealing would attribute to it." It is to be construed as understood in common language; Craies on Statute Law, p. 153 (5th Ed.). It was so held in *Planters Nut Chocolate Co. Ltd. v. The King* (1). This interpretation was accepted by the High Court of Madhya Pradesh in *Madhya Pradesh Pan Merchants' Association, Santra Market, Nagpur v. The State of Madhya Pradesh (Sales Tax Department)* (2) where it was observed:—

"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."

In that case the word "vegetables" was construed and in our opinion correctly construed in relation to the very provisions of the Act which are now in controversy before us. In cases under the U. P. Sales Tax Act betel leaves have been held not to be within the expression "green vegetables"; *Brahma Nand v. The State of Uttar Pradesh* (3); *Firm Shri Krishna Chaudhry v. Commissioner of Sales Tax* (4). In *Bhairondan Tolaram v. The State of Rajasthan* (5) they were held not to be plants and in *Kokil Ram & Sons v. The State of Bihar* (6), it was held that vegetables meant plants cultivated for food and *Pans* are not foodstuffs. In *Dharamdas Paul v. Commissioner of Commercial*

(1) [1952] 1 Bom. L.R. 385, 389.

(3) [1956] 7 S.T.C. 206.

(5) [1957] 8 S.T.C. 798.

(2) [1956] 7 S.T.C. 99, 102.

(4) [1956] 7 S.T.C. 742.

(6) [1949] 1 S.T.C. 217.

*Taxes* (1), also they were held not to be vegetables which specifically meant *Sabzi, Tarkari and Sak*. Therefore apart from the fact that the legislature by using two distinct and different items i.e. item 6 "vegetables" and item No. 36 "betel leaves" has indicated its intention, decided cases also show that the word "vegetables" 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.

In our view, betel leaves are not exempt from taxation. These petitions therefore fail and are dismissed with costs. One hearing fee.

*Petitions dismissed.*

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v.

COMMISSIONER OF SALES TAX, DELHI  
 AND ANOTHER

(S. K. DAS, J. L. KAPUR, M. HIDAYATULLAH,  
 J. C. SHAH, and T. L. VENKATARAMA AIYAR, JJ.)

1951  
 March 14.

*Sales Tax Act—Security demanded for payment of tax—Validity of—Bengal Finance (Sales Tax) (Delhi Amendment) Act, 1956 (Act 17 of 1956), s. 8A.*

The validity of s. 8A of the Bengal Finance (Sales Tax) (Delhi Amendment) Act, 1956, enabling the Commissioner of Sales Tax to demand security from dealers for payment of tax was challenged by the petitioners on the grounds that (i) the section gave undefined, unlimited and unrestricted power to the commissioner, (ii) no limit was fixed for the amount of security, and (iii) the section did not provide for any enquiry before the demand of security, nor did it provide for an opportunity of being heard being given to the person against whom the order was proposed to be passed.

*Held*, that s. 8A did not give any unlimited or unrestricted power to the Commissioner of Sales Tax. The power of the Commissioner of Sales Tax was subject to the condition that it

(1) [1958] 9 S.T.C. 194.