

A

STATE OF ORISSA

v.

M/S. DINABANDHU SAHU & SONS

March 30, 1976

B

[H. R. KHANNA AND P. K. GOSWAMI, JJ.]

Central Sales Tax Act (74 of 1956), s. 14(vi)—Notification by concerned department of Government of India including some seeds in 'oil seeds'—How far relevant in determining category of seeds.

C

Under s. 14(vi), Central Sales Tax Act, 1956, among goods declared to be of special importance in inter-State trade and commerce are mentioned oil-seeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, etc., or volatile oils used chiefly in medicines etc. The Assistant Commissioner under the Orissa Sales Tax Act, the Tribunal, and the High Court on reference, held that jeera, dhania, panmohuri, methi and postak are oil-seeds within the meaning of s. 14(vi) and liable to a lesser rate of tax. The High Court relied on ordinary and technical dictionaries and a notification of the Ministry of Finance, Department of Economic Affairs, Government of India, dated January 3, 1959 for its conclusion.

D

In appeal to this Court under Art. 136, it was contended by the State, relying on *State of Andhra Pradesh v. Kajjam Ramchandrarai Gari Anantaiah* (1961) 12 STC 795, that the Court should adopt the meaning given to these articles in common parlance by people who use them, that so understood they are spices and not oil-seeds, and that though they yield non-volatile oil to a certain extent, there is no evidence that they fall within the description in s. 14(vi).

Dismissing the appeal,

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HELD : It cannot be said that the Tribunal was not right, and so it is not a fit case for interference under Art. 136, when the High Court held that the Tribunal was right. [970C-D, G]

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(a) Item 3, Schedule IV, A.P. General Sales Tax Act, 1957, is identical with s. 14(vi) of the Central Act. In *Kajjam Ramchandrarai's* case, the Andhra Pradesh High Court held that dhania did not come within the definition of oil-seeds relying on some letters from (i) Director, National Chemical Laboratory, Poona, and (ii) Central Food Technological Research Institute, Mysore. [968F]

G

(b) The High Court was right in the present case in holding that the notification of the Government of India had no statutory force and was not binding on the Sales Tax Officer, but it cannot be said that the High Court and Tribunal were not right in preferring the opinion therein as good evidence for their conclusion to the opinions in the letters relied upon by the Andhra Pradesh High Court. The Ministry of Finance, which issued the notification, is intimately conversant not only with the policy of legislation for the purpose of implementation of the provisions of the Central Act, but is also familiar with the nature and quality of the commodities and also their use from time to time. [970D-F]

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(c) Further, the letters of the Director, National Chemical Laboratory and the Central Food Technological Research Institute, do not indicate that the opinions expressed therein were firm or even final or whether all the uses mentioned in the definition of oil-seeds were brought to their notice. [970F]

Commissioner of Sales Tax, Madhya Pradesh, Indore v. Bakhat Rai and Co. (1966) 18 Sales Tax Cases 285 and *The Deputy Commissioner of Agricultural Income-tax and Sales Tax, Kozhikode v. Sreedhara Shenoy* (1973) 32 Sales Tax Cases 181, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 912 to 916 of 1971. A

Appeals by Special Leave from the Judgment and Order dated the 2nd July 1969 of the Orissa High Court in Special Jurisdiction Cases Nos. 73, 74, 75 and 76 of 1964.

V. C. Mahajan and *R. N. Sachthey* : for Appellants (In CAs. 912-13/71) B

R. N. Sachthey; for Appellant in CAs. 914-16/71.

Gobind Das, *amicus curiae* for Respondent.

The Judgment of the Court was delivered by

GOSWAMI, J.—Five quarters of assessment of sales tax are involved in these five appeals, by special leave, the period commencing from January 1, 1959 to March 31, 1960. This judgment will govern all these appeals involving a common question. C

The Assistant Sales Tax Officer, Cuttack, included in the turnover of the respondent the sale price of jeera, dhania (coriander), panmohuri, methi, postak and pipall and levied 5 per cent sales tax under the Orissa Sales Tax Act (briefly the State Act). On appeal the Assistant Commissioner of Sales Tax, Puri, allowed the claim of the respondent and held that the above items are oil-seeds within the meaning of section 14(vi) of the Central Sales Tax Act and gave the respondent the benefit of a lower tax of 2 per cent on the sale turnover of those goods instead of 5 per cent under the State Act. On appeal by the State of Orissa to the Sales Tax Tribunal claiming 5 per cent on the sale turnover thereof under the provisions of the Central Sales Tax Act, the orders of the Assistant Commissioner were affirmed. On application by the State for each of the five quarters, the Tribunal referred the following two common questions under section 24 of the State Act : D

“(1) Whether in the facts and circumstances of the case, the Sales Tax Tribunal is right in holding that jeera, dhania, panmohuri, methi, postak and pipali are oil-seeds within the meaning of section 14 of the Central Act and the tax payable under the State Law in respect of the sale or purchase of these goods inside the State, cannot exceed 2 per cent of the sale or purchase price thereof. E

(2) Whether the communication No. 4(8)-ST/57 dated 31st January, 1958, issued by the Government of India which is only an official communication having no statutory sanction behind it can have any legal effect to hold the goods in question as oil-seeds as understood in common parlance and whether such an official communication is binding on the State Government.” F

We are not concerned with ‘pipali’ in these appeals. G

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A When these appeals came before us for hearing the respondent was not represented. We, therefore, requested Mr. Gobind Das to act as *amicus curiae* in these appeals.

Before we may proceed further, we may immediately turn to section 14(vi) of the Central Sales Tax Act (briefly the Central Act) :

B "14. Certain goods to be special importance in inter-State trade or commerce. It is hereby declared that the following goods are of special importance in inter-State trade or commerce :—

C (vi) Oil-seeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics and the like".

D The above definition is an explanatory one and uses mentioned therein cover a wide range. If the particular items which are assessed under the State Act can be brought under the definition of "oil-seeds", as given in the above provision, the assessee will be entitled to a lower levy of sales tax.

E Mr. Mahajan appearing on behalf of the appellant submits that the Court should adopt the meaning given to these items in common parlance and by the people who use the articles. He chiefly relies upon a decision of the Andhra Pradesh High Court in *The State of Andhra Pradesh v. Kajjam Ramchandraiah Gari Anantaiah*.⁽¹⁾ In that case the High Court was dealing, *inter alia*, with an identical item, viz., dhanial (coriander) under item 3 of Schedule IV of the Andhra Pradesh General Sales Tax Act, 1957. Item 3 is identical with item (vi) of section 14 of the Central Act giving the definition of "oil-seeds". The Andhra Pradesh High Court relied upon a letter from the Director of the National Chemical Laboratory, Poona, dated January 29, 1959, addressed to the Secretary, Council of Scientific and Industrial Research, New Delhi, as also upon another letter from the Central Food Technological Research Institute, Mysore, dated February 18, 1959, and came to the conclusion that, amongst other things, dhanial (coriander) did not come "within the definition of oil seeds". The High Court also held that it was not difficult to envisage with the increase in scientific knowledge and technological development that oil could be extracted from any seed which might not be known as an oil-seed in common parlance. That Court also observed that there was no evidence to show that any oil was extracted in this country or that the oil extracted from the seeds concerned was used commercially or industrially or could be bought in the market. In this view of the matter the Andhra Pradesh High Court held that dhanial and other seeds which came up for consideration were not oil-seeds under item 3 of Schedule IV of the Andhra Pradesh Sales Tax Act. It is interesting that on this finding of that Court coriander escaped altogether from assessment.

(1) (1961) 12 S.T.C. 795.

In *Commissioner of Sales Tax, Madhya Pradesh, Indore, v. Bakhat Rai and Co.*,⁽¹⁾ the Madhya Pradesh High Court also took the same view as that of the Andhra Pradesh High Court while dealing with item 3, Part II, Schedule 1 of the C.P. and Berar Sales Tax Act. In the Madhya Pradesh case, however, the term 'oil-seed' has not been defined under the Act. The Court, therefore, held that since it was an item of every day use it must be construed in its popular meaning, that is to say, in that sense which people conversant with the subject matter with which the statute was dealing would attribute to it. A

The Division Bench of the Kerala High Court has also held in *The Deputy Commissioner of Agricultural Income-tax and Sales Tax, Kozikode v. V. Sreedhara Shenoy*⁽²⁾ that dhania (*coriander*) and methi are not oil-seeds under section 14(vi) of the Central Act. B

Mr. Mahajan has strenuously submitted that the articles in question are spices to all intents and purposes and not "oil-seeds". He further submits that even if they are oil-seeds in the sense that these yield non-volatile oil to a certain extent, no evidence has been produced by the assessee that these are used for human consumption or in industry or in the manufacture of varnishes, soaps and the like, or in lubrication, or in medicines, perfumes, cosmetics and the like as mentioned in the definition. C

Mr. Gobind Das, on the other hand, has drawn our attention to the fact that the High Court had before it the Condensed Chemical Dictionary (7th Edition) edited by Arther and Elizabeth Rose, from which the following informations regarding the seeds in question were available :— D

"Dhania (coriander seed); botanical name *coriandrum sativum*. Coriander oil is distilled from the coriander sativum a colourless or slightly yellowish liquid having aromatic odour. E

Jeera (cumin seed). Cumin oil is distilled from the cumin seed and is used for medicine, flavouring and perfumery. It is a colourless or yellowish, limpid liquid having characteristic odour of cumin. F

Postak (poppy seed); botanical name *papaver somniferum*. Poppy oil is a very pale, golden yellow liquid with pleasant taste and odour extracted from the seeds and it is used as food oil, artist's colours, varnishes & lubrication.

Methi (Fenugreek); botanical name *trigonella Foenum-graecum* (*vide p. 164, vol. 9 of the Encyclopaedia Britannica*). It is stated *inter alia* therein that it bears a sickle-shaped pod, containing from 10 to 20 seeds, from which 6% of a foetid, fatty, and bitter oil can be extracted by ether". G

Besides, the High Court also had before it the notification of the Ministry of Finance, Department of Economic Affairs, Government of India, dated January 3, 1959, wherein amongst other commodities H

(1) (1966) 18 S.T.C. 285.

(2) (1973) 32 S.T.C. 181.

A the following were stated to be included in the term "oil-seeds" under item (vi) of section 14 of the Central Act :

"(18) Poppy-seed (Posta-dana, Khaskhas);

(37) Aniseed (saunf);

(42) Coriander-seeds (Dhania);

B (44) Cuminseed (Jeera, Safed Jeera);

(49) Fenugreek-seeds (Methi)".

Mr. Gobind Das also drew our attention to the Webster's Third International Dictionary where coriander seed is described as "the ripened dried fruit of coriander used for flavouring especially of pickles, curries, confectioneries, and liquors."

C These appeals arise out of a decision in a reference under section 24 of the State Act under article 136 of the Constitution and we have to consider whether it is a fit case for interference with the order of the High Court when it held that the Sales Tax Tribunal was right in its conclusion. It is true the High Court has rightly observed that the aforesaid notification of the Government of India has no statutory force and as such is not binding on the Sales Tax Officer. It cannot, however, be denied that the Ministry of Finance, Department of Economic Affairs, is intimately conversant not only with the policy of legislation for the purpose of implementation of the provisions of the Central Act but is also familiar with the nature and quality of the commodities as also their use from time to time. If, therefore, such an authority issued a notification including certain commodities under the head of 'oil-seeds', as defined under the Central Act, it cannot be said that the Tribunal and the High Court were not right in preferring such an opinion of the Government as good evidence for its conclusion, to the opinions relied upon by the Andhra Pradesh High Court on which great reliance has been placed by the appellant. A perusal of the contents of the letters referred to in the judgment of the Andhra Pradesh High Court would indicate that the opinions cannot be said to be very firm or even final. Apart from this, it is not known whether all the uses which are mentioned in the definition of "oil-seeds" were brought to the notice of the National Chemical Laboratory, Poona and of the Central Food Technological Research Institute, Mysore, in rendering their opinions. If, therefore, the Tribunal in the facts and circumstances of the case held that the particular commodities came within the definition of clause (vi) of section 14 of the Central Act, it is not possible to hold that it was not right. The answer to the first question by the High Court is, therefore, rightly in the affirmative.

G We do not also see anything wrong in the High Court's answering the second question in the way it did.

The appeals, therefore, fail and are dismissed. There will be no order as to costs.

H We are thankful to Mr. Gobind Das for assisting the Court as amicus curiae.