

**Krishna Mango Processing Factory Vs. Additional Commissioner of**

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**Court :** Sales Tax Tribunal STT West Bengal

**Decided On :** Dec-19-1989

**Reported in :** (1990)77STC296Tribunal

**Judge :** B Chakrabarti, P Banerji, L Ray

**Appellant :** Krishna Mango Processing Factory

**Respondent :** Additional Commissioner of

**Judgement :**

1. Both these cases--one for an interim order and other for relief in respect of the main application--arise out of an application under Article 226 of the Constitution of India filed before the High Court at Calcutta being C.R. 15550(W) of 1980. On transfer to this Tribunal the application has been re-numbered as indicated above.

The applicant carries on the business of manufacturing mango pickles and jelly as also green mango slices in brine. The applicant is registered under the Bengal Finance (Sales Tax) Act, 1941 and the Central Sales Tax Act, 1956. On examination of the books of accounts of the applicant, the respondent No. 3, namely, the Commercial Tax Officer, Malda, found that in 1382 B.S., the applicant had sold green mango slices in brine for Rs. 17,837.50 and in 1383 B.S. for Rs. 70,783.95. The Commercial Tax Officer concerned, held that green mango slices in brine is a preserved fruit within the meaning of Notification No. 2252-F.T. dated 9th June, 1969 and is a notified commodity within the meaning of West Bengal Sales Tax Act, 1954. The applicant was accordingly advised to apply for

registration under that Act. On the failure of the applicant to do so, notice was issued upon the applicant under Section 16 of the Act to show cause why appropriate action should not be taken. Eventually, the Commercial Tax Officer found that the applicant was liable to pay tax with effect from 17th June, 1975, on the sale of green mango slices in brine. The applicant preferred an appeal to the respondent No. 2 who upheld the order of the Commercial Tax Officer by his order dated 5th July, 1978. Being aggrieved, the applicant filed a revision before the Commissioner being Case No. 429/78-79. The revisional application was heard by respondent No. 1 who by his order dated 10th July, 1986, confirmed the orders of the respondents 2 and 3. Thereupon the present application under Article 226 was filed.

3. The main contention of the applicant is that green mango is not a fruit but is a vegetable which is a tax-free item vide entry No. 6 of Schedule I of the Bengal Finance (Sales Tax) Act, 1941. It is also his case that the Notification No. 2252-F.T. dated 9th June 1969, relates to fruits preserved and has no manner of application to vegetables or any other article of food which is not a fruit. It is further the contention of the applicant that under the 1954 Act neither fresh vegetables nor fresh fruits are taxable. In that view of the matter, the applicant has challenged the orders passed by respondent No. 1 confirming the orders passed by respondents 2 and 3. Hence, the application for an order prohibiting the respondents from giving any effect to the impugned order in Revision Case No. 429/78-79 by the respondent No. 1.

4. The application is opposed. In substance, the case of the respondents is that the mango slices in brine being a preserved fruit was a commodity notified under Section 25 of the 1954 Act and as such, the applicant was liable to registration as a dealer under the said Act and to pay tax on all its sales of the said item with effect from 27th June, 1975, when the sale of this item by the applicant commenced. In fine, the contention of the respondents is that articles sold by the applicant is, in essence, a preserved fruit within the meaning of the notification referred to above and as such taxable.

5. It is clear upon a perusal of the respective cases of the parties that liability, if at all, can be fixed on the applicant only if the Notification No. 2252-F.T. dated 9th June, 1969, is applicable in the present case. There is no dispute that in the 1954 Act fresh fruits are not taxable. Entry No. 6 of Schedule I of the Bengal Finance (Sales Tax) Act, 1941, relates to vegetables, green or dry, and are tax-free except when sold in sealed containers. The notification upon which reliance has been placed by the respondents is to the following effect : "(57) No. 2252 F.T./IT-34/69-S.T. dated the 9th June, 1969-- Whereas the Governor is of opinion that it would be in the public interest that the commodity mentioned below, being a commodity liable to taxation under the Bengal Finance (Sales Tax) Act, 1941 (Bengal Act VI of 1941), should be taxed under the West Bengal Sales Tax Act, 1954 (West Bengal Act IV of 1954) ; Now, therefore, in exercise of the power conferred by Section 25 of the West Bengal Sales Tax Act, 1954 (West Bengal Act IV of 1954), the Governor is pleased hereby to specify such commodity under that section and direct that with effect from the 1st July, 1967, which date is hereby fixed in this behalf, the Bengal Finance (Sales Tax) Act, 1941 shall cease to apply and the West Bengal Sales Tax Act, 1954, shall apply to such commodity.

Dry or preserved fruit, that is to say, any fruit or edible part of fruit that has undergone full or partial dehydration or any other preserving process, including almond, khasta badarn, pistachio nut, chilgoza or neoza, apricot, alubukhra, cashewuut, walnut, fig, raisin (locally known as kismis or monacca) and date (locally known as khajur, zahedi or sohera) but excluding any fruit which is oil-seed, as defined in Section 14 of the Central Sales Tax Act, 1956 (Act 74 of 1956)." 6. It is clear upon a perusal of the notification quoted above that in order to come within the meaning of the notification the article must be a fruit--dry or preserved--or the edible parts of which has undergone full or partial dehydration. The notification also includes certain items of dry fruits by name as being included within the meaning of the notification. But, at any rate, there is no escape from the position that in order to make the applicant liable for tax with the aid of this notification issued under Section 25 of the West Bengal Sales Tax Act, 1964, the item must have to be a fruit first. Therefore, the main question that falls for consideration in this case is whether or not mango slices in brine, prepared out of green mango, is a preserved fruit. It may be so held in favour of the applicant

provided green mango itself is considered a fruit. It may be significant to mention that the respondent No. 1 while hearing the revision application has observed--"in common parlance, no doubt green mango will not be treated as a fruit simpliciter. But it is not treated also as a vegetable either in the sense a brinjal is a vegetable or kanchakala is a vegetable". It follows that even according to respondent No. 1, green mango is not treated as a fruit in common parlance.

7. Learned Advocate for the applicant has referred to various dictionary meanings of the term "fruit", and upon a consideration of the same has concluded that in order to be fruit, it must satisfy three conditions-- It is the applicant's case that green mango slices in brine is neither a fruit, preserved or dry, as it does not satisfy any of the conditions stated above. Generally, a fruit has the three essential qualities, enumerated above, but it is not inconceivable that there may be a fruit which does not contain a seed capable of reproduction but enveloped by a pulp or a thing of like nature suitable for consumption, as for example, a banana. Therefore, the definition quoted by the applicant, and referred to, in course of the argument, is certainly not a conclusive test. Even then, the question remains whether green mango out of which green mango slices in brine is prepared by peeling off the skin, removing the seed, slicing the mango into pieces, soaking the same in saline water, and thereafter, dehydrating the same for preservation and used not as a fruit but as an ingredient for the preparation of vegetable or curry or chutney or pickles and things like that, is a fruit or not.

8. Mr. Majumdar, appearing on behalf of the respondents, contended that green mango, if not a fruit, is not also a vegetable either and that it is inconceivable that it is neither. We do not feel very much impressed with the contention because in our daily experience we never find green mangoes being sold in the fruit market. They are generally sold in the season time by vegetable vendors. This apart, it is not inconceivable that an item of food in its green stage may be a vegetable but while ripe becomes a fruit. Take, for instance, the case of jack-fruit. Even though it is termed as jack-fruit, it is never consumed as a fruit until it is ripe ; but it is consumed as vegetable in its green stage.

Therefore, it is possible to conceive that a particular item may be a vegetable at one stage while at a later stage it may become a fruit. A green mango in common parlance does not appear to be a fruit in the sense a fruit is commonly used in the trade circle. Irrespective of definitions or botanical nomenclature, we should go by what meaning is attributed to the expression by those dealing with them. It is well-settled that in interpreting items in statutes like the Sales Tax Act, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific or technical meaning of the term but to their popular meaning, that is to say, the meaning attached to them by those dealing in those articles. If any term or expression has been defined in the enactment, then it must be understood in the sense in which it is defined. But in the absence of any definition being given in the enactment, the meaning of the term in common parlance or commercial parlance has to be adopted. (See *Indo International Industries v. Commissioner of Sales Tax, U.P.* [1981] 47 STC 359 (SC) ; AIR 1981 SC 1079, P.A. *Thillai Chidambara Nadar v. Additional Appellate Assistant Commissioner 9. The State Representative* referred to the case of *Commissioner of Sales Tax v. Chhotelal* reported in [1966] 18 STC 179 (MP). That was a case relating to pind-khajur. Considering the manner in which pind-khajur is prepared, it was held that it is neither a fresh fruit nor a dry fruit but it is only a preserved fruit. Reference to this case was possibly made to indicate that mango slices in brine also is a preserved fruit and, therefore, it comes within the meaning of the notification referred to earlier. It appears that pind-khajur is prepared by extracting the pulpy fruit of the date-palm and then processing it in a particular manner. The pulpy fruit of the date-palm is a fruit, and, therefore, pind-khajur which is made out of it is treated as a preserved fruit. In order to take advantage of this decision the respondents have to satisfy that green mango is a fruit.

We are unable to hold that green mango as an article of food is ever treated as a fruit in common parlance although in its ripened stage it becomes fruit. The next case relied on by the respondents is the case of *State of West Bengal v. Washi Ahmed* reported in [1977] 39 STC 378 (SC). In this case the item under consideration was green ginger and the question was whether it was vegetable within the meaning of item No. 6 of Schedule I of the Bengal Finance (Sales Tax)

Act, 1941. The Supreme Court held that the expression "vegetables" 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 a kitchen garden or in a farm and are used for the table. It was further held that green ginger is generally regarded as included within the meaning of the word vegetable as understood in common parlance. Upon a reference to this decision it was contended that in order to be vegetable the item must be grown either in a kitchen garden or in a farm. It is true that mangoes--green or ripe--are not grown in kitchen gardens. They are grown in horticultural farms or in an isolated manner. But the fact that they are not grown in kitchen gardens or farms, cannot be the sole determining criterion. As we have already indicated that jack-fruit when not ripe is used as a vegetable for preparation of curry, but when ripe, becomes a fruit. Therefore, it is possible for a particular item of food to be vegetable at one stage and a fruit at another. The decisions relied on by the respondents, do not really support the contention urged on behalf of the respondents. The principle that such meaning of the expression, unless defined in the Act itself, should be given which the ordinary people dealing with those articles mean it to be is well-established. We do not think that green mango by itself is a fruit. In fact, the finding of the revisional authority also is to that effect, namely, that in common parlance, green mango will not be treated as a fruit simpliciter. But the revisional authority went on to say that it cannot be treated as a vegetable either. The test is not to find out the nature of the article from the negative point of view, namely, that it is not a vegetable.

This apart, the positive aspect of the matter is that it is not treated as a fruit in common parlance.

10. The notification with the aid of which tax liability has been saddled upon the applicant, refers to dry or preserved fruits which might have undergone changes by various processes of dehydration and preservation. But, at any rate, it is clear that in order to come within the meaning of that notification the item must have to be a fruit first. Thereafter the question of dehydration or preservation, etc., may arise. In the instant case, the expression "fruit" has nowhere been defined either in

1941 Act or in the 1954 Act. In common parlance, green mango is not a fruit, and it will bear repetition, was also the finding of the revisional authority. Therefore, there is no question of applying the notification in the case of green mango slices in brine and thereby make the applicant liable for tax under the 1954 Act. That being our view of the matter, the application succeeds. The interim injunction issued in this case is made absolute. The case is thus disposed of. There will be no order for costs.

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