KRISHAN CHANDER DUTTA (SPICE) PVT. LTD. A

*v.*

COMMERCIAL TAX OFFICER AND ORS.

FEBRUARY 23, 1994

[B.P. JEEVAN REDDY AND B.L. HANSARIA, JJ.] B

*West Bengal Sales Tax Act, 1954—Sections 4, 25—Notifications No. 885-F.T. dated 1.5.1955 and No.1915 F.T. dated 10.5.1963—Whole black and white pepper powder—Whole turmeric and turmeric powder—Sales Tax—Exigibility of—Held whole black and white pepper and pepper powder are the same goods—Because of description of whole turmeric and turmeric powder in both notifications in same manner as black and white pepper, whole turmeric and turmeric powder must also be treated as same goods.* C

*Words and Phrases—'that is to say'—Occurring in clauses (2) and (3) of Notification No. 885-F.T. dated 10.5. 1955 issued under s.25 of the West Bengal Sales Tax Act, 1954—Interpretation of.* D

**By notification No. 885-F.T. dated May 1,1955 issued under s.25 of the West Bengal Sales Tax Act,1954, turmeric and pepper were brought under the purview of the Act. By another notification No. 1915-F.T. dated May 10,1963 isued under s.4 of the Act, the rates of tax on these commodities were prescribed. Under the Act, the tax was a single point tax leviable at the first point of sale. The revenue imposed tax on the sale of pepper powder and turmeric powder. The appellant, who purchased whole black pepper and whole turmeric and converted them into pepper powder and turmeric powder for sale, contended that pepper and pepper powder and similarly turmeric and turmeric powder, being one and the same thing, were not exigible to tax since whole pepper and whole turmeric had suffered tax when they were sold to him. The Revenue rejected the claim holding that pepper and pepper powder and similarly turmeric and turmeric powder were two different goods. The West Bengal Taxation Tribunal upheld the view of the Revenue. The appellant filed the appeal by special leave.** E G

**Allowing the appeal, this Court**

**HELD: 1.1 Whole black and white pepper and pepper powder are the** H

**same goods, whether applying the functional test or the test of common/commercial parlance. The analogy of paddy and rice or of wheat and wheat powder is not apt. Nobody consumes paddy as it. Similarly, no one eats whole wheat. They are consumed after milling them into rice or flour, as the case may be. But so far as the pepper is concerned, it is used equally in whole as well as powder form. Therefore, the entry in Notification No. 885-T.F. dated 1.5.1955 speaks of 'Black and white pepper - whole, broken, ground or powdered or of any other form or description whatsoever'. Further, the reference of black and white pepper in Notification No. 1915, 'as specified in Notification No. 885' means black and white pepper, whether whole, powdered, broken or in any other form. [128-B-D]**

**1.2 The position of turmeric and turmeric powder is not identical, applying the functional test. But inasmuch as turmeric is also described in Notification No. 885 in the same manner as black and white pepper and also because Notification No. 1915 refers to it with reference to the said earlier Notification, turmeric and turmeric powder must also be treated as same goods. [128-E]**

*Rajasthan Flour Mills Association* **v.** *State of Rajasthan,* **[1993] 3 SCALE 600, held inapplicable.**

*Alladi Venkateshwarlu* **v.** *State of Andhra Pradesh,* **41 S.T.C. 394;** *Commissioner of Sales Tax, Lucknow* **v.** *D.S.Bist & Ors.,* **[1980] 1 S.C.R. 593,** *Ganesh Trading Company, Karnal* **v.** *State of Haryana,* **32 S.T.C. 623 and** *State of Karnataka* **v.** *Raghuram Shetty,* **47 S.T.C. 369, referred to.**

**2. In items (2) and (3) of Notification No. 885-F.T., the words 'that is to say' seem to refer to the botanical expression following the said words, and they cannot, by any stretch of imagination, be taken to indicate that broken, powdered or any other form of pepper are different goods from pepper. [129-A]**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1211-13 of 1992.

From the Judgment and Order dated 15.5.91 of the West Bengal Taxation Tribunal, Calcutta, in Case No. R.N. 207(T), 608(T),609(T) of 1988.

Dr. Shankar Ghosh, Gopal Chakravarthi, K.P. Ghosh and Ms. Kum A
Kum Sen for the Appellant.

Santosh Hegde, Dilip Singh and J.R. Das for M/s. Sinha and Das for the Respondents.

The Judgment of the Court was delivered by

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**B.P. JEEVAN REDDY, J.** In this appeal preferred against the judgment of the West Bengal Taxation Tribunal, the question is whether sales of turmeric powder and pepper powder obtained from whole turmeric and whole pepper are exigible to sales tax under West Bengal Sales Tax Act, 1954 (1954 Act). The principal Act levying sales tax in the State of West C
Bengal, of course, is the Bengal Finance (Sales Tax) Act, 1941. By a Notification No. 885-F.T. dated May 1, 1955, issued under Section 25 of the 1954 Act, the Governor of West Bengal specified and notified certain commodities including turmeric and pepper, wih the result that the said commodities ceased to be governed by the 1941 Act and came within the purview of the 1954 Act. The Notification, in so far as it is relevant, reads D
thus:

> "No. 885-F.T. – Ist May, 1955. – Whereas the Govenor is of opinion that it would be in the public interest that the commodities mentioned below, being commodities liable hitherto to taxation under E
> 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 F
> of 1954), the Governor is pleased hereby to specify such commodities under that section.
>
> The commodities referred to above:
>
> (1) (Omitted as unnecessary). G
>
> (2) black and white pepper, known as gol mirch, that is to say, the berry of the plant "piper Nigrum", whole, broken, ground or powdered, or of any other form or description whatsoever;
>
> (3) Turmeric, known locally as haridra or halud, that is to say, the H

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product obtained from the plant "Curcuma Longa", whole, broken, ground or powdered, or any other from or description whatsoever;

(4) (Omitted as unnecessary);

(5) (Omitted as unnecessary)."

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By another Notification No.1915-F.T. dated May 10, 1963 issued under Section 4 of the 1954 Act, the Governor of West Bengal notified the rates of tax on several commodities including black and white pepper and turmeric. In so far as it is relevant, it reads thus:

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"No.1915-F.T.—10th May, 1963.—In exercise of the power conferred by section 4 of the West Bengal Sales Tax Act, 1954 (West Bengal Act IV of 1954), the Governor is pleased hereby to fix in respect of the notified commodities specified in column 2 of the table below, the rates specified in the corresponding entries in column 3 of the said table as the rates at which tax under the said Act shall be paid by a dealer on his turnover.

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Table

| Sl.No. | Notified commodity | Rate of tax |
|---|---|---|
| 1, 2 & 3 | (Omitted as unnecessary). | |
| 4. | Betel-nuts, black and white Pepper, Turmeric, Cloves and Cinnaamon or Cassia, *as specified in notification No.885- F.T., dated 1st May, 1955.* | Four per centum |

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S.No. (5) to (16) — (Omitted as unnecessary).

This will take effect from the 10th day of May, 1963."

(Emphasis supplied)

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It is the common case of the parties before us that under the 1954 Act, the tax is a single point tax leviable at the first point of sale.

The appellant says that he purchases whole black pepper and whole turmeric within the State of West Bengal and converts them into pepper

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powder and turmeric powder for sale. His contention is that black pepper and pepper powder and similarly turmeric and turmeric powder are one and the same goods and inasmuch as whole black pepper and whole turmeric suffered tax when it was sold by the selling dealer to the appellant, the powders derived from them are not exigible to tax when sold by him. For the same reason, he says, he need not register himself as a dealer under the Act. The department, however, took the view that pepper and pepper powder and similarly, turmeric and turmeric powder are different goods and, therefore, the pepper powder and turmeric powder when sold by the appellant are exigible to tax. The Tribunal has upheld the contention of the Revenue.

Dr. Shanker Ghosh, learned counsel for the appellant relied upon the decisions of this court in *Alladi Venkateshwarlu* v. *State of Andhra Pradesh*, 41 S.T.C. 394 and *Commissioner of Sales Tax, Lucknow* v. *D.S. Bist & Ors.*, [1980] 1 S.C.R. 593 in support of his submission that pepper and pepper powder and turmeric and turmeric powder are one and the same goods. He submitted that pepper is sometimes used in its original form and sometimes in its powdered form. Similarly, turmeric is also used sometimes in its original form and sometimes after converting it into powder. According to learned counsel, pepper powder is but a form of pepper and similarly turmeric powder is but only a form of turmeric. They are not diferent goods. Counsel submitted that just as parched rice and puffed rice are different forms of rice *(Alladi Venkateshwarlu)*, so is the pepper powder a form of pepper and turmeric powder a form of turmeric.

The learned counsel for the State of West Bengal, on the other hand, submitted that pepper and pepper powder and similarly turmeric and turmeric powder are two different goods just as wheat and wheat-flour are different goods. The learned counsel relied upon the recent decision of this court in *Rajasthan Flour Mills Association* v. *State of Rajasthan*, [1993] 3 SCALE 600 in support of his submission. He also relied upon the decisions of this court in *Ganesh Trading Company, Karnal* v. *State of Haryana*, 32 S.T.C. 623 and *State of Karnataka* v. *Raghuram Shetty*, 47 S.T.C. 369. In the latter case, learned counsel pointed out, it has been held that when wheat is ground into flour, wheat is consumed in the manufacture of wheat-flour and a different product emerges and similarly, when wheat-flour is baked as a bread,thereemerges yet another different goods. Learned counsel, therefore, submitted that on the same analogy when pepper and turmeric are ground into powder, they change their shape and emerge as different goods.

We are of the opinion that so far as whole black and white pepper and pepper powder is concerned, they are the same goods, whether applying the functional test or the test of common parlance/commercial parlance. The analogy of paddy and rice or of wheat and wheat powder is not apt. Nobody consumes paddy as it is. Similarly, no one eats whole wheat. They are consumed after milling them into rice or flour, as the case may be. But so far as the pepper is concerned, it is used equally in whole as well as well powdered form. It is for this reason perhaps that the entry in Notification No.885-F.T. dated May 1, 1955 speaks of "Black and white pepper-whole, broken, ground or powdered or of any other form or description whatsoever". It is equally significant that the Notification No.1915-F.T. dated May 10, 1963 refers to these commodities "*as specified in Notification* No.885-F.T. dated 1st May, 1955". Black and white pepper "as specified in Notification No.885" means black and white pepper, whether whole, powdered, broken or in any other form.

So far as turmeric and turmeric powder is concerned, the position is not identical, applying the functional test. But inasmuch as turmeric is also described in Notification No.885 in the same manner as black and white pepper and also because Notification No.1915 refers to it with reference to the said earlier Notification, we are inclined to say that turmeric and turmeric powder must also be treated as same goods.

Sri Santosh Hegde, learned counsel for the State of West Bengal submitted that the use of the words "that is to say" in items (2) and (3) in Notification No. 885-F.T. serve to indicate that broken, ground or powdered pepper is different from pepper. Support is sought to be derived from the decision of this court in *Rajasthan Flour Mills Association* where the meaning of the said words was dealt with reference to Section 14(i) of the Central Sales Tax Act. It was held in the said decision that the said words had the effect of limiting the operation of Section 14 to the goods specifically mentioned thereunder and not to their products. In other words, it was held that when Section 14(i) (iii) mentioned wheat, it meant wheat alone and not the products of wheat like flour, maida and suji. We do not see how the said decision assists the argument of the learned counsel. In items (2) and (3) of Notification No.885-F.T., the words "that is to say" seem to refer to the botanical expression following the said words. Be that as it may, the said words cannot, by any stretch of imagination, be taken to indicate that broken, powdered or any other form of pepper are different goods from pepper. A

The appeals are allowed accordingly. The judgment of the West Bengal Taxation Tribunal is set aside. There shall be no order as to costs. B

R.P. Appeals allowed.