PETITIONER:
STATE OF WEST BENGAL & ORS. ETC.

Vs.

RESPONDENT:
LAL CHAND AGARWALLA & ORS. ETC.

DATE OF JUDGMENT24/03/1987

BENCH:
RAY, B.C. (J)
BENCH:
RAY, B.C. (J)
THAKKAR, M.P. (J)

CITATION:
1987 AIR 1316 1987 SCR (2) 621
1987 SCC (2) 504 JT 1987 (1) 758
1987 SCALE (1)584

ACT:

Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1970 as amended in 1972 and 1974, section 6 read with Item 4 of Schedule thereto---Exigibility to levy of Entry tax-Words and phrases-"Groundnut", whether a "nut’ within the description of the specified goods under the head "Class I--Articles of food and drink-"Edibles" attract levy of duty--In case the purpose of importer is to extract only oil therefrom, whether exempt from the levy.

HEADNOTE:

Section 6 of the Taxes on Entry of Goods into Calcutta Metropulitan Area Act, 1970 provides for imposition of levy and collection of taxes on the entry of every specified goods into Calcutta Metropolitan Area (for consumption, use or sale therein) from any place outside that area at such rate not exceeding the rates specified in the corresponding entry in Column 3 of the Schedule as the State Government may by notification specify. CIasa specifies articles liable to tax grouped under the caption of food and drink. Item 4(t) specifies "nuts excluding beetal nuts" as one of the items on which the rate of entry tax has been specifically mentioned therein. Under the said Class-l in item No.4(u) "oilman stores (except edible oils)" has been mentioned and in Class-3 under heading (b), item No. 22 refers to oil seeds of inedible oils as one of the specified items for imposition of tax.

The respondents who are licensed dealers under the West Bengal Edible Oil Seed Dealers Licensing Order, 1963 challenged the imposition of entry tax on groundnuts imported into Calcutta Metropolitan Area for the purpose of manufacture of groundnut oil under the provi-

sions of the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1970 on the ground that such importation of groundnuts as oil seeds is not subject to any levy under the provisions of the said Entry Tax Act in as much as there is no specific provision for levy on groundnuts as oil seeds for manufacturing edible oil. The respondents prayed for a mandate directing the appellants not to impose any entry tax on the ground that they are edible nuts failing under specific entry 01 edibles provided in the Schedule to the said Act, and with a further prayer for refund of the taxes already imposed and collected by the
622
respondents. A learned Single Judge of the Calcutta High Court issued a writ of mandamus as prayed for. The State appeal against the judgment and order was dismissed and the judgment and order of the learned Single Judge was affirmed. Hence the appeal by special leave.

Allowing the appeals, the Court,

HELD: 1. On a plain reading of the provisions of the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1970, it is clear and evident that groundnuts which answer the description of nuts is excisable to entry tax under the said Act. Once the goods answer the description of the item exigible to tax, under Item 4(t) the importer of such goods cannot escape liability depending on the use to which he puts. No question of speculating about intention of the legislature arises when "nuts" are in term specified as goods which are exigible to tax and "groundnuts" fall under the description of "nuts". That groundnuts are nuts is not disputed nor disputable that it is not so. Groundnuts are "nuts" whether the same are consumed as they are or whether they are crushed for extracting oil--they do not cease to be nuts. [626E-H; 627A-B]

2. The legislative intent to tax nuts being very clear there is no room for considering whether groundnut is also oil seed used for manufacturing edible oil, "why" it is imported and whether it is exempt from entry tax on that account. Undoubtedly, nuts include groundnut also. Though the 1970 Act was replaced by the Taxes on Entry of Goods into Calcutta Metropolitan Area, 1972 making identical provisions for the imposition of entry tax on specified goods entering into Calcutta Metropolitan Area, West Bengal Act XIX of 1974 specifically mentioned in SI.No.4 item No. (u) for the words "nuts excluding betel nuts" the words "nuts including groundnuts, cashewnuts and walnuts but excluding betel nuts" shall be, and shall be deemed always to have been substituted. [627B-G]

3. The words "nuts including groundnuts, cashewnuts and Walnuts but excluding betel nuts" has been substituted retrospectively for

the words "nuts excluding betel nuts" in item No. 4(u). This amendment is clarificatory in nature and makes explicit what was implicit out of abundant caution, and clearly puts an end to all controversies as to whether groundnuts imported into Calcutta Metropolitan Area from outside is liable to imposition of entry tax. It makes patently clear that groundnuts as one of the "nuts" was always subject to the imposition of entry tax under the said Entry Tax Act. Therefore, the contention that groundnut imported into Calcutta Metropolitan
623
Area for the purpose of manufacture of groundnut oil which is one of the edible oils and which is exempted from the imposition of levy of entry tax cannot be sustained any longer in view of the express provisions of the Act. [627G-H; 628A-B]

Avadh Sugar Mills Ltd. v. Sales Tax Officer & Anr., [1973] (Vol. 31) STC 469 (SC), distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1387 of 1973.

From the Judgment and Order dated 31.5.1973 of the Calcutta High Court in Appeal from Original Order No. 612 of 1971.

WITH

CIVIL APPEAL NO. 4301 of 1984.

From the Judgment and Order dated 9.9. 1981 of the Calcutta High Court in Appeal from Original Order (F.M.A.) No. 459 of 1980.

Govind Das and Mr. G.S. Chatterjee for the Appellants.

D.N. Mukherjee for the Respondents in C.A. No. 1387 of 1973.

A.K. Ganguli and Miss Mridula Ray for the Respondent in C.A. No. 4301 of 1984.

The Judgment of the Court was delivered by

B.C. RAY, J. Civil appeal No, 1387/73. This appeal by special leave is against the judgment and order passed in appeal from Original Order No.612 of 1971 dated May 31, 1973 by the Division Bench of the High Court of Calcutta affirming the judgment and order of the learned Single Judge made in Civil Revision Case No. 5805 of 1970. The respondents who are licensed dealers under the West Bengal Edible Oil Seed Dealers Licensing Order, 1963 have challenged the imposition of entry tax on groundnuts imported into Calcutta Metropolitan Area for the purpose of manufacture of groundnut oil under the provisions of the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1970 on the ground that such importation of groundnuts as oil seeds is not subject to any levy under the provisions of the said Entry Tax Act in as much as there is no specific provision for levy on groundnuts as oil seeds for manufacturing edible
624

oil. They have therefore prayed for a mandate directing the appellants not to impose any entry tax on the ground that they are edible nuts failing under specific entry of edibles provides in the Schedule to the said Act. There was also a prayer or refund of the taxes already imposed and collected by the respondents.

The learned single Judge who issued the rule after hearing both the parties held that though under SI. No. 4, item No. (t) of the Schedule to the said Act, 'nuts' was a specified item for purposes of imposition of entry tax as shown in corresponding column No. 3 in the said Schedule yet the learned Judge held that since groundnut is oil seed for manufacturing edible oil which is not subject to entry tax, the groundnut imported for the purpose of extracting oil as oil seed by the dealers was not subject to the imposition of entry tax. It was further held that the term groundnut might answer the description of being nuts used as edibles as also oil seeds for edible oils. The legislature intended to impose levy on 'nuts' imported as edibles and not to cover such nuts imported as oil seeds for edible oils. The rule was made absolute with costs and a writ of mandamus was issued directing the appellants herein not to impose any levy under the provisions of the said Act. There was also a further mandate upon the appellants herein directing them to refund all taxes realised under the said Act on groundnut imported by the petitioners, respondents herein into Calcutta Metropolitan Area.

Against this judgment and order the appellant State of West Bengal preferred an appeal. This appeal was dismissed and the judgment and order of the learned single Judge was affirmed. It was held that the intention of the legislature was that edible oil or oil seeds would not be liable to tax. The Court referring to the decision in Avadh Sugar Mills Ltd. v. Sales Tax Officer & Anr., [1973] (Vol. 31) STC 469 (S.C.) held that in commercial circle 'groundnut' was treated as 'oil seed' for manufacture of oil. It did not refer to 'nuts' as such, and as such groundnut did not fail with the ambit of entry tax as provided in the said Entry Tax Act. Against this judgment and order the instant appeal on special leave was filed.

The sole question that poses itself for consideration in this appeal is whether groundnuts falling within the description of 'nuts' in Schedule in Class-l, item No. 4(t) is liable to be taxed under the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1970 in case the purpose of importer is to extract oil therefrom. It has been urged on behalf of the respondents that oil seeds or edible oils are not
625
specified items for the purpose of imposition of entry tax under section 6(1) of the said

Act. The importation into Calcutta Metropolitan Area of groundnuts by the respondents for the purpose of manufacturing groundnut oil is exempt from the levy of entry tax according to them. It is necessary to quote here the relevant provisions of the Schedule for the purpose of determining this question.

....

Serial No.	Specified goods	Rates of tax
1	2	3
X	X X X Class I--Articles of food and drink	
4.	Edibles--	
X	X X X	
	t. nuts, excluding betal nuts	6 per-cent ad valorem
	u. oilman stores (except edible oils)	(1/2 per-cent ad valorem for dry fruits) -do-
x	x x x x	
	Class-III. Articles for industrial use and articles used for fuel, lighting, washing and polishing.	
	A .-- Articles for industrial use and articles used for fuel.	
X	X X X	
16.	Mineral oils of all sorts--	
X	X X X	
	(xii) Turkey red oil, bye-products of mineral oils	2 paise per litre
x	x x	
	(b) Crude oil	1 paise per litre
	(c) grease, petroleum jelly	2 percent ad valorem
	B .--Articles used for 0lighting.	
x		
22.	Oilseeds for inedible oils	50 paise per 50 kilograms

Section 6 of the said Act provides for imposition of levy and collection of taxes on the entry of every specified goods into Calcutta Metropolitan Area (for consumption, use or sale therein) from any place outside that area at such rate not exceeding the rates specified in the corresponding entry in column No. 3 of this Schedule as the State
626
Government may by notification specify. The State Government specified the goods entry of

which into Calcutta Metropolitan Area will be liable to tax under this Act at the rate specified in corresponding column No. 3 of the Schedule. On a reading of the aforesaid Schedule it is clear and evident that Class-I specifies articles liable to tax grouped under the caption of food and drink. Item No. 4(t) specifies nuts excluding betel nuts as one of the items on which the rate of entry tax has been specifically mentioned therein. Under the said Class-I in item No. 4(u) oilman stores (except edible oils) has been mentioned and in Class-3 under heading (B) item No. 22 refers to oil seeds of inedible oil as one of the specified items for imposition of tax. It has been urged on behalf of the respondents that a edible oils are exempted from imposition of tax under the said Act groundnut which is imported by the respondent dealers from outside the State into Calcutta Metropolitan Area for the purpose of manufacture of groundnut oil is exempted from the imposition of entry tax. It has been further urged in this connection that a very negligible quantity of groundnuts is used for edible purposes. The ground nuts are generally used as oil seeds for the purpose of manufacturing edible oil i.e. groundnut oil. It has been submitted that though groundnut is included within nuts in item No. 4(t) yet it was rightly held by the Courts below that ground nuts used as oil seeds for the purpose of manufacture of groundnut oil is free from imposition of entry tax and as such the appeal should be dismissed. This contention of the learned counsel on behalf of the respondents cannot be sustained in as much as 'nuts' has been specified as one of the items liable to be taxed under 4(t) for imposition of tax at the rate mentioned in corresponding column No. 3. So on a plain reading of the said provisions it is clear and evident that groundnuts which answer the description of nuts is excisable to entry tax under the said Act. It is unnecessary to go into the question as to whether groundnut is also used for the purpose of extracting edible oil. The observations of this Court in the case of Avadh Sugar Mills Ltd. v. Sales Tax Officer & Another (supra) wherein groundnut has been taken as oil seed for the purpose of U.P. Sales Tax Act. This has no beating for the purpose of imposition of entry tax under the said Entry Tax Act, 1970 as it has been mentioned already hereinbefore that under item No. 4(t) 'nuts' has been specifically mentioned as one of the specified goods for the imposition of entry tax. Once the goods answer the description of the item exigible to tax, the importer of such goods cannot escape liability depending on the use to which he puts. No question of speculating about intention of the legislature arises when 'nuts' are in term specified as goods which are exigible to tax and 'groundnuts' fall under the description of 'nuts'. That groundnuts are

627

nuts is not disputed nor disputable that it is not so. An extract from Encyclopedia Britannica also leaves no room for doubt on this score and even the contention of the respondents is not that groundnuts are not 'nuts' but that when same are imported for extracting oil the same are not exigible to tax. Groundnuts are 'nuts' whether the same are consumed as they are or whether they are crushed for extracting oil--they do not cease to be nuts. The relevant extract is appended below as appendix "A".

The legislative intent to tax nuts being very clear there is no room for considering whether groundnut is also oil seed used for manufacturing edible oil 'why' it is imported and whether it is exempt from entry tax on that account. Undoubtedly, nuts include groundnut also. The contention of the respondents in our considered opinion is totally devoid of any merit and as such it is overruled. It is very relevant to mention here that the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1970 was replaced by the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 (West Bengal Act V of 1972). In the said Act identical provision has been made for the imposition of entry tax on specified goods entering into Calcutta Metropolitan Area', at the rates specified in corresponding column No. 3 of the items mentioned in the Schedule. Class I, item 4(u) specifies edible nuts excluding betel nuts as was in the previous Act of 1970. In Entry No. 22 under Class IV oil seeds of vegetable oils other than mustard, rape, groundnut etc. was mentioned. In item No. 24 of the said Class IV vegetable oils, other than mustard oil, groundnut oil etc. has been specifically mentioned. So this Act of 1972 also specifically mentions 'nuts' as one of the goods entry of which into Calcutta Metropolitan Area is subject to the levy of entry tax. This Act of 1972 was further amended in 1974 by West Bengal Act XIX of 1974. By the said Act it has been specifically mentioned in the Schedule to the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 in S1. No. 4, item No. (u) for the words 'nuts excluding betel nuts' the words 'nuts including groundnuts, cashewnuts and walnuts but excluding betel nuts' shah be, and shah be deemed always to have been, substituted. In other words, the words 'nuts including groundnuts, cashewnuts and walnuts but excluding betel nuts' has been substituted retrospectively for the words 'nuts excluding betel nuts' in item No. 4(u). This amendment is clarificatory in nature and makes explicit what was implicit out of abundant caution, and clearly puts an end to all controversies as to whether groundnuts imported into Calcutta Metropolitan Area from outside is liable to imposition of entry tax. It makes patently clear that groundnut as one of the 'nuts' was always

628

subject to the imposition of entry tax under the said Entry Tax Act. The contention that groundnut imported into Calcutta Metropolitan Area for the purpose of manufacture of groundnut oil which is one of the edible oils and which is exempted from the imposition of levy of entry tax cannot be sustained any longer in view of the express provisions of the Act.

Considering all these facts and circumstances as well as considering that nuts excluding betel nuts being one of the specified goods mentioned in the Schedule to the said Act clearly bring within its field groundnut; so groundnut imported into Calcutta Metropolitan Area is liable to the imposition of entry tax under the said Entry Tax Act. We therefore allow this appeal and set aside the judgment and order passed in Appeal from Original Order No. 612 of 1971 without any order as to costs. The writ petition giving rise to the appeal will stand dismissed.

In Civil Appeal No. 4301 of 1984 the respondent made a similar challenge that groundnut which the petitioner imported from outside the State into Calcutta Metropolitan Area could not be subjected to the levy of entry tax as the same is used as oil seed for manufacturing edible oil i.e. groundnut oil which is exempted from the incidence of entry tax under the said Act.. This challenge was made in 1974 when the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 as amended by the Amendment Act (West Bengal Act XIX of 1974) came into operation. We have already mentioned hereinbefore that in the Schedule to the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 in S1. No. 4, item (u) for the words 'nuts excluding betel nuts' the words 'nuts including groundnuts, cashewnuts and walnuts but excluding betels' shall be deemed always to have been substituted. In other words, this amendment has been given retrospective effect and groundnut being specifically mentioned in SI. No. 4(u) of the Schedule to the said Act, there is no scope for any controversy that 'groundnuts' imported into Calcutta Metropolitan , Area are liable to entry tax under the provisions of the said Act.

In this view of the matter this judgment will also govern Civil Appeal No. 4301 of 1984 wherein identical questions have been raised. This appeal is also allowed without any order as to costs. The writ petition giving rise to the appeal will stand dismissed with no order as to costs.

S.R. Appeals allowed.

629

Book Name: ENCYCLOPAEDIA BRITANNICA
Volume 16 Napoleon I to Ozonolysis
(Page 797 Nusaybin-NUI) Edition 1768

NUT, generally any seed or fruit consisting of a kernel, usually oily, surrounded by a hard or brittle shell. Most edible nuts, e.g., walnut, brazil nut, peanut, etc., are well known as dessert nuts. Not all nuts, however, are edible; some are used as sources of oil or fat and may be regarded as oil seeds (see Oil Plants); others are used for ornaments. The botanical definition of a nut, based on morphological features, is more restrictive: a hard, dry, one-called one seeded fruit that does not split open at maturity. Among the nuts that fit both the botanical and popular conception are the acorn, chestnut and filbert; other so-called nuts may be botanically seeds (Brazil nuts), legumes (peanuts) or drupes (almond, coconut, pecan and walnut), In this article the term nut will be used in its broadest sense unless otherwise indicated.

630