

(1955) 09 BOM CK 0081

**Bombay High Court****Case No:** Civil Ref. No. 9 of 1955

State of Bombay

APPELLANT

Vs

R.S. Phadtare

RESPONDENT

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**Date of Decision:** Sept. 8, 1955**Acts Referred:**

- Bombay Sales Tax Act, 1946 - Section 7

**Citation:** AIR 1956 Bom 496 : (1956) 7 STC 495**Hon'ble Judges:** Chagla, C.J; Tendolkar, J**Bench:** Division Bench**Advocate:** Advocate General and V.T. Gambhirwala, for Govt. Pleader, for the Appellant;  
V.S. Desai and M.B. Kadam, for the Respondent

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**Judgement**

Chagla, C.J.

This is a reference under the Sales Tax Act and the short question that arises for our determination is whether sugarcane is a fresh vegetable which is exempted from the provisions of the Sales Tax Act. We are concerned with the Act V. of 1946. and u/s 7 goods which were specified in the first column of Schedule II were exempted from the Sales Tax, and when we turn to this Schedule, item 8 is "Fresh vegetables" and item 9 is "Fresh fruits", and the contention of the assessee was that "sugarcane" was a "fresh vegetable" and therefore exempted from the tax. The Sales Tax Tribunal has accepted this contention, and the State has come on this reference.

2. "Vegetable" is not defined in the Act and therefore it is possible to put upon that expression one of two constructions, either we might put upon "vegetable" a construction which is consistent with the plain and natural meaning in the English language or we might put a construction which would give to that, expression a special meaning & look upon the expression as a term of art.

In its plain and natural meaning a "vegetable" clearly is wide enough to cover a "sugarcane"; but what is urged by the Advocate General is that we must not give it

that wide meaning but must give it the popular meaning as understood by people who deal in vegetables or eat vegetables, and it is urged that from that narrow and restricted point of view a sugarcane is not a vegetable. This is a taxing statute and if two constructions are possible, we must lean in favour of that construction which gives relief to the subject. That was exactly the approach of the Sales Tax Tribunal, and in our opinion, that approach was a very proper one.

3. Our attention has been drawn to two pieces of legislation which are in pari materia. One is the Central Statute which is Act 52 of 1952, Essential Goods (Declaration and Regulation of tax on sale or purchase) Act (52 of 1952), and that Act declared certain goods as essential to the life of the community, & in the schedule is mentioned fresh & dry fruits, sugarcane, cocoanuts, vegetable vegetable and flower seeds, etc., and it is contended that when the Legislature wanted to refer to sugarcane, it did so expressly and sugarcane was not covered by expression "vegetables". We are unable to accept this contention.

It is by no means plain that sugarcane and vegetables are mutually exclusive terms. Even though sugarcane may fall in the category of vegetables, the Legislature for greater caution may expressly refer to sugarcane. Same is the position with the Amending Act in of 1953. Under this Act in the exemption provision sugarcane is expressly mentioned as item 40, and it is therefore urged that when the Legislature wanted to exempt sugarcane it expressly did so.

But there are innumerable instances where the Legislature from greater caution or greater clarity refers to an article which is already covered by the wider category mentioned in the earlier part of the section, and therefore we are not at all satisfied that the Legislature in mentioning sugarcane in item 40 in Schedule A to the Amending Act necessarily referred to an item which did not already fall in item 24 which is the item of fresh vegetables and edible tubers. In any view of the case, the matter is not free from doubt or ambiguity, and if that is the position, the doubt or ambiguity must be resolved in favour of the subject and not in favour of the State.

4. The result is that the reference fails and must be dismissed. No order as to costs. Our answers to all the three questions will be in the affirmative.

5. Reference dismissed.