in the present case can seek protection. Apart from that, I am of the view that if under the general law of income-tax, as enacted in Act of 1922, the annuity which had been granted to the mother of the ruler was not assessable to tax, there could be no occasion or necessity for the assessee to seek the protection of the Part B States (Taxation Concessions) Order, 1950. The fact that the assessee sought the protection of that Order, in my opinion, clearly shows that it was taken for granted that under the general law of income-tax as given in Income Tax Act of 1922 the income was liable to tax.

Reference has also been made to the provisions of clause (vii) of sub-section (3) of section 4 of the Act according to which receipts, which are of a casual and non-recurring nature, shall not be included in the total income of the person receiving them. The assessee, however, can get no benefit from the above provision because the payment of the allowance in this case is neither casual nor of a non-recurring nature.

I may observe that Mr. Hardy, on behalf of the Revenue, has relied upon Article 295 of the Constitution in order to show that the above liability was accepted, before the coming into force of the Constitution, by the Union of India. It is, however, not necessary to go into this aspect of the matter in view of my observations made earlier.

After giving the matter my earnest consideration I am of the view that the amount of Rs. 10,000 received as annual allowance by the assessee during the assessment year in question was revenue income liable to tax under the Indian Income Tax Act, and that the question referred to this Court should be answered in the affirmative. I order accordingly. The parties, in the circumstances of the case, should bear their own costs.

S. B. CAPOOR, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before S. B. Capoor and H. R. Khanna, JJ.

M/S THE DELHI CLOTH AND GENERAL MILLS COMPANY LTD.,—*Petitioner*

versus

THE MUNICIPAL CORPORATION OF DELHI AND ANOTHER,—*Respondents.*

Civil Writ No. 620-D of 1966

September 28, 1966

Delhi Municipal Corporation Act (LXVI of 1957)—Schedule X, Clause I, Entries 3 and 16—Terminal tax on import of groundnut oil and other edible

vegetable oils into the Union Territory of Delhi—Whether payable under entry 3 or 16.

Held, that the groundnut oil cannot be said to be an admixture of ghee or vegetable ghee though it may be the chief ingredient for the preparation of vegetable ghee. The terminal tax on it and similar other edible vegetable oils on their import into the Union Territory of Delhi is payable in accordance with entry 16 and not in accordance with entry 3 of Class I of the Tenth Schedule of the Delhi Municipal Corporation Act, 1957.

Petition under Article 226 of the Constitution of India, praying that Your Lordships may be pleased to issue to respondents an appropriate writ, direction or order quashing the illegal levy of the Octroi Duty by respondent No. 1 on groundnut oil and sunflower oil from 31st July, 1966, and restraining respondents from charging from the petitioner company terminal tax and octroi duty on ground-nut oil and other vegetable oils to be imported by the petitioner into the limit of the Municipal Corporation of Delhi, at a rate in excess of what is authorised by law.

H. R. Gokhale, A. N. Sinha and S. L. Sethi, Advocates, for the Petitioner.

H. D. Hardy and R. L. Tandon, Advocates, for the Respondents.

JUDGMENT

Khanna, J.—The short question, which arises for determination in these two writ petitions Nos. 620-D and 688-D of 1966, filed by the Delhi Cloth and General Mills Company Limited, Delhi, and the Ganesh Flour Mills Company Limited, Delhi, respectively, is whether terminal tax on the import of groundnut oil and other edible vegetable oils within the limits of the Municipal Corporation of Delhi is payable in accordance with the rates specified in entry No. 3 or those specified in entry No. 16 of Class I of the Tenth Schedule of the Delhi Municipal Corporation Act, 1957 (66 of 1957) (hereinafter referred to as the Act).

The respondents in Civil Writ No. 620-D are the Municipal Corporation of Delhi and the Union of India, while those in Civil Writ No. 688-D are the Commissioner, Municipal Corporation, Delhi, and the Union of India. The two petitioner-Companies are engaged in the manufacture of Vanaspati (hydrogenated vegetable) ghee in Delhi, and for that purpose import raw, unprocessed and unrefined groundnut oil, til oil and sunflower oil from all over India. According to sub-section (1) of section 178 of the Act, on and from the

date of the establishment of the Corporation, there shall be levied on all goods carried by railway or road into the Union territory of Delhi from any place outside thereof, a terminal tax at the rates specified in the Tenth Schedule. Class I of the Tenth Schedule deals with the rates of terminal tax on articles of food and drink. Entries Nos. 3 and 16 of Class I read as under:—

"

	Articles	Terminal Tax payable per maund of gross weight except where otherwise stated
		Rs
1	* * *	
2	* * *	
3	Ghee including vegetable ghee, and admixtures of ghee also vegetable solidified oil, dripping, marvo, trex, cocogold, purico, crisco and cocogem.	1·75
	* * * *	
	* * *	
16	Animal fat, tallow and oil of all kinds except oils mentioned in Class III, V and IX	0·29"

Before 22nd July, 1966, terminal tax on the import of groundnut oil and other vegetable oils within the limits of Municipal Corporation, Delhi, was charged in accordance with the rates mentioned in entry No. 16, i.e., Re. 0.29 paise per maund and with effect from 1st April, 1965, at Re. 1.00 per quintal. On 22nd July, 1966, the Commissioner of Municipal Corporation issued instructions to the terminal tax collection staff that terminal tax on the import of groundnut oil and similar other vegetable oils be charged at the rate of Rs. 4.85 paise per quintal in accordance with entry No. 3 and not at the rate of Re. 1.00 per quintal, the rate mentioned in entry No. 16. The petitioners have challenged the levy of terminal tax on the import of groundnut oil and other vegetable oils at the rate of Rs. 4.85 per quintal instead of Re 1.00 per quintal, and according to them groundnut oil and other vegetables oils are covered by entry No. 16 and not entry No. 3. As against that, the case set up on behalf of respondent No. 1 in both the petitions is that groundnut oil and other oils

mentioned in the aforesaid instructions are admixtures of ghee and fall under entry No. 3, reproduced above. The Commissioner of Municipal Corporation, it is stated, in issuing the impugned instructions only corrected the error or mistake which had occurred in the past.

From the resume of facts given above, it is clear that the first question which arises for determination is whether groundnut oil is an admixture of ghee as mentioned in entry No. 3. The process of the preparation of vegetable ghee has been given in the two cases of *M/s Tungabhadra Industries Ltd., Kurnool* v. *The Commercial Tax Officer, Kurnool* (1), *and Union of India and another* v. *Delhi Cloth and General Mills Co. Ltd.* (2). It is, however, not necessary to reproduce that process. For the purpose of the present case it is sufficient to state that it is the common case of both the parties that groundnut oil is the principal constituent and ingredient out of which vegetable ghee is prepared. According to the Shorter Oxford English Dictionary, Third Edition, Volume I, the word "admixture" means "1. The action of mingling as an ingredient; the fact of being so mingled. 2. That which is mixed with anything; an alloy." Accepting the above meaning of the word "admixture", groundnut oil, in our opinion, cannot be said to be an admixture of ghee or vegetable ghee though it may be the chief ingredient for the preparation of vegetable ghee. When the Legislature used the word admixtures of ghee' in entry No. 3, it meant, in our view, anything which was mixed with ghee or vegetable ghee and not something which was used as the principal ingredient for the preparation of ghee. It is significant that entry No. 4 in Class I of the Tenth Schedule deals with butter and cream and provides the rate of terminal tax for those articles of food. Had the word "admixture" been used in the sense of being the principal component or ingredient of ghee, entry No. 4 would be superfluous and otiose because butter and cream would, according to the contention advanced on behalf of the respondents, be already provided for in entry No. 3. Entry No. 4 thus lends colour to the contention advanced on behalf of the petitioners that the word "admixture" in entry No. 3 has not been used to denote the principal component for the preparation of ghee and vegetable ghee.

(1) A.I.R. 1961 S.C. 412.
(2) A.I.R. 1963 S.C. 791

Although arguments have been addressed to us in the two petitions mainly in respect of groundnut oil, it is not disputed that so far as other edible or vegetable oils mentioned in direction dated 22nd July, 1966, of the Commissioner of Municipal Corporation are concerned, the same decision would govern them. So far as the words "vegetable solidified oil" mentioned in entry No. 3 are concerned, in our view they refer to vegetable oil which has assumed the solid form through some process of human agency as distinguished from oils which have assumed that form on account of drop in temperature by weather.

The matter can also be looked at from another angle. According to entry No. 16 terminal tax on import of oils of all kinds except oils mentioned in Classes III, V and IX is payable at the rate mentioned in that entry. Class III deals with the articles used for fuel, lighting and washing. Class V relates to drugs, spices and perfumes, while Class IX pertains to miscellaneous articles. Plain reading of entry No. 16 shows that it is of a comprehensive nature and deals with oils of all kinds except oils mentioned in Classes III, V and IX. Had it been the intention of the Legislature to exclude edible vegetable oil such as groundnut oil which forms the principal component for the preparation of vegetable ghee from the ambit of entry No. 16, there was nothing to prevent it from making an exemption in that entry in espect of groundnut oil and other edible vegetable oils also along with oils in Classes III, V and IX. If ground-nut oil and other similar edible oils were intended to be covered by entry No. 3, entry No. 16 would have read "animal fat, tallow and oil of all kinds except oils *mentioned in entry No. 3 of Class I and in Classes* III, V and IX." The fact that Legislature neither gave specific exemption to groundnut oil and other similar edible oils nor added the underlined (italicised herein) words in entry No. 16, in our view, clearly goes to show that terminal tax on groundnut oil and similar other edible oils was intended to be paid in accordance with entry No. 16 and not in accordance with entry No. 3.

Reliance on behalf of the respondents has been placed upon the affidavits of Shri Sudhamoy Roy and Dr. Sadgopal according to whom the groundnut oil and other similar vegetable oils fall under entry No. 3 and not under entry No. 16. This, however, is essentially a matter which is for the Court to decide by reference to the relevant provisions. If on consideration of those provisions the Court comes to

the view that groundnut oil and other similar edible oils are covered by entry No. 16 and not entry No. 3, its decision would not be affected by the above-mentioned expert opinion.

Reference has been made on behalf of the respondents to entry No. A. 17 of Appendix 'B' of the Prevention of Food Adulteration Rules, 1955, which deals with twelve types of edible oils and it has been argued that such of the edible oils as are used for the preparation of vegetable ghee fall in entry No. 3 of Class I referred to above, while the other edible oils fall in entry No. 16. We, however, find no basis in the different entries in the Tenth Schedule of the Act to warrant such a distinction. Apart from that, we are of the view that the different entries in the Tenth Schedule of the Act have to be construed on perusal of the relevant provisions of that Act and not by reference to the entries in Appendix 'B' of the Prevention of Food Adulteration Rules.

It is not disputed that the groundnut oil is also used for the purpose of preparing toilet articles. The groundnut oil imported for the preparation of toilet articles can hardly be called an admixture of ghee, yet, according to the submission made on behalf of the respondents, it would be taxed as such. It is also obvious that the Municipal Terminal Tax authorities cannot determine the purpose for which the groundnut oil imported in Delhi is ultimately going to be used, for the levy of terminal tax depends upon the nature of article and not the ultimate purpose for which it is to be used.

Lastly, it has also been argued on behalf of the respondents that it is primarily for the Municipal Authorities to determine as to whether the import of groundnut oil and similar other vegetable oils is covered by entry No. 3 or by entry No. 16, referred to above, and that Court can only interfere if the view taken by the Municipal authorities is manifestly unreasonable. Reference in this connection has been made to *A. V. Venkateswaran* v. *Ramchand Sobhraj Wadhwani and another* (3) and *Collector of Customs, Madras* v. *K. Ganga Setty* (4). The above-mentioned two authorities cannot be

(3) A.I.R. 1961 S.C. 1506.
(4) A.I.R. 1963 S.C. 1319.

of much avail to the respondents, because the direction issued by the Commissioner of Municipal Corporation for charging terminal tax in accordance with the rates mentioned in entry No. 3 and not entry No. 16, in our view, is manifestly erroneous and clearly unreasonable.

We, therefore, allow the petitions with costs and quash the direction dated 22nd July, 1966 of the Commissioner of Municipal Corporation for the levy of terminal tax on groundnut oil and other vegetable oils at the rate of Rs 4.85 paise instead of Rs 1.00 per quintal.

K.S.K

2353 ILR Government Press, Chandigarh.