



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 28th OF AUGUST, 2025

TAX REFERENCE No. 2 of 2015

M/S. TIRUPATI STARCH & CHEMICALS LTD. INDORE

Versus

COMMERCIAL TAXES DEPARTMENT

WITH

TAX REFERENCE No. 3 of 2015

M/S. TIRUPATI STARCH & CHEMICALS LTD. INDORE

Versus

COMMERCIAL TAXES DEPARTMENT

TAX REFERENCE No. 4 of 2015

M/S. TIRUPATI STARCH & CHEMICALS LTD. INDORE

Versus

COMMERCIAL TAXES DEPARTMENT

TAX REFERENCE No. 5 of 2015

M/S. TIRUPATI STARCH & CHEMICALS LTD. INDORE

Versus

COMMERCIAL TAXES DEPARTMENT

TAX REFERENCE No. 6 of 2015

M/S. TIRUPATI STARCH & CHEMICALS LTD. INDORE

Versus

COMMERCIAL TAXES DEPARTMENT



TAX REFERENCE No. 16 of 2016
M/S. TIRUPATI STARCH & CHEMICALS LTD. INDORE
Versus
COMMERCIAL TAXES DEPARTMENT

Appearance:

Shri Prakhar Karpe – Advocate for the petitioner.

Shri Bhuwan Gautam – Government Advocate for the respondent.

Reserved on : 07/08/2025

Pronounced on : 28/08/2025

ORDER

Per: Justice Vivek Rusia

1. This order shall govern the disposal of Tax Reference Nos. 2/2015, 3/2015, 4/2015, 5/2015, 6/2015 & 16/2016. Regard being had to the similarity of the controversy involved in the Tax References described above, they are heard analogously & disposed of by this common order.
2. The controversy arises when the Assistant Commissioner of Commercial Tax, Indore, treated ***Maize oil & Maize cake*** as independently taxable commodities & not as exempt by-products of Maize or Maize starch & consequently imposed tax on these items under entries covering vegetable oil & oil cake for all the above assessment periods.
3. The Commercial Tax Appellate Board, Bhopal, by a consolidated order, has referred the questions of law for the opinion of this court arising out of the dispute regarding the taxability of “Maize Oil & Maize Cake” manufactured & sold by the applicant. These tax references arise out of



reference applications filed by the applicant: M/s Tirupati Starch & Chemicals Ltd. Indore under Section 70(1) of the Madhya Pradesh Commercial Tax Act, 1994 registered as Reference Case Nos.71/CTAB/05, 72/CTAB/05, 73/CTAB/05, 29/CTAB/05, 30/CTAB/05 & 2/CTAB/10 pertaining to the assessment periods from 01.04.1994 to 31.03.1999.

4. The applicant is engaged in the manufacture & sale of Maize Starch, Dextrose, Gluten, Maize Oil, Maize Cake & allied products. The principal place of business is at Indore & the factory is situated at Ghata Billod in District Dhar. The process of manufacturing starch yields, apart from starch itself, certain derivatives such as Maize Oil & Maize Cake are by-products.

5. For various assessment periods from 01.04.1994 to 31.03.1999, the applicant was assessed under the provisions of the M.P. Commercial Tax Act, 1994. The Assistant Commissioner of Commercial Tax, Indore, treated Maize Oil & Maize Cake as independently taxable commodities & not as exempt by-products of Maize or Maize starch & consequently imposed tax on these items under entries covering vegetable oil & oil cake for all the above assessment periods.

6. Aggrieved by the said orders, the applicant preferred first appeals before the Deputy Commissioner of Commercial Tax, Indore Division-I which were partly allowed & the matters were remanded back to the Assessing Officer for reconsideration observing that the applicant had not been afforded adequate opportunity & the claim of exemption had not been properly considered & the assessing officer was further directed to re-examine the issue of tax liability on Maize Oil & Maize Cake.



7. The issue in question, related to ***whether Maize Oil & Maize Cake are produced during the starch manufacturing process, could be treated as exempt by-products of cereals under Entry 91(ii) of Schedule I to the Act.***

However, upon remand, the Assessing Officer passed a fresh order reaffirming the original view & maintaining the levy of tax on Maize oil & Maize cake as independent products.

8. Aggrieved by this order, the applicant preferred a second appeal before the Commercial Tax Appellate Board. The Board vide common order dated 25.08.2005 partly allowed the appeal & again remanded back the matter to the assessing officer for recalculation of tax under Section 8A of the Act. Against this common order, the applicant applied to the Board for reference under Section 70 of the Act. The Board after hearing the arguments advanced by both sides and perusing the record considered the submission of applicant that Maize Oil & Maize Cake are by-products of Maize starch & therefore exempt from tax under Schedule-I, Entry 91 of the Act relying on the judgment of this court in ***Raja Ram & Bros. v. CCT, M.P. & Others reported in (2010) 16 STJ 105*** wherein Maize was treated as a grain & its oil & cake were held to be its by-products. However, the Board, after analysis, concluded that in the process of manufacturing starch, the resultant Maize Oil & Maize Cake cannot be classified as by-products of Maize starch as claimed, but are to be recognised as independent commodities in trade & since they fall under separate entries as vegetable & edible oil, they are taxable. However, considering that the matter raised substantial questions of law touching the nature & classification of Maize



Oil & Maize Cake, the Board vide order dated 16.11.2011 decided to refer the same to this court for adjudication :

1. *"Whether, on the facts & in the circumstances of the case, the M.P. Commercial Tax Appellate Board was justified in law in holding that "Maize Oil & Maize Cake " are by-products of Maize starch?"*
2. *"If the answer to question No.1 is the negative, whether "Maize oil & Maize cake" are by products of Maize, a cereal & if so, whether they are covered under schedule I, entry 91 (ii) of M.P. Commercial Tax Act, 1994 specifying therein "by products" of cereals & food grains," as stood at the relevant time?"*
3. • *"Whether the Appellate Board was right in law in holding that entry 38 of part V of schedule II to the M.P. Commercial Tax Act, 1994 specifying "vegetable & edible oil except hydrogenated vegetable oil" was a specific entry?"*
 - *"If the answer to question No.1 is that Maize oil & Maize cake are by-products of Maize, whether they are covered under entry 91 ii) of Schedule I to the M.P. Commercial Tax Act, 1994 specifying therein "By-products of cereals & food grains" exempted from tax & not under entry 38 of part V of Schedule II to the said Act?"*
4. *If the answer to question No.3 is in the negative, whether entry 38 of part V of Schedule II specifying therein "vegetable & edible oil except hydrogenated vegetable oil & entry 15 of part V of Schedule II specifying therein "oil cake including de-oiled cake" as stood at the relevant time were general entries?"*



5. *"If the answer to question No.4 is the affirmative whether "Maize oil & Maize cake" will be covered under entry 91 (ii) of Schedule II of the M.P. Commercial Tax Act, 1994 exempted from payment of tax generally &, therefore they were also exempt from payment of central sales tax u/s 8(2A) of the Central Sales Tax Act, 1956?"*

Submissions of the Applicant

9. Shri Prakhar Karpe, learned counsel appearing for the applicant, submitted that the assessing authority as well as the Board committed an error by treating Maize Oil & Maize Cake as independent taxable commodities. The manufacturing process undertaken by the applicant is primarily for the production of Maize starch and in the course of such process, Maize oil & Maize cake inevitably emerge as secondary/allied products. These products by their very nature are inseparably linked with the processing of Maize and cannot be regarded as commodities brought into existence by any independent act of manufacture. Once the law under Entry 91(ii) of Schedule I to the M.P. Commercial Tax Act, 1994 specifically exempts "by-products of cereals & food grains," the said entry squarely covers Maize oil & Maize cake as they are nothing but by-products of Maize, which is a cereal. The expression "by-products" has to be given its natural & commercial meaning and in common parlance, whatever arises incidentally in the course of manufacture from a cereal without any separate or distinct process is a by-product. Learned counsel has placed reliance on the judgment of this Court in the case of **Raja Ram & Bros. v. CCT, M.P. (supra)**, wherein Maize grain, its oil and Maize cake were all treated as by-products of Maize & it was held that such commodities were entitled to



exemption. Learned counsel further submitted that the authorities failed to appreciate that the legislature intended to exempt all incidental products derived from cereals & food grains and, therefore, no liability of tax could be imposed on Maize oil & Maize cake. The attempt of the Department to classify these items under Entry 38 of Part V of Schedule II, which refers to vegetable and edible oil except hydrogenated vegetable oil and Entry 15 referring to oil cake, including de-oiled cake, is misconceived. The general scheme of the fiscal act is that where a commodity is exempted under Schedule I, the same cannot be brought into the tax net through a general entry in Schedule II. Thus, it is prayed that the referred questions be answered in favour of the applicant, holding that Maize oil & Maize cake are by-products of Maize starch and covered under Entry 91(ii) of Schedule I and consequently, no tax should be levied.

Submission of Respondent/ State

10. Shri Bhuwan Gautam, learned Government Advocate for the respondent, supported the orders of the assessing authority and the Board and submitted that Maize oil & Maize cake cannot be treated as mere incidental or residual by-products of starch as they are independent commodities known in trade & commerce with separate commercial identity and use. He further submitted that Maize oil is directly marketed and sold as a cooking medium and edible oil, while Maize cake is utilised in the cattle-feed industry as oil cake. Both of these articles are separately dealt with by traders and consumers and are not merely waste or incidental outputs of the starch industry. The scheme of the M.P. Commercial Tax Act makes a clear distinction between commodities that are exempted under Schedule I and



those specifically taxable under Schedule II. Entry 38 of Part V of Schedule II expressly mentions vegetable & edible oil except hydrogenated vegetable oil and Entry 15 of Part V covers oil cake, including de-oiled cake. These are specific entries and once a commodity is covered by a specific entry in the taxing schedule, it cannot be relegated to a general exemption clause, and to treat Maize oil & Maize cake as exempt merely on the ground that they arise from Maize, would amount to rewriting the legislative entries. Thus, the learned Government Advocate prayed that the reference questions be answered in favour of the respondent department by affirming the view that Maize oil & Maize cake are distinct taxable commodities falling under Schedule II of the Act and are subject to tax.

We have heard the learned counsel for the parties at length and perused the record.

11. The aforesaid references have been admitted on the following questions of law framed by this court:-

(1) Whether, on the facts & circumstances of the case, the Tribunal was justified in holding that “Maize oil & Maize cake” are by products of Maize starch covered under Schedule I, entry 91(ii) of M.P. Commercial Tax Act, 1994 & they were also exempted from payment of central sales tax under Section 8(2A) of the Central Sales Act, 1956? &

(2) Whether, in the facts & circumstances of the case, the Tribunal was justified in holding that entry 38 of part V of Schedule II to the M.P. Commercial Tax Act, 1994 specifying “vegetable & edible oil except hydrogenated vegetable oil” was a specific entry?

12. The applicant asserts that while producing starch from maize, Maize oil & Maize cake come out as by-products in its industry, therefore, they are



liable to be exempted as incidental or secondary products. In the Commercial Tax Act, as per Entry No. 91 Schedule I, the by-products of cereals are exempted from the tax, and starch is a cereal, hence according to the applicant, all the by-products of starch are liable to be exempted. The Maize oil & Maize cake are also the products of the applicant, apart from the starch, which are being sold in the market. In the dictionary meaning the by-product means 'an incidental or secondary product made in the manufacturing of something else'. The learned Tax Board has held that the Maize oil & Maize cake can be a by-product of starch but not the by-product of Maize, and Maize is a cereal. The main manufacturing product of the applicant is starch from Maize or Makka, and during this process, Maize oil & Maize cake are manufactured as by-products, but they have an independent identity in the market. Therefore, the learned Board has rightly said that the Maize oil & the Maize cake are the by-products of starch and not the by-product of Maize or Makka, which is a cereal. Under Entry 91 of Schedule I, by-products of cereal are exempted and the starch is not cereal, whereas Maize or Makka is a cereal which was not considered by the Division Bench while deciding **Raja Ram & Bros. v. CCT, M.P. (supra)**.

13. By-product of a cereal is a general entry under Entry 91 of Schedule I, whereas vegetable & edible oil are a specific entry under Entry No.12 of Part 6 of Schedule II. Admittedly, Maize oil & the Maize cake are vegetable and edible oils. The Supreme Court of India in the case of **Commissioner of Commercial Tax, U.P., Vs. M/s A.R. Thermosets Pvt. Ltd.** reported in **2016(16) SCC 122** held that resort can be made to a residuary heading only when, by liberal construction, the specific Entry cannot cover the goods in question. In the case of **Hindustan Poles Corporation Vs. Commissioner of**



Central Excise reported in 2006(4) SCC 85 also the Apex Court held that the residuary entry is meant to cover only those categories of goods which clearly fall outside the ambit of the main entry. It is also not in dispute that the Maize oil & Maize cake are independently declared as goods as edible oil under the Commercial Tax Act/VAT Act.

14. In the case of this present applicant, these two products, *viz.* Maize oil & the Maize cake are being manufactured while manufacturing the starch. This could be one of the methods of production of Maize oil & Maize cake. Therefore, the same cannot be treated as a by-product of cereals. In the case of ***M/s A.R. Thermosets Pvt. Ltd*** (supra), the Apex Court held that the nature and composition of the product or the goods and the particular entry in the classification table are important. Matching of the good with the Entry or Entries in the Schedules is tested based on the identity of the goods in question with the Entry or the contesting entries and by applying the common parlance test, i.e. whether the goods as understood in the commercial or business parlance are identical or similar to the description of the Entry. Where such similarity in popular sense of meaning exists, the generic entity would be construed as including the goods in question. Sometimes, under certain circumstances, the end use test, i.e., use of the good & its comparison with the Entry is applied. In the case of the ***State of Maharashtra Vs. M/s. Bradma of India Ltd. Reported in 2005(2) SCC 669***, the Supreme Court of India observed that the general principle is that the specific entry would override a general entry. In the case of ***Commercial Tax Officer Vs. M/s Jalani Enterprises reported in 2011(4) SCC 386***, also the Apex Court held that while dealing with the question of Sales Tax / VAT under the Rajasthan Sales Tax Act, if from the record it was established that



the product in question could be brought under a specific entry, then there is no reason to take resort to the residuary entry. The revenue cannot be permitted to travel to the residuary entry when the product can be covered under the specific entry, but in the present case, the applicant is relying on a residuary entry, whereas the revenue is insisting that so-called by-product Maize oil & the Maize cake are covered under the specific entry as an independent product.

15. In the present case, the applicant is relying on a general entry, whereas, as per the case of the Department, there is a specific entry for vegetable oil & vegetable cake. Therefore, instead of applying the general entry/residuary entry that all the by-products of cereals are exempted, the applicant is not entitled to exemption.

16. The applicant is admittedly engaged in the manufacturing of starch, dextrose, gluten, Maize oil, Maize cake and their sale. Therefore, the applicant is manufacturing and selling Maize oil & Maize cake as independent products along with other products. By chance, they are being manufactured while manufacturing the main product, i.e. starch. Admittedly, starch is not exempted; therefore, its by-products, Maize oil & Maize cake, cannot be treated as exempted.

17. Therefore, the question of law No.1 framed by the Appellate Board vide order dated 16.11.2011 that *whether on the facts & circumstances of the case, the M.P. Commercial Tax Appellate Board was justified in law in holding that "Maize oil & Maize cake" are by-products of Maize starch*, is answered in the affirmative in favour of the Revenue Department. Therefore, the question of law No.2 need not be answered as the Maize oil & Maize cake are not the by-products of cereal & food grains. Resultantly, question



No.3 is also answered in favour of the Revenue Department, that the Appellate Board was justified in law in holding that Entry 38 of Part V of Schedule II of the M.P. Commercial Tax Act, 1994 specifying "vegetable & edible oil except hydrogenated vegetable oil" was a specific entry. Since the answer to question No.3 has been answered in the affirmative, question No.4 is not required to be answered. Since the Maize oil & Maize cake are not covered under Entry 91(ii) of Schedule II of the M.P. Commercial Tax Act, 1994, for the purpose of exemption from payment of tax, therefore, they are also not exempted from payment of central sales tax under Section 8(2A) of the Central Sales Tax Act, 1956.

18. In view of the above, all the Tax References answered and are disposed of.

19. Signed order be kept in the file of TR No.2/2015 and a copy thereof be placed in the file of TR Nos 3/2015, 4/2015, 5/2015, 6/2015 & 16/2016.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE