IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX REFERENCE NO. 24 OF 2010

The Commissioner Of Sales Tax Maharashtra State, Mumbai ...Applicant

Versus

M-s Nestle India Ltd. ...Respondent

Ms. Jyoti Chavan, Addl. G.P, for Applicant.

Ms. Nikita Badheka a/w Lata Nagal, for Respondent.

CORAM : M.S. Sonak &
Advait M. Sethna, JJ.

DATED : 27 November 2025

ORAL JUDGMENT (*Per M.S. Sonak,J*):-

1. Heard learned counsel for the parties.

2. This is a reference arising under Section 61 of the Bombay Sales Tax Act, 1959 ("**said Act"**) made to this Court by the Maharashtra Sales Tax Tribunal ("**Tribunal**") to determine the following question:-

> *"Whether on a true and proper interpretation of entry 18(2) of the Schedule 'C' Part II of the Bombay Sales Tax Act, 1959 the Tribunal was correct in holding that the product "Coffee and Instant Drinks Nescafe Premix" sold vide Invoice No. M 81-32778 dated February 7, 1998 is not covered by the Scope of entry 18(2) of Schedule 'C' Part II, but is covered by the Entry 3 of Schedule 'C' Part II?"*

3. The Statement of Facts accompanying the reference order encapsulates the facts and circumstances in which the

above question came to be referred for determination of this Court. The same is transcribed below for the convenience of reference: -

> *"M/s. Nestle India Ltd is dealing in diverse consumer produce. One of them is Nescafe prepared Mix for vender machines the dealer is registered under Bombay Sales Tax Act, 1959. The dealer had filed a petition before the Commissioner of Sales Tax for seeing determination on the rate of tax on "Coffee and Instant Drinks 'Nescafe Premix' sold vide invoice No. M 81-32779 dated 7.2.1998. It was argued before the Commissioner that in common parlance, the impugned product is known as "Instant Coffee". The product was nothing but instant coffee. Since Instant Coffee could be prepared by making the impugned product in hot water. The dealer argued that the impugned products to be covered under the Schedule Entry C-II-3 which specifically includes "Instant Coffee subject to 8% sales Tax.*
>
> *The Commissioner of Sales Tax observed that the impugned product is not instant coffee. The product contains ingredients like.*
>
> | | | |
> |---|---|---|
> | *i* | *Soluble Coffee Powder* | *8.5%* |
> | *ii* | *Sucrose* | *54.0%* |
> | *iii* | *Partially Skimmed Milk Powder* | *37.0%* |
> | *iv* | *Maltodextrine* | *0.5%* |
>
> *From the aforesaid description, he came to the conclusion that impugned product is in form from which coffee a beverage is prepared. Therefore, the Commissioner held that the "coffee and Instant Drinks Nescafe Premix" would be powder from which no alcoholic beverages are prepared and covered by Schedule Entry C-II-18(2) liable for sales tax at the rate of thirteen paise in a rupee.*
>
> *Being aggrieved by the order passed by the Commissioner under section 52(1)(c) of the Bombay Sales Tax Act, 1959, the dealer filed appeal before the Maharashtra Sales Tax Tribunal. The Tribunal relied on the Supreme Court Judgment in the case of M/s. Forage & Co. Vs. Municipal Council of Greater Bombay, JT 1999 (9) SC 57. In which, Supreme Court held that the concept of quantity was not at all decisive of the matter.*
>
> *The Tribunal set aside the D.D.Q. Order passed by the Commissioner and held that the Coffee and Instant Drinks Nescafe Premix is covered by the Schedule Entry C-II-3 of the B.S.T. Act liable for sales tax at the rate of eight paise in*

a rupee."

4. To determine the above question, we must refer to Entries C-II-3 and C-II-18 in the Schedule to the Bombay Sales Tax Act. The two competing entries read thus :-

"Entry C-II-3

Sr. No.	*Description of goods*	*Rate of sales Tax*	*Rate of Purchase Tax*	*Period*
1	*2*	*3*	*4*	*5*
3.	*Coffee, Chicory and tea in instant coffee. Rate reduced to 4% on tea when sold not in sealed container and not above 10 Kg. Refer entry A-90 of Noti. U/s. 41 w.e.f. 1.5.98 to 31.3.99.*	*8%*	*8*	*1.10.1995 to date*
Entry C-II-18				
1	*2*	*3*	*4*	*5*
18(1)	*Non-alcoholic beverage including vegetable or fruit juices, squashes, syrups and cordials when sold in sealed, capsuled or corked bottles, jars, tins. Drugs or other containers (but except those covered by entry 21 of this part of the Schedule)*	*13%*	*13%*	*1.10.1996 to date*
1	*2*	*3*	*4*	*5*
18(2)	*Powders, tablets,*	*16%*	*16%*	*1.10.1995*

	cubes Crystals and other solids from which non-alcoholic beverages and soups are prepared			*to 30.9.1996*
(2)	*Do*	*13%*	*13%*	*1.10.1996 to date*

5. In this case, we are concerned with the classification and consequently the determination of tax rate for the respondent's product "Nescafe premix". There is no dispute that this product is used for preparing Nescafe through a vending machine by simply pouring hot water into the premix. There is also no dispute about the contents of the premix i.e. Soluble Coffee Powder 8.5%, Sucrose 54.0%, Partially skimmed milk powder 37%, Maltodextrin 0.5%.

6. Therefore, the question which arises for our determination is whether the above product could be classified under Entry C-II-3 thereby attracting tax of 8% or the same was classifiable under Entry C-II-18 (2), thereby attracting a tax of 16 %.

7. By judgment and order dated 8 December 1998, the Commissioner of Sales Tax determined that the product would be governed by Entry C-II-18(2). On an appeal, however, the tribunal, by its judgment and order dated 6 January 2001, referred the Commissioner, and held that the product was to be governed by schedule entry C-II-3. At the instance of the Sales Tax Department, however, reference was

made to this Court under Section 61 of the Sales Tax Act to determine the above question.

8. Firstly, it was contended before us that the Commissioner was justified in holding that the product in question would not be classified as "coffee" or "instant coffee" because the percentage of coffee in this premix was "*Miniscule 8.5%".*

9. The Appellate Court, by relying upon the Hon'ble Supreme Court decisions in the case of ***Forge & Co. Vs. Municipal Corporation of Greater Bombay & Ors***[1] has disagreed with this reasoning of the Commissioner. In the said decision, the Hon'ble Supreme Court has firstly held that for the imposition of the levy, what has to be seen is that the article in question is enumerated in the Schedule to the statute imposing the tax. If the article is enumerated therein, then regardless of the heading under which it is mentioned, the authority concerned would be entitled to levy tax in respect of the article. Thus, the heading is not decisive of whether an article mentioned in the Schedule can be subjected to tax.

10. Secondly, the Hon'ble Supreme Court has also held that the percentage of the ingredients is also not decisive in such matters. The Hon'ble Supreme Court was confronted with the issue that only 0.25% of Zinc oxide was mixed with the paint used in the buildings, and therefore, it could not be

[1]. (1999) 8 SCC 577)

regarded as a ground for concluding that Zinc oxide was not an article used in the construction of buildings.

11. The Court observed that if this reason of the learned Single Judge was correct, it would mean that a pinch of salt which is added in preparing food cannot be regarded as an item of food because of the small quantity which is used in the said preparation. The Court held that what is to be seen for the purpose of imposition of levy of octroi is whether an item in question is enumerated in the Schedule or not. If the item is mentioned therein, then irrespective of the heading under which it is contained, the Corporation would be entitled to levy octroi on the import of the said item.

12. Thus, we are satisfied that the Tribunal, in this case, was justified in reversing the Commissioner's view that the product in question would not be classified under Entry C-II-3 because the percentage of soluble coffee powder therein was only 8.5%. Ultimately, in all such matters, we must go by the common parlance test. Admittedly, the product was not only styled as an "Nescafé premix", but it was also used to prepare a "Nescafé" vended through a vending machine. Such Nescafé was being prepared by simply pouring hot water into the premix. The resultant product, in common parlance, was nothing but Nescafé. Entry C-II-3 includes not just "coffee" but also "instant coffee". Thus, in common parlance, this was nothing but an "instant coffee" prepared by pouring hot water into the premix.

13. The Tribunal has correctly reasoned that if the soluble coffee powder were to be withdrawn from the Nescafé premix, no matter what its percentage from the premix, then the perception of such a product in common parlance would be entirely different. Therefore, the Tribunal reasoned that once the final product after pouring hot water into the premix, at least, in common parlance was regarded as, "coffee" or "instant coffee", the product in question was liable to be classified under Entry C-II-3, which was a specific entry and not under Entry C-II-18(2) which was, a general entry in the context of powders from which nonalcoholic beverages are prepared. One of the fundamental tests in the matter of classification is that specific entries would prevail over the general entries.

14. The Hon'ble Supreme Court in the case of ***Bharat Forge and Press Industries Pvt. Ltd. Vs. Collector of Central Excise, Baroda***[2]**,** has explained that a general entry can be resorted to only if the goods in question cannot be classified under the specific tariff entries.

15. In ***Commissioner of Central Excise Vs. Connaught Plaza Restaurant***[3]. The Hon'ble Supreme Court held thus:-

> "Time and again the principle of common parlance as standard for interpreting terms in the taxing statutes, albeit subject to certain exceptions, where the statutory context runs to the contrary, has been reiterated. The application of the common parlance test is an extension of the general principle of interpretation of statutes for

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[2]. 1990 (1) SCC 532

[3]. (2013) 18 GSTR 1 (SC)

> deciphering the mind of the law maker; "it is an attempt to discover the intention of the Legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts. (See: ***Oswal Agro Mills Ltd***[4])
>
> A classic example on the concept of common parlance is the decision of the Exchequer Court of Canada in King v. Planter Nut and Chocolate Company Ltd. The question involved in the said decision was whether salted peanuts and cashew nuts could be considered to be "fruit" or "vegetable" within the meaning of the Excise Tax Act. Cameron J., delivering the judgment, posed the question as follows :
>
> "...would a householder when asked to bring home fruit or vegetables for the evening meal bring home salted peanuts, cashew or nuts of any sort? The answer is obviously 'no'."
>
> Applying the test, the court held that the words "fruit" and "vegetable" are not defined in the Act or any of the Acts in pari materia. They are ordinary words in every-day use and are therefore, to be construed according to their popular sense."

16. The Hon'ble Supreme Court referred to several precedents on the subject and explained the importance of the common parlance test in interpreting taxing statutes, particularly relating to the classification of products. The Court also explained that in the absence of any statutory definition in precise terms, the words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words, they must be construed in the sense that the people conversant with the subject-matter of the statute would attribute to it. Resorting to rigid

[4]. (1993) Suppl. (3) SCC 716.

interpretation in terms of scientific and technical meanings should be avoided in such circumstances. Above such instances, unless, of course, the legislature has expressed a contrary intention.

17. On applying the commercial parlance or the popular meaning test, we are satisfied that the product in question was liable to be classified under Entry C-II-3, which was a specific entry dealing with "coffee" or "instant coffee" rather than the general Entry C-II 18(2).

18. In this context, I would also like to refer to the decision of the Division Bench of this Court in the case of ***Commissioner of Sales Tax Vs. La Bella Products***[5]. Here, the issue was whether "auto sticking bindies" sold under the name of "beauty spots", were to be classified as "toilet articles" or "toilet requisites", or they ought to be covered under the entry in respect of "kumkum", i.e. Entry 32 of Schedule A to the Bombay Sales Tax, 1959.

19. The Division Bench of this Court held that even if it was assumed that the beauty spots were toilet articles, merely on that ground, they do not cease to be 'kumkum' within the meaning of Entry 32 of Schedule A to the Bombay Sales Tax Act, 1959. This Court held that though the auto-sticking bindies were thin sheets of PVC material of different colours, round in shape, one side of which was treated with some chemicals to make them fit to the skin, still, they were

[5]. (1985) 59 STC 221

nothing but "kumkums" generally used by ladies and girls for applying on the middle of their forehead. The Court explained that the word "kumkum" is not found in standard English dictionaries because it is peculiar to India and Indian culture.

20. The Court noted that it was common knowledge that it comprises the material women have used for centuries to create a round spot in the middle of their foreheads. Therefore, if by common parlance or by popular perception, a product was nothing but such an article, then it could not but be classified as "kumkum" and liable to be taxed accordingly. The fact that it was also used for beautification would not render it a toilet article or a toilet requisite, falling under the more generalised entry in the schedule to the Bombay Sales Tax Act.

21. Another Division Bench of this court in the case of ***Commissioner of Sales Tax Vs. Ajay Industrial Packing Pvt. Ltd***[6], after taking note of the tremendous advancement of science and technology, held that the still rule of construction of taxing statute would be that words in everyday use must be construed not in their scientific and technical test but understood in common parlance.

22. The Tribunal in this case was justified in holding that the concept of instant coffee must conform to the modern development and modern perceptions. Therefore, if the

[6]. (1995) 99 STC 35)

product “Nescafé premix” by pouring hot water into it results in “coffee” or “instant coffee”, the department cannot insist upon classifying the same under the general Entry C-II-18(2).

23. For all the above reasons, we answer the question referred to us in favour of the respondent assessee and against the sales tax.

24. The reference is disposed of in the above terms. No costs.

(Advait M. Sethna, J) (M.S. Sonak, J.)