Deshmane

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

SALES TAX REFERENCE NO. 3 OF 2010
IN
REFERENCE APPLICATION NO.68 OF 2004

The Commissioner of Sales Tax, Mumbai ...Applicant

Versus

Sudha Instant Soft Drinks and Essences, Nagpur ...Respondent

Mr Amar Mishra, AGP for Applicant-State.

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

DATED: **04 DECEMBER 2025**

ORAL JUDGMENT:- *(PER M.S. SONAK, J.)*

1. Heard M. Mishra for the Applicant.

2. This Reference under Section 61 of the Bombay Sales Tax Act, 1959 (said Act) refers the following question of law to this Court for its determination:

> "*Whether on the facts and circumstances of the case, is the Tribunal justified in holding that the goods like pineapple slices, pineapple tidbits, fruit cocktail preserved in sugar syrup and canned in vacuum sealed tin containers are fresh fruits and are covered by the scope of the entry A-23 of the Bombay Sales Tax Act and hence not liable to tax?*"

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3. The facts and circumstances which give rise to this Reference have been set out in the statement of facts accompanying the Reference. (See pages 10 to 13). Accordingly, we do not reproduce those facts and circumstances in detail in this judgment and order.

4. The Assessee is engaged in the manufacture and sale of juices, instant soft drinks, compounds, powders, essences, etc., and is duly registered under the provisions of the said Act. The Assessee also manufactures various processed food items such as orange juice, tomato juice, mixed fruit jam, pineapple juice, mango juice, pineapple tidbits, tomato purée, pineapple slices, sweetcorn, etc.

5. The record shows that the Asseessee had been granted exemption under the 1979 Scheme of Incentives in relation to the payment of sales tax for the manufacture of certain products. However, in the assessment for the period 1991-1992, exemption benefits were disallowed in the context of items like tomato juice, mixed fruit jam, pineapple slices, sweet corns, etc., because these products were not explicitly mentioned in the eligibility certificate as the class of goods/products manufactured by the unit eligible for exemption benefits. In the above regard, a dispute arose whether the goods like pineapple slices, pineapple tidbits, fruit cocktail preserved in sugar syrup and canned in vacuum sealed tin containers could be classified as 'fresh fruits' covered by the scope of Entry A-23 (as it then stood) of the Bombay Sales Tax Act for levy of nil tax or claim of exemption.

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6. The Maharashtra Sales Tax Tribunal (Tribunal), by relying upon the decision of the Hon'ble Supreme Court in the case of **Deputy Commissioner, Sales Tax (Law) Board of Revenue (Taxes) Ernakulam Vs. Pio Food Packers**[1] has held that the case in question could be classified as 'fresh fruit' for Entry A-23 and accordingly, held in favour of the Assessee. It is from this order that the present Reference arises.

7. Entry A-23, as it then stood, read as follows:

Sch Ent	Description of goods	Conditions and Exception, subject to which exemption is granted
A-23	1. Fresh Vegetable And Potatoes, Sweet Potatoes Elephants Foot (yam) onion and Garlic.	Nil
	2. Fresh fruits.	Nil

8. For determining whether the goods like pineapple slices, pineapple tidbits, fruit cocktail preserved in sugar syrup and canned in vacuum sealed tin containers are 'fresh fruits' covered by the scope of Entry A-23, we are required to apply the common parlance test as was held by this Court in the case of **The Commissioner of Sales Tax, Maharashtra State, Mumbai Vs. M/s. Nestle India Ltd.**[2]

9. In M/s. Nestle India Ltd. (supra), this Court observed as follows: "*The Hon'ble Supreme Court referred to several*

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1 [1980] 3 S.C.R. 1271

2 Decided by this Court on 27 November 2025 in STR No.24/2010

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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 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."

10. In the context of whether a coconut (neither tender nor dried but a ripened coconut with or without husk) is a 'fresh fruit' or a 'vegetable' to earn exemption from the levy of sales tax under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act), the Hon'ble Supreme Court, in the case of **P.A. Thillai Chidambara Nadar Vs. Addl. Appellate Asstt. Commissioner, Madurai and another**[3] made the following observations at paragraphs 3 & 4 :

> *"3. The canon of construction to be invoked in these types of statutes has been repeatedly enunciated in several decisions of this Court but it is not necessary to refer to all of them. In Indo international Industries v. CST, (1981) 3 SCR 294, this court ruled thus: (SCC p. 530, para 4)*
>
> > *It is well-settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to*

[3] (1985) 4 SCC 30

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> *the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted.*
>
> *4. If regard be had to this rule of construction, the question raised will have to be answered against the appellant. On the first aspect of the question it can not be disputed that a coconut would be a 'fruit' in the botanical sense but unless it can be said to be a 'fresh fruit' it will not fall within the exemption notification. Similarly a coconut may be available in a vegetable market but because of that it does not become a 'vegetable'. It is well-known that the kernel of the coconut is used as an ingredient in the culinary preparations for adding taste to the food but it is hardly used as a substantial article of food on the table. The concerned articles namely, 'fresh fruits' and 'vegetables' being household articles of everyday use for the table these will have to be construed in their popular sense meaning the sense in which every householder will understand them. Viewed from this angle, the most apposite test would be the one adopted in the case of His Majesty the King v. Planters Nut and Chocolate Company Limited, 1951 CLR (Ex.) 122 (which decision was approved by this court in CST v. Jaswant Singh Charan Singh, AIR 1967 SC 1454). Would a householder when asked to bring home some 'fresh fruit' and some 'vegetable' for the evening meal bring coconut? Obviously, the answer is in the negative."*

11. After setting out the canon of construction to be invoked in these types of Statutes, the Hon'ble Supreme Court held that a coconut, as described above, could not be regarded as a 'fresh fruit' to qualify for exemption under the Tamil Nadu Act.

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12. In the case before the Hon'ble Supreme Court, the Counsel for the Appellant, apart from relying upon the legislative history and some earlier exemption notifications issued by the State Government, argued that a coconut would be entitled to the exemption under these exemption notifications issued from time to time. The Hon'ble Supreme Court noted that the exemption notifications relied upon by the learned Counsel for the Appellant referred merely to 'fruits', and since, a coconut would have come within the category of 'fruits' the same was expressly excluded from the exemption thereby making the sale thereof liable to tax.

13. In the concurring opinion, it was reiterated that the principles to be adopted in deciding the question whether the ripened coconut with or without husk can be considered to be a vegetable i.e. in interpreting items in statutes whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used, but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. The Court noted that the expressions 'fresh fruit' or 'vegetable' have not been defined in the Act. Therefore, by applying the popular meaning test for the common parlance test, it was held that a ripened coconut could not be classified as either 'fresh fruit' or 'vegetable'.

14. The Tribunal in this case has relied upon *Pio Food Packers* (supra). Here, the issue involved was whether the pineapple fruit, which is processed into pineapple slices for being sold in sealed cans, there is no consumption of the original pineapple foods for 'manufacture' within the meaning

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assigned to this term under Section 5-A (1)(a) of the Kerala General Sales Tax Act, 1963.

15. The definition in Section 5-A(1)(a) had envisaged the consumption of a commodity in the manufacture of another commodity. The goods purchased had to be consumed, the consumption should be in the process of manufacture, and the result must be the manufacture of other goods. It was precisely in this context that the Hon'ble Supreme Court, after noting that the pineapple purchased by the Assessee were washed, the inedible portion, the end crown, skin and inner core are removed, thereafter the fruit was sliced and the slices are filled in cans, sugar is added as a preservative, the cans are sealed under temperature and then put in boiling water for sterilization, held that there was no consumption of the original pineapple fruit for manufacture.

16. The observations relied upon by the Tribunal that there was no essential difference between the fruit and the canned pineapple slices must be read and construed in the context of the issue before the Hon'ble Supreme Court, i.e. whether the manufacturing process involved the consumption of the original pineapple fruit.

17. The issue involved in *Pio Food Packers* (supra) was not comparable to the issue involved in the present matter, dealing with the precise classification into which the goods like pineapple slices, pineapple tidbits, fruit cocktail preserved in sugar syrup and canned in vacuum containers were fresh fruits covered by the scope of Entry A-23. In any event, it is apparent that the Hon'ble Supreme Court was not dealing with a specific entry like "fresh fruits." Therefore, the Tribunal

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was not justified in deciding this matter based on some of the observations in *Pio Food Packers* without appreciating the context in which such observations were made.

18. Applying the common parlance test, it is difficult to hold that the pineapple slices or tidbits or fruit cocktail preserved in sugar syrup and canned in sealed vacuum containers would qualify to be categorised as 'fresh fruit'. Going by the test adopted in the case of *His Majesty the King Vs. Planters Nut and Chocolate Company Limited,* which decision was approved by the Hon'ble Supreme Court in *CST v. Jaswant Singh Charan Singh, AIR 1967 SC 1454* and followed in *P.A. Thillai Chidambara Nadar (supra),* the question to be posed would be whether a householder when asked to bring home some 'fresh fruit' from the market, would, bring home pineapple slices or a fruit cocktail preserved in sugar syrup canned and sealed in vacuum containers? If the answer is in the negative, as, by applying the common parlance test, we think it should be, then the view taken by the Tribunal based upon failing to appreciate certain observations in *Pio Food Packers* (supra) would warrant interference.

19. We were also shown the decision in **Sterling Foods Vs. The State of Karnataka and another**[4]**,** where the issue involved was whether shrimps, prawns and lobsters subjected to processing like cutting of heads and tails, peeling, deveining, cleaning and freezing cease to be the same commodity and become a different commodity for the purposes of section 5(3) of Central Sales Tax, 1956. In other words, can they still go under the description of shrimps, prawns and lobsters or in other words, when we use the words 'shrimps, prawns and

[4] [1986] 3 SCR 367

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lobsters', do they mean only raw shrimps, prawns and lobsters as caught from the sea, or do they also include processed and frozen shrimps, prawns and lobsters?

20. Again, the issue in *Sterling Foods* (supra) was similar to that in *Pio Food Packers* (supra). Therefore, the distinction made above in the context of Pio *Food Packers* (supra) would apply as well to this decision. In any event, it is significant to note that the relevant provisions had not qualified the shrimps, prawns and lobsters with the expression 'raw' or 'fresh'. That, in our opinion, would make a significant difference. In the present case, we are not considering an entry that merely describes the product as 'fruit'. Here, we are concerned with an entry which describes the goods as 'fresh fruit'. This is another reason why the observations in *Sterling Foods* (supra) to the effect that processed or frozen shrimps, prawns and lobsters are commercially regarded as the same commodity as raw shrimps, prawns and lobsters would not apply.

21. Mr Mishra correctly argued that there is a clear and universally understood distinction between 'fresh fruits', 'canned fruits', and 'preserved foods.' In fact, the Schedule to the said Act has separate entries for preserved foods. 'Fresh fruits' are generally understood as perishable goods shown in their natural state. 'Canned foods' are processed goods with a long shelf life, sold in sealed containers with preservatives. Therefore, a customer seeking to buy 'fresh fruit' would not be satisfied if the vendor offered him canned pineapple slices packed and sealed in a vacuum container.

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22. In this case, the legislature's choice of the word ‘fresh’ must not be ignored or made meaningless. The word ‘fresh’ acts as a limitation. If the legislative intention was to include all types of fruits in every form—such as fresh, canned, preserved, and so on—under a single entry, then perhaps the Legislature would have used the term ‘fruits’. However, the inclusion of ‘fresh’ clearly shows an intention to exclude fruits that are not in their natural state, such as dried, frozen, canned, or preserved foods.

23. For all the above reasons, with respect, we disagree with the Tribunal’s view in this matter, set aside the Tribunal’s determination and dispose of this reference by holding that in the facts and circumstances of the present case the Tribunal was not justified in holding that the goods like pineapple slices, pineapple tidbits, fruit cocktail preserved in a sugar syrup and canned in vacuum sealed containers are ‘fresh fruits’ covered by the scope of Entry A-23 in the Scheduled of the Bombay Sales Tax Act and consequently not liable to be taxed.

24. The Reference is accordingly answered in favour of the Revenue and against the Assessee. There shall be no order as to costs.

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

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