IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.98 of 2015

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M/s Marico Ltd. Son of Shri Narayan Padgulekar Resident of Manohar Apartment, 2nd Floor Room No.12 Kopar Cross Road Dombivli P.S. Dombivli District Thane Maharashtra

... ... Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Commercial Taxes Tribunal, Bihar, Patna through its Secretary
3. The Commissioner of Commercial Taxes, Government of Bihar, Vikash Bhawan, Patna,
4. The Deputy Commissioner of Commercial of Taxes, Special Circle, Patna

... ... Respondent/s

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with

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5. The Deputy Commissioner of Commercial of Taxes, Special Circle, Patna.

... ... Respondent/s

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Bihar Value Added Tax Act, 2005---Section 77 (1) (e), Entry 82, Entry 27 of Schedule-III—whether coconut oil sold by assessee can be classified as an edible oil or vegetable even when sold as hair oil under brand name ‘Parachute’—whether coconut is a vegetable—appeal against order of Commercial Taxes Tribunal—appellant, a dealer under VAT Act sought ruling as to whether coconut oil is to be taxed at rate of 12.5% as a residuary item or at rate of 4% as a commodity.

Held:Processed from coconut is used as a toiletry and not as an edible oil. Hence, it cannot be termed as an edible oil or a vegetable oil—concurred with the findings of authority under Section 77—approved order of Tribunal—questions of law answered against the assessee—appeal dismissed.

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Appearance :
(In Miscellaneous Appeal No. 98 of 2015)
For the Appellant/s : Mr. Alok Kumar Agrawal, Advocate
For the Respondent/s : Mr. P. K. Shahi, AG
(In Miscellaneous Appeal No. 99 of 2015)
For the Appellant/s : Mr. Alok Kumar Agrawal, Advocate
For the Respondent/s : Mr. P. K. Shahi, AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-12-2023

Two appeals from the common order dated

11.03.2005 of the Commercial Taxes Tribunal (for brevity 'the Tribunal') in a Miscellaneous Case and Revision Case, agitate the same issue. The appellant, a dealer under the provisions of the Bihar Value Added Tax Act, 2005 (for brevity 'Act of 2005') approached the authority under Section 77 for a ruling as to whether coconut oil, sold by it, would be taxed at the rate of 12.5% as a residuary item or at the rate of 4% as a commodity coming within Schedule-III.

2. The assessment year is 2005-06; the year in which the Value Added Tax regime was enforced in the State of Bihar, as in the other states. Initially, Entry 27 of Schedule-III contained edible oil and oil cakes which, by a notification dated 09.07.2005 was amended to read as *"edible oils (other than coconut oil) or oil cakes."* Hence, up to 09.07.2005, the commodity was an edible oil liable to a lesser rate of tax as provided for Schedule-III goods. Even after the amendment of 09.07.2005, coconut oil would be taxable at the rate of 4% being a vegetable oil, which was included under Entry 82, which entry was substituted out by notification dated 01.04.2006, is the contention of the assessee.

3. We heard Sri S.D. Sanjay, learned Senior Counsel for the appellant and Sri Vikas Kumar for the State.

4. The appellant had approached the authority

under Section 77(1)(e) of the 'Act of 2005'. The authority by Annexure-2 order produced in M.A. No. 98 of 2015 found that the invoice of the petitioner shows ‘coconut oil’ having been sold along with soap, detergents etc. making it clear that what is sold by the petitioner is used as hair oil and not as an edible oil. The Commissioner found that the lesser liability on edible oils and vegetable oils did not include hair oils which fall under the category of toiletries, which have to be taxed at a higher rate of 12.5%. ‘The Tribunal’ concurred with the said opinion by the common impugned order and also rejected the appeal filed from the order of assessment, confirmed in first appeal; which is challenged in M.A. No.99 of 2015.

5. The question of law arising is as to

> *“whether coconut oil sold by the assessee can be classified as an edible oil under Entry 27 and in the teeth of the exclusion of coconut oil from Entry 27, will it be possible for inclusion under Entry 82 being vegetable oil; as the entries in Schedule-III existed in the relevant year ?”*

6. Learned Senior Counsel appearing for the appellants argued that the Schedule itself was brought out at the nascent stage of introduction of Value Added Tax and there was bound to be some mistakes, the benefit of which has to be necessarily conceded to the assessee. It is pointed out, coconut

oil is an edible oil and in that circumstance till 01.07.2005, it could be included in Entry 27 and after that under Entry 82, as a vegetable oil. It is also pointed out that coconut oil under the Customs Tariff Act is included under the common nomenclature of vegetable oils as per Section III Chapter 15 of the Customs and Central Excise Tariffs annexed along with M.A. No. 99 of 2015. The Senior Counsel asserts that even in the relevant assessment year, the coconut oil sold by the assessee was only liable to tax at the rate of 4%.

7. The learned State Counsel on the other hand points out that the assessee though claimed coconut oil as an edible oil, was selling it as hair oil, which would not come either within the definition of an edible oil or under the nomenclature of vegetable oil; since coconut in the normal parlance is not a vegetable. Thus, the State defended the order of 'the Tribunal'.

8. The appellant, even in the memorandum of appeal does not have a clear case as to whether coconut oil manufactured and sold in the brand name of 'Parachute' is an edible oil or a hair oil. The contention is that coconut oil manufactured and sold in the brand name of 'Parachute' by the appellant is 100% pure coconut oil containing no amount of perfumes. It is also averred that the appellant also manufactures hair oils in the brand name of Parachute Advanced, Parachute

Light, Parachute Jasmine etc. which can be distinguished from the one sold as 100% pure coconut oil. The clear finding of the first Appellate Authority on facts is that the appellant sells the product it manufactures, from coconut, as a hair oil, as evident from the invoice. No question of law arises from this aspect and hence, the appellants product sold in the brand name of Parachute cannot be brought under the Entry of edible oils. In any event, from 01.07.2005 onwards, coconut oil is excluded from Entry 27. This does not really have any significance with respect to the appellant's product, which is a toiletry and not an edible oil.

9. Now the question is as to whether coconut oil can be considered to be a 'vegetable oil' under Entry 84, which entry was available so in the first year, in which the VAT regime was introduced. The appellant's counsel harped upon the Customs and Excise Tariff based on HSN Codes. There is no link to HSN Codes in the Entries under the ' Act of 2005' and examination of the same is not permissible especially when the levy has to go by the separate enactments. Even under the Customs and Tariff Act, though *'Animal or vegetable fats and oils and their cleavage products'* come under Section III, coconut oil, as is palm oil, sunflower oil, mustard oil and so on are treated differently from the common nomenclature applied

to other fixed vegetable fats and oils and their fractions.

10. The further contention of the appellant is based on ***Tata Oil Mills Company Ltd. v. Director, Marketing, Bihar State Agriculture Board, Patna,*** reported in ***1986 PLJR 172.*** Therein a Division Bench was concerned with the term 'agricultural produce' which as per the Bihar Agriculture Produce Markets Act, 1960 included all produce, whether processed or non-processed, of agriculture, horticulture, animal husbandry and forests. The learned Judges referred to two decisions of the Madras High Court in ***Deputy Commissioner of Commercial Taxes, Tiruchirappalli v. Hameed Trading Company, 32 (1973) STC 228,*** which held that coconut was not a perishable article and cannot be treated as a fresh fruit. It was also held that it was not a vegetable within the meaning of the words of the notification granting exception. A Full Bench of Madras High Court in ***S.M. Narayana Ayyangar vs S.P.R.M. Subramanian Chettiar*** in the context of Estates Land Tax was relied on, which held that coconuts are fruits and coconut trees are fruit trees and coconut plantation is a fruit garden. The Dictionary meaning was also looked at to find that coconut is generally referred to as fruit. In any event, the question was answered in the context of the specific definition of the term 'agricultural produce' and there was no circumstance of

examining whether coconut was a vegetable or a fruit or a nut. The definition of 'agricultural produce' in the enactment which was under consideration in ***Tata Oil Mills Company Ltd.*** was an inclusive definition which brought within it's ambit all produce, whether processed or non-processed of agriculture. Coconut oil admittedly is a processed, product of coconut, which is also admittedly an 'agricultural produce'. The said decision does not in any manner aid the interpretation sought to be placed on the term 'vegetable oil'.

11. As has been held in ***Deputy Chief Controller of Imports and Exports v. K.T. Kosalram*** reported in ***AIR 1971 SC 1283***, the Dictionary meaning or the meaning imployed in the Customs Tariff is not of much aid, if the meaning given in the statute is clear. In the present case, the use of vegetable oil definitely indicates process by which oil is extracted from a vegetable. The term 'vegetable' in ordinary usage and common parlance cannot be found taking within it's meaning, coconut.

12. In ***1992 Supp (1) SCC 298, Shri Bharuch Coconut Trading Co. v. Ahmedabad Municipal Corporation,*** it was held so:-

> **3.** The question is whether brown coconut (watery coconut) is a green fruit or not? In *Ramavatar Budhaiprasad* v. *Asstt. STO* [(1961) 12 STC 286 : AIR 1961 SC 1325 : (1962) 1 SCR 279] and *CST* v. *S.N. Brothers* [(1973) 3 SCC 496 : 1973 SCC (Tax) 254 : (1973) 31 STC 302] , this Court held

that the expression occurring in schedules to the Sales Tax Acts have to be considered with reference to their meaning in ordinary commercial parlance and should not be considered according to the strict scientific meaning. In *Ramavatar Budhaiprasad case* [(1961) 12 STC 286 : AIR 1961 SC 1325 : (1962) 1 SCR 279] , this Court held that betel leaves, though vegetable leaves in the strict scientific sense, cannot be considered to be vegetables. In ordinary commercial language in the common parlance, betel leaves cannot be considered as vegetables. Coconut in the ordinary commercial sense is understood in several forms as tender coconut, watery coconut, dried coconut and copra and all these come under the expression coconut. Tender coconut contains juicy water and the kernel is at the tender stage. The tender coconuts are used generally during summer (autumn) season to drink the watery juice therein after cutting it. A watery coconut is a ripened coconut and enters the market after the removal of the outer cover of its fibre. It is called coconut or watery coconut. For the purpose of the case it is called brown coconut. The water is used as a drink and the kernel for culinary purposes. After the coconut is fully grown it is plucked from the trees and after removing the outer fibre (to reduce weight), it is sent to the market for commercial purposes. As stated earlier it is called coconut or watery coconut (brown coconut). The question, therefore, is whether the brown coconut (watery coconut) is a green fruit. The word green is defined in *Chambers Dictionary* at page 463 as adjective of the colour usually in leaves between blue and yellow in spectrum … unripe, fresh, undried, raw or colour of green things.

4.In *Webster Comprehensive Dictionary* (International Edition) at p. 509, the word ‘fruit’ has been defined as the edible, pulpy mass covering the seeds of various plants and trees. They are classified as fleshy, as gourds, melons, oranges, apples, pears, berries, etc.; drupaceous as cherries, peaches, plums, apricots, and others containing stones; dry as nuts, capsules, ashenia, follicles, legumes, etc. In flowering plants, the mature seed vessel and its contents, together with such accessory or external parts of the inflorescence seemed to be integral with them. Any vegetable product used as food or otherwise serviceable to man; as grain, cotton, or flax; also such products, collectively: the fruits of the earth. Therefore, in the context of the octroi it could be legitimate to conclude that all kinds of fresh fruits are exempted articles.

5. In *P.A. Thillai Chidambara Nadar* v. *Addl. Appellate Asstt. Commissioner* [(1985) 4 SCC 30 : (1985) 60 STC 80] , this Court was to consider whether ripened coconut which is none other than watery coconut is an exempted article as vegetable under the Tamil Nadu General Sales Tax Act (1 of 1959). This court held that fresh fruits and vegetables being household articles of everyday use for the table, these will have to be construed in the popular sense, meaning the sense in which every householder will understand them. Viewed from this angle, the most apposite test would be an answer to a simple question: Would a householder when asked to bring home some 'fresh fruits' and some 'vegetables' for the evening meal, bring coconut too? Obviously the answer is in the negative. Accordingly this Court held that ripened coconut is neither a fresh fruit nor vegetable. The watery coconut is no doubt a ripened coconut used for several purposes like offerings to a deity in a Hindu temple being broken or used on auspicious occasions or used in preparation of the daily table food or in confectionery like biscuits or in the extraction of oil when it is fresh or dried kernel. When a person in the commercial market goes and asks for coconut no one will consider brown coconut to be vegetable or fresh fruit, much less a green fruit. No householder would purchase it as a fruit. No doubt in some English dictionary, coconut is called a fruit or nut but it is to be understood in its ordinary commercial parlance. In *Sri Krishna Coconut Co.* v. *CTO* [(1965) 16 STC 511 : AIR 1966 AP 128] , the Andhra Pradesh High Court was to consider whether fully grown coconut with well developed kernel containing water i.e. watery coconut could be called tender or dried coconut. In that context considering the scope of an explanation to Schedule III of the A.P. General Sales Tax Act, 1957 which exempted tender coconut from the sales tax under the Act, it was held that in a tender coconut, the kernel is hardly formed or is only in the initial stages of formation. In a dried coconut the kernel is formed and fully developed and further the water inside the coconut has dried up leading to the drying of the kernel also. But a fully grown coconut with a well developed kernel, which contains, water cannot be alleged either a tender or a dried coconut. This is well known that coconut is used fo culinary purposes and on auspicious occasions and as part of the offerings in temples. It was held in that case that the watery coconuts are fully developed coconuts and they are exigible to sales tax. In *Kunchi Rajeshwara Sastry & Sons* v. *Asstt. CCT* [(1976) 37 STC

399 (AP HC) : 1976 Tax LR 1786] , the Division Bench of the Andhra Pradesh High Court was to consider whether copra is an oil seed within the meaning of Item (*vi*) of the list of declared goods mentioned in Section 14 of the Central Sales Tax Act, 1956, and whether it is exigible to sales tax under the Andhra Pradesh Sales Tax Act, 1957. In that context it was held that copra is an oil seed and it is a declared good within the meaning of Central Sales Tax Act, 1956. The watery coconuts are made liable to tax at the point of last purchase and that, therefore, copra would be taxed till that period at the point of last purchase and the coconut of all varieties would include copra also. Therefore, it is a declared goods. The Division Bench while considering whether copra is an oil seed held thus : (STC p. 403)

"Coconut is understood in several forms, namely, tender coconut, watery coconut, dried coconut and copra, and all these come under the expression 'coconut'. Except in the case of tender coconut from which oil cannot be extracted, in all other cases, oil can be extracted and all of them are regarded in common parlance as oil seeds."

In *Sri Lakshmi Coconut Industries* v. *State of Karnataka* [(1980) 46 STC 404 (Karn HC)] , the Division Bench of the Karnataka High Court was to consider whether desiccated coconut falls within the entry coconut, which is one of the declared goods under Section 14 of the Central Sales Tax Act, 1956 and is also included at Entry 5 of the Fourth Schedule to the Karnataka Sales Tax Act, 1957. In that context the meaning of the word oil seeds was extensively examined by the Division Bench and held that desiccated coconut is a coconut and a declared good under Section 14 of the Central Sales Tax Act, 1956. In *Deputy Commissioner of Agrl. Income Tax and Sales Tax, Kerala* v. *A.P. Raman* [(1960) 11 STC 263 (Ker HC)] , the Kerala High Court also took the same view. In *CST* v. *Ram Kumar Nand Kumar* [(1973) 31 STC 321 : 1973 Tax LR 2165 (All HC)] , the Allahabad High Court also held that coconut is an oil seed within the definition of Section 3-AA(1)(*vi*) of the U.P. Sales Tax Act, 1948.

13. Hence, in ordinary commercial parlance, coconut cannot be termed a vegetable. In classification, the use to which a product is put to also has to be looked at and in the present case, the factual finding is insofar as the product of the appellant, processed from coconut is used as a toiletry and not as an edible oil. Hence, by no stretch can the product of the appellant be termed as an edible oil or a vegetable oil.

14. We fully concur with the findings of the authority under Section 77 and uphold the order of 'the Tribunal'. We answer the questions of law against the assessee and in favor of the revenue. The appeals stand dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

sharun/-

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