BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (Judicial)

Appeal No. 225/STT/04
Date of Judgment: 19/09/2022

M/s H. B. Sons,
6693, Khari Baoli,
Delhi. .....Appellant

v.

Commissioner of Trade & Taxes, Delhi. .....Respondent

Counsel representing the Appellant : Sh. R. Mahana.
Counsel representing the Revenue : Sh. P. Tara.

Appeal No. 211/STT/04
Date of Judgment: 19/09/2022

M/s Gupta Sons
J-10/27, Rajouri Garden,
New Delhi. .....Appellant

v.

Commissioner of Trade & Taxes, Delhi. .....Respondent

Counsel representing the Appellant : Sh. Sushil K Verma.
Counsel representing the Revenue : Sh. C. M. Sharma.

Narinder Kumar
19/9/2022

APPELLATE TRIBUNAL VAT DELHI

JUDGMENT

1. This common judgment is to dispose of the above captioned appeals as common points are involved.

2. It may be mentioned here that earlier common judgment dated 20.01.2006 was passed by two learned Members of this Appellate Tribunal. At that time, dissenting view was given by Sh. Bharat Bhushan, learned Member (Judicial). Other learned Member of the Appellate Tribunal was Member (Administrative).

3. Common judgment dated 20.01.2006 pertained also to other Appeals Nos. 78,96,98,99,100,101,168, 202,231/STT/04. Sh. Bharat Bhushan, learned Member (Judicial) gave dissenting view giving finding that the appeals were liable to be dismissed and that same shall be dismissed. Sh. K Sethuraman, learned Member (Administrative) of the Tribunal recorded finding that the appeals deserved to be allowed and the tax assessed on sales on Katha & Supari deserved to be reduced by amounts assessed in excess of amount assessable @ 4%; that the deduction, if any, claimed in the returns u/s 4(2)(a)(i) of the Local Act where denied, was required to be allowed subject to the satisfaction of the Ld. Assessing Authority with the conditions subject to which the points of sale in question were tax exempt were complied with.

19/9

APPELLATE TRIBUNAL VAT DELHI

4. Section 73(5) of DVAT Act provides that where the number of members of the Appellate Tribunal is more than one and if the members differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, the decision of the Chairperson of the Appellate Tribunal thereon shall be final.

5. As per provisions of Section 73(2) of DVAT Act, where the number of Members of the Appellate Tribunal is more than one, the Government is required to appoint one of the Members to be the Chairperson of the Appellate Tribunal. Admittedly, during the days judgment was delivered in the appeal filed by the appellant, out of the two Members of the Appellate Tribunal, none of them was appointed by the Government to be with the Chairperson of the Appellate Tribunal.

6. Recently, dealer-appellant H. B. Sons, filed W.P. (C) 12181/2022 before the Hon'ble High Court with the prayer for disposal of appeal no. 225/04. Vide order dated 23/08/2022, Hon'ble High Court has disposed of the Writ Petition with directions to this Appellate Tribunal to dispose of this pending appeal.

7. Learned counsel for the Revenue in appeal no. 211/04 has submitted that there is no order in favour of the appellant

1919

APPELLATE TRIBUNAL VAT DELHI

similar to the order in favour of the appellant in appeal no.225/04 and that in absence of any such order, the appellant should firstly file petition before the Hon'ble High Court.

It may be mentioned here that the other appeal no. 211/04 is on similar footings as dissenting views were given by learned Member (Judicial) as regards the points in dispute arising out of the said appeal, and as such the judgment did not attain finality. Taking a cue from the order dated 23/08/2022, passed by the Hon'ble High court in W.P. (C) 12181/2022, both these appeals have been taken up for arguments and disposal afresh.

Appeal No. 225/04

8. The matter pertains to tax period 2002-03. Dealer-appellant, a partnership firm, was engaged in the business and sale of Areca Nut (Supari & Katha). It was registered with Department of Trade & Taxes, under Central Sales Tax Act as well as under the Local Act, w.e.f. May 2002.

9. By way of the assessment framed on 28/03/2004, under Section 23(3) of Delhi Sales Tax Act, 1975, learned Assessing Authority directed the dealer-appellant to pay Rs. 27,98,770/-, i.e. Rs. 22,03,755/- towards tax and Rs. 5,95,015/- towards interest. This assessment for the tax period 2002-03 was the first assessment of the dealer-appellant, framed by learned Assessing Authority of Ward No. 16.

19/9

APPELLATE TRIBUNAL VAT DELHI

10. The assessment under Local Act was framed due to the following reasons given by learned Assessing Authority:-

> "The dealer has made all his Local sales as taxable sales. The dealer has sold Supari for Rs. 5,04,17,331/- and Katha for Rs. 14,76,650/- and tax charged @4% whereas the Supari and Katha is taxable @8%. Hence, the total amount for Rs. 5,18,93,981/- is to be taxes @8% with interest under the Local Act."

11. Feeling dissatisfied with the assessment dated 28/03/2014, the dealer filed first appeal. Learned Additional Commissioner-II, dismissed the appeal by observing in the manner as:-

> "After hearing and considering all the records, it is clear that the item katha and supari were taxable at the rate of 8%. The appellant for the sake of arguments cannot take a plea that the item katha and supari should either be taxed at kirana items or medicinal herbs at the rate of 4%. The references made in the budget speech may not be basis for taxation till the proposals are notified as per law. It is also true that while excluding medicinal herbs from the kirana items vide notification dated 31.3.2000 effective from 1.4.2000 no inference can not be drawn that katha and supari were defined as medicinal herbs for the purposes of taxation and could not be taxed as general item. Moreover the separate entry no. 63, added as medicinal herb in second schedule vide notification No.F.4(75)/99-Fin(G)/2095 dated 31.3.2000 was omitted w.e.f. 1.5.2000 vide notification No.F.4(52)/99-Fin(G)/(i) dated 30.4.2000. As such question of treating katha and supari as medicinal herb taxable @4% does not arise."

12. Learned First Appellate Authority did not find any merit in the contention raised on behalf of the appellant that the two items

1/9/19

APPELLATE TRIBUNAL VAT DELHI

i.e. Katha and Supari should be exigible to tax @4% as Kirana item or Medicinal Herb.

13. Before learned First Appellate Authority, on behalf of the appellant reference was made to Budget Speech of Hon'ble Finance Minister in connection with budget for the year 2000-01.

14. Learned First Appellate Authority did not place any reliance on the references made in the Budget Speech, while observing that same could not be made basis for the purpose of taxation until the proposals were notified as per law.

15. Before Learned First Appellate Authority, on behalf of the appellant, reference was also made to Notification No.F.4(75)/99-Fin(G)/2095, dated 31/03/2000. Said notification provided as under:

> "Kirana items (including all items excepting medicinal herbs as notified by the Govt. of India, Ministry of Home Affairs under the Central Sales Tax Act vide Notification No.F.14(12)89-PPR/PF/Vol.III/25274/523 dated 3.12.1997."

16. As regards this notification, learned First Appellate Authority observed that with the exclusion of medicinal herbs from kirana items w.e.f. 01/04/2000 no inference could be drawn that Katha & Supari items were defined as "Medicinal Herbs" for the purposes of taxation and that the same could not be subjected to tax as general item.

17. Learned First Appellate Authority ultimately held that there was no question of treating Katha & Supari as "Medicinal Herbs". It was further held that these two items were not exigible to tax @4%. In this way the assessment framed while raising demand of tax in respect of these goods that Katha & Supari @8%, was upheld.

Appeal No. 211/04

18. The matter pertains to tax period 2001-02. Dealer-appellant, a partnership firm. It was registered with Department of Trade & Taxes.

19. By way of the assessment framed on 15/03/2003, under Section 23(3) of Delhi Sales Tax Act, 1975, learned Assessing Authority directed the dealer-appellant to pay Rs. 17,83,784/-, i.e. Rs. 15,31,145/- towards tax and Rs. 2,52,639/- towards interest.

20. The assessment under Local Act was framed due to the following reasons given by learned Assessing Authority:-

> "The dealer has also filed the list of tax paid purchases/sales, exemption allowed after verification of tax paid sales/purchases. The sale of Supari for Rs. 1,12,42,040/- as tax paid and taxable sales of Supari for Rs. 1,57,94,622/- @ 4% is taxed @*% with interest under the Local Act."

21. Feeling dissatisfied with the assessment dated 15/03/2003, the dealer filed first appeal. Learned Additional Commissioner-II, vide order dated 17/08/2004 dismissed the appeal by observing in the manner as:-

19/9

APPELLATE TRIBUNAL

"After hearing and considering all the records, it is clear that the item supari was taxable at the rate of 8%. The appellant for the sake of arguments cannot take a plea that the item supari should either be taxed at kirana items or medicinal herbs at the rate of 4%. The references made in the budget speech may not be basis for taxation till the proposals are notified as per law. It is also true that while excluding medicinal herbs from the kirana items vide notification dated 31.3.2000 effective from 1.4.2000 no inference can not be drawn that supari was defined as medicinal herbs for the purposes of taxation and could not be taxed as general item. Moreover the separate entry no. 63, added as medicinal herb in second schedule vide notification No.F.4(75)/99-Fin(G)/2095 dated 31.3.2000 was omitted w.e.f. 1.5.2000 vide notification No.F.4(52)/99-Fin(G)/(i) dated 30.4.2000. As such question of treating supari as medicinal herb taxable @4% does not arise."

22. Arguments heard. File perused.

23. Indisputably, the two items i.e. Katha and Supari, subject matter of appeal no. 225/04 and "Supari," subject matter of appeal no. 211/04 were placed in Entry No. 63, Schedule-II w.e.f. 01/05/2003.

Prior thereto up to 30/09/1959, these two items were subjected to tax at the rate of 3.125%; at the rate of 4% from 01/10/1959 to 31/05/1963 and thereafter at the rate of 5% w.e.f. 01/06/1963. These rates were applicable as per provisions of Bengal Finance (Sales Tax) Act, 1941.

24. The Second Schedule to the Delhi Sales Tax Act, 1975 replaced the Third Schedule of the erstwhile Bengal Finance (Sales Tax) Act, 1941 w.e.f. 21/10/1975, but Katha and Supari

1/9/19

APPELLATE TRIBUNAL VAT DELHI

continued to be unspecified in any of the schedules referred to in Sections 4 & 7 of the DST Act and as such Katha & Supari were taxable at the rates specified u/s 4(1)(d) of the DST Act.

25. The rate of tax w.e.f. 21/10/1975 to 14/06/1995 was 7%. For the first time, this rate was reduced to 3.5% w.e.f. 15/06/1995 with the insertion of the entry "Dry fruits and Kirana" but not including tea, coffee, chicory and cocoa, treating 'katha' and 'supari' as kirana items though not specifically mentioned as such.

The rate was further reduced to 3% w.e.f. 15/10/1996 vide Notification No.F4(20)/96-Fin(G)(i) dated 15/10/1996.

For the first time, the Central Government vide Notification No. 14(12)/89-PPR/PF/Vol.III/25273-523 dated 03/12/1997 reduced the rate of Central Sale Tax payable on Inter-state sale of many goods, not being "declared goods", listed in a non-exhaustive list of 701 items of primary produce of land, of plant or mineral origin (which had either not undergone any processing, other than drying, or undergone some processing).

26. Vide Notification dated 15/01/2000, items specified therein including herb used in kitchen, and included in Second Schedule were exigible to tax at the rate of 4% w.e.f. 16/01/2000. However, vide notification dated 31/03/2000, "Medicinal Herb" were excluded from the set of goods listed in Government of India notification dated 03/12/1997. So,

19/9

APPELLATE TRIBUNAL VAT DELHI

w.e.f. 01/04/2000 to 27/11/2000 Entry No. 16 contained the following items which were exigible to tax at the rate of 4%:

> "Kirana items including all items excepting medicinal herbs as notified by the Govt. of India, MHA under the Central Sales Tax Act vide Notification No. F.14 (12)/89-PPR/PF/Vol.III/25274-523 dated 03/12/1997."

27. Ultimately w.e.f. 01/05/2003, Entry No.16 covered the following Kirana items:-

(a) All kinds of spices and condiments including cumin seeds, turmeric, ajwain, haldi, dhania, hing, methi, sonth, kalaunji, saunf, khatai, amchur, imli, long-patta, dalchini, tej-patta, javatri, jaiphal, pepper, elaichi of all kind;
(b) Dried chillies, garlic and ginger, kankaul mirch;
(c) Ararote, singhara, kuttu and their atta;
(d) Kala namak, sendha namak, Heeng;
(e) Aam papar, mushrum, khumba and guchchi;
(f) Gola, goley ka burada, seik narial;
(g) Til, rai;
(h) Postdana, khushk pudina, magaj of all kind;
(i) Mungfali dana, sabudana;
(j) Shikakai, roli;
(k) Mehendi patti, pisi mehendi;
(l) Kesar;
(m) Dry fruits.

28. It may be mentioned here that the above notifications and their history find mention in judgment delivered by this Appellate Tribunal in Appeal No.1035-1037/11, titled as **M/s Bhola Nath & Co. v. Commissioner of Trade & Taxes, Delhi, and others,** pertaining to the assessment year 2000-01, 2001-02,

19/9

APPELLATE TRIBUNAL VAT DELHI

2002-03 came to be disposed of by this Appellate Tribunal on 20/06/2014 and decision in Appeal no. 32/2011, pertaining to the assessment year 2003-04 as well as Appeal no. 852/2009, titled as M/s B. H. Marketing (P) Ltd. v. Commissioner of Trade & Taxes decided on the same date.

Therein question cropped up before this Appellate Tribunal as to whether intention of legislature was to place 'katha'& 'supari' in entry pertaining to Kirana items as Medicinal Herb. The Appellate Tribunal observed that w.e.f. 31/03/2000, 'katha' & 'supari' were excluded from Entry 16 pertaining to Kirana items by making amendment in Entry No. 16 to read Kirana items, including all items except Medicinal Herb as notified by Government of India on 03/12/1997 under Central Sales Tax Act, 1956. Appellate Tribunal then relied upon decision in **M/s Uttam Agencies *v.* Government of NCT, Delhi**,12 STC 286, wherein it was observed as under:

> "In the present case, the Department and the Assessee were under a common bonafide mistaken belief that tea continued to be liable for sales tax at first point. Tea was not provided as a separate specified entry upto 1.5.2003, whereby a notification a separate entry for tea was made. Prior to 28.11.2000, tea was treated as part of kirana goods after notification of 28.11.2000, there was no mention of be tea in kirana goods but there was no mention of tea anywhere else also I the second schedule. This created a confusion and petitioner continued to collect tax at first point of sale. This tax was duly deposited with the Department and assessment orders were passed by the Department considering tea taxable at first point. It is only after

19/9

the circular dated 12.11.2002 when the Department woke up to correct legal position that re-assessment notices were given. Since both the Department and the petitioners were under a mistaken belief and continued to treat tea a taxable at first point, we consider just and proper to direct that if the Department assesses tea dealers at last point of sale, the tax already deposited on behalf of the dealers by the petitioner should be accounted and adjustment of the tax should be given to the dealers. No other relief survives in this petition. The petition is, accordingly, disposed of in above terms."

29. Learned counsel for the appellant has contended that in view of the above cited decisions by this Appellate Tribunal, which have attained finality for want of challenge by the Revenue and in view of provisions of Section 43 (7) of DST Act, 1975, this appeal deserves to be allowed.

On the other hand, Learned Counsel for the Revenue has submitted that in common parlance, Katha and Supari were never considered to be Kirana items or herbs used in kitchen or medicinal herbs prior to 01/05/2003, and that these two items are applied to or used in beetle and a common man would never think of their use as medicine, and as such the appeals deserve to be dismissed.

In support of his contention learned counsel for the Revenue has referred to decisions in **Alpine Industries v. Collector of Central Excise,** 131 STC, page 9 and **Madras Rubber Factory v. Union of India**, AIR 1977 SC597, which find

19/9

APPELLATE TRIBUNAL VAT DELHI

mentioned in the dissenting view / judgment by the Learned Member (Judicial).

30. Indisputably, the decisions by this Appellate Tribunal in appeals no. 1035-1037/11 titled as **Bhola Nath and others v. Commissioner of Trade & Taxes**, Delhi; in appeal no. 32/11, titled as **H.B. Sons v. Commissioner of Trade & Taxes** and in Appeal No. 852/09-10 titled as **M/s B. H. Marketing P. Ltd.** all dated 20/06/2014 have never been challenged by the Revenue before the Hon'ble High Court. In other words, the said decisions have been accepted by the Revenue. All the said decisions were on the point of interpretation of law as regards particular entries of Schedules appearing in the taxing statute, and have remained in force ever since 2014.

It is well settled that order of the Appellate Tribunal is binding on the Revenue Authorities ~~following~~ falling under its jurisdiction. In this regard, reference may be made to decision in **Union of India v. Kamlakshi Finance Corporation Ltd's** case AIR 1992 SC 711.

31. No judgment or decision has been brought to the notice of this Appellate Tribunal by the Revenue ever delivered by the Hon'ble High Court or Hon'ble Supreme Court in relation to interpretation of the said items or entries.

19/9

APPELLATE TRIBUNAL VAT DELHI

Had these appeals been distinguishable on facts, it would have been a different matter. While interpreting the entries, in Appeal No. 225/04, "Katha and Supari", the two items were the subject matter of discussion, whereas in the other appeal no. 211/04 the subject matter or discussion was only "Supari".

To maintain consistency, certainty and predictability in the administration of justice, a Bench of co-ordinate jurisdiction should not disregard the decision of a Bench of the same strength on its own an identical question. It was so observed by Hon'ble High Court of Punjab & Haryana in **Tilak Raj Madan Mohan v. State of Punjab**, (2009) 20 VST 351.

32. On the point of interpretation of taxing statutes, reference may be made to decision in **Shri Chitta Ranjan Saha vs. State of Tripura and Ors.**, (1990) 79 STC 51 Gauhati and **Tungabhadra Industries Ltd. vs. Commercial Tax Officer, Kurnool**, (1960) 11 STC 827 (SC). On this point, it has been observed in the manner as:-

> "The principles of interpretation of items in taxing statutes like the Sales Tax Act are well-settled by a series of decisions of the Supreme Court and this Court. In a taxing statute, words of everyday use must be construed not in the scientific or technical sense but as understood in common parlance.
>
> If a statute contains language, which is capable of being construed in a popular sense such a statute should not be construed, according to the strict or technical meaning of the language contained in it but it should be construed in its

popular sense, meaning of course by the words "popular sense" that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it.

If any form or expression has been defined in the enactment then it must be understood in the sense in which it is so 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.

The words of everyday use are to be construed according to their popular sense....."

33. While deciding M/s Bholanath's and other connected appeal's case (supra), on the point of common parlance, this Appellate Tribunal observed in para 11 of the judgment as under:

"The submission by respective counsels for the appellants that katha/supari was, in fact, an item of kirana Entry as was in practice and taxed accordingly @4%, of which assessments are also placed on record which fact is recognized by bringing the Entry 16 in Second Schedule w.e.f. 16.01.2000 specifically mentioning the herb used in kitchen and taxable @ 4% which included katha/supari used in preparation of betel for chewing and consumption as a routine some times after breakfast, lunch, dinner and some times during the whole day by families of different religious groups after preparation by households in their place of business, i.e., kitchen considering the same as herb which is given recognition by the respondent as medicinal herbs in a very specific manner when katha/supari was included within the meaning of 'medicinal herb' w.e.f. 01.05.2003. It is also common knowledge that supari as such is taken not only in raw form but in other form for the purpose of healthy life as

APPELLATE TRIBUNAL VAT DELHI

1919

medicine. This submission cannot be outrightly rejected as the fact remained that katha/supari always remained household items for consumption as a practice with betel leaves and as such, as a common man, one has to go with the presumption which stands accepted that katha/supari remained a medicinal herb in one form or the other, i.e., herbs used in kitchen or medicinal herb within the Entry 63 of Second Schedule itself. The purpose of such entries in the same Schedule is collection of tax @ 4% as was there at the relevant time. The question confronted for moot discussion as such remained whether the intention of the Legislature was to keep katha/supari within the entry of kirana as a medicinal herb, which is the admitted position as of now or was there no intention earlier to the Entry w.e.f. 01.05.2003 to give benefit of 4% treating the same as medicinal herb in term of Entry No. 63 of the same Schedule II as existed w.e.f. 31.03.2000 especially when w.e.f. 31.03.2000 itself, katha/supari was excluded from the Entry 16 pertaining to kirana items be amended Entry No. 16 to read "Kirana Items, including all items excepting medicinal herbs as notified by the Govt. of India on 03.12.1997 under the Central Sales Tax Act, 1956."

34. Even if, with effect from 01/05/2003, these two items were notified to be treated as medicinal herbs, onus was upon the dealer-appellant to prove that even prior to 01/05/2003, these two items were so used that in common parlance, ~~that~~ same were treated/accepted as Kirana items or herbs used in kichen. From the decisions dated 20/06/2014, it does not transpire as to what material was relied on by the dealer-appellant in this regard.

1919

APPELLATE TRIBUNAL VAT DELHI

On perusal of the decisions dated 20/06/2014, it is obvious that the observations made in para 11 of the decision in M/s Bholanath and other matters on the point of use of katha & supari for consumption after breakfast, lunch, dinner or sometimes during the entire day by families of different religious groups, in place of business, and that consumption of supari in a form, other than a raw form, for the purpose of healthy life, were the personal observations. Had the material which led to the making of these observations been there in the decisions, it would have been of much help to this Appellate Tribunal, in adjudicating the point involved in these appeals.

Similarly, observations therein regarding use of these two items, as herbs in one form or the other, were based on presumption. Had the basis which led to the drawing of the said presumption been there in the decisions, it would have been of great help to this Appellate Tribunal, in deciding the controversy involved in these appeals.

In these two appeals in hand, in the course of arguments on merits, Learned Counsel for the appellants have not referred to any material/evidence on the point of common parlance or interpretation of term "herb" while referring to the two items Katha and Supari, from medical aspect of the matter to convince that even prior to 01/05/2003 these two items were covered by the list of Kirana items or herbs.

19/9

APPELLATE TRIBUNAL VAT DELHI

35. Here, the Tribunal is presently headed by single member i.e. Member (Judicial). Under Section 45 of DST Act, 1975, this Appellate Tribunal has the powers to make reference to the Hon'ble High Court on the question of law involved, but only when an application is filed by the dealer or the Commissioner as prescribed under the law for such reference. In other words, at this stage, before passing of the judgment and without any application either by the dealer or the Commissioner, no reference can be made u/s 45 of the DST Act.

35A. In view of the above discussion, when the earlier decisions passed by this Appellate Tribunal on 20/06/2014 have not been challenged by the Revenue, having regard to the said decisions, both these appeals deserve to be allowed. Same are accordingly allowed.

36. File be consigned to the record room. Copy of the Judgment be sent to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 19/09/2022

APPELLATE TRIBUNAL VAT DELHI

19/9/22

(Narinder Kumar)
Member (J)