

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI

*Rectified  
value of  
input credit*

*and ECD*

Appeal Nos. 1035/1037/ATVAT/11-12  
Assessment Year : 2000-01, 2001-02, 2002-03

(1) M/s Bhola Nath & co.  
6377, Naya Bans  
Delhi

*27/4/23*

..... APPELLANT

VERSUS

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

Present for the Appellant  
Present for the Respondent

: Sh. Balram Sangal, Adv.  
: Sh. Pradeep Tara, Adv.

*Rectified value  
input credit*

*Appeal No. 1036/ATVAT/11 and*  
Appeal Nos. 1498-1499/ATVAT/12-13  
Assessment Year : 2001-02, 2002-03

(2) M/s Bhola Radha Kishan  
6377, Naya Bans  
Delhi

*27/4/23*

..... APPELLANT

VERSUS

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

Present for the Appellant  
Present for the Respondent

: Sh. Balram Sangal, Adv.  
: Sh. Pradeep Tara, Adv.

Appeal No. 908/ATVAT/10-11  
Assessment Year : 2002-03

(3) M/s Om Prakash Rajinder Pd.  
6033, Gali Arya Samaj  
Naya Bans  
Delhi

..... APPELLANT

VERSUS

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

Present for the Appellant  
Present for the Respondent

: Sh. V. Gautam, Adv.  
: Sh. C.M. Sharma, Adv.



Appeal No.1281/ATVAT/11-12  
Assessment Year : 2001-02

(4) M/s Indus Valley Trading (P) Ltd.  
2485/8, Bedan Pura, Karol Bagh  
New Delhi

..... APPELLANT

VERSUS

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

Present for the Appellant : Sh. H.L. Madan, C.A.  
Present for the Respondent : Sh. S.B. Jain, Adv.

Appeal No.372/ATVAT/09-10  
Assessment Year : 2002-03

(5) M/s Durga Trading Co.  
285, Katra Perian, Tilak Bazar  
Delhi

..... APPELLANT

VERSUS

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

Present for the Appellant : Sh. V. Srivastava, Adv.  
Present for the Respondent : Sh. Pradeep Tara, Adv.

Appeal No.235/ATVAT/05-06  
Assessment Year : 2003-04

(6) M/s Mehta Bishan Das  
78-284, Katra Peran  
Tilak Bazar, Khari Baoli  
Delhi-110006

..... APPELLANT

VERSUS

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

Present for the Appellant : Sh. S.K. Verma, Adv.  
Present for the Respondent : Sh. C.M. Sharma, Adv.



*[Handwritten signature]*

Appeal No.1666/ATVAT/12-13  
Assessment Year : 2002-03

(7) M/s Baboo Ram Hari Chand  
2114, Khari Baoli  
Delhi-110006

..... APPELLANT

VERSUS

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

Present for the Appellant : Sh. S.K. Kapoor, Adv.  
Present for the Respondent : Sh. C.M. Sharma, Adv.

Appeal No.822/ATVAT/09-10  
Assessment Year : 2002-03

(8) M/s Super Katha Industries (P) Ltd.  
56, Kucha Bela More, Naya Bans  
Delhi

..... APPELLANT

VERSUS

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

Present for the Appellant : Sh. Rakesh Hazrati  
Asstt. of Sh. S. Mehra, Adv.  
Present for the Respondent : Sh. S.B. Jain, Adv.

Appeal No.869/ATVAT/09-10  
Assessment Year : 2002-03

(9) M/s Mahesh Wood Products (P) Ltd.  
2042, Katra Tobacco  
Khari Baoli  
Delhi

..... APPELLANT

VERSUS

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

Present for the Appellant : Sh. V. Gautam, Adv.  
Present for the Respondent : Sh. C.M. Sharma, Adv.



*[Handwritten signature]*



Appeal No.33/ATVAT/11-12  
Assessment Year : 2002-03

(10) M/s Shree Ganga Kirana Co.  
48/1, Gabodia Market  
Khari Baoli  
Delhi

..... APPELLANT

VERSUS

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

Present for the Appellant : None  
Present for the Respondent : Sh. S.B. Jain, Adv.

### ORDER

D.C. ANAND, MEMBER (J)

1. In all these appeals common question of law and facts are involved and as such this order/common order is passed for disposal of all these appeals. The facts in each appeal primarily or basically are that the appellants are registered dealers in different Wards of the Trade & Taxes Department having different Registration numbers. The assessments of the appellants were carried out in each case under the Delhi Sales Tax Act, 1975 (in short the DST Act) for different assessment years/periods of assessment by the STO's and the additional demands were created against the appellants in respect of tax & interest for the assessment year/period as per tax period of the appellants, copy of assessment order placed for ready reference herewith. The demands were created by taxing Katha/Supari, or Katha or exclusively Supari @ 8% treating them as unclassified item. The demands were challenged before the Ld. First Appellate Authorities who vide different impugned orders placed in each file, dismissed the appeals and upheld the orders of assessment of tax & interest. Aggrieved



*af*

by the impugned orders passed in each file by Ld. First Appellate Authority, the appellants assailed the same, *inter alia*, on various grounds including primarily on the grounds as under :-

- (i) That the orders of the authorities below are wrong in law and on facts of the case.
- (ii) That the order of re-assessment having been made contrary to the mandate of law and established on this score by the Hon'ble Supreme Court of India and Delhi High Court, the same is liable to be quashed on this ground.
- (iii) That the term 'kiriyana item' has its own meaning expression and scope and its meaning cannot be restricted by merely saying that out of many of the kiriyana items only such items are kiriyana goods which appears in Entry No.16 of Second Schedule.
- (iv) That there was a confusion in the trade and also in the department that supari continues to be subjected to tax @ 4% at first point of sale. The very fact that many dealers in the trade were later on subjected to re-assessment establishes that there was a confusion both in the trade as well as in the department about the rate of tax and point of tax on sale of supari. In such circumstances, the appellant firm should not have been taxed on sales of supari @ 8%.
- (v) That in view of the preceding grounds, the judgments of the Hon'ble High Court of Delhi in the case of Uttam Agencies could not be ignored.
- (vi) That the list of kirana items issued by the Central Government on 03.12.1997 classifies supari and medicinal herbs within the same classification which means that the trader had bonafide belief that supari falls within the definition of medicinal herbs and is liable to be taxed @ 4% at first point of sale.
- (vii) That there is ample literature and material to establish that supari falls within the ambit of 'medicinal herbs'.
- (viii) The AA unilaterally treated 'katha' as unclassified item and taxed the same @ 8% without bringing on record any reasons in support of his alleged classification. The dealer had purchased the materials from companies that charged tax at the rate of 4% and the





tax was duly paid to the Government. The Assessing Authority were specifically informed of this but no credit for this tax paid was allowed. In any case, the Assessing Authority has given no reason for classifying 'katha' as unclassified item when the world over it is proved that this is a medicinal herb which was taxable @ 4% appearing in Schedule II Item No.63.

- (ix) That as per the judgment of Hon'ble Member Shri K. Sethuraman, Betel Nut (Supari) is covered in Entry No.63 hence taxable @ 4%. The authorities below grossly erred in overlooking and disobeying the judgment.
- (x) That the Assessing Authority erred in treating 'Katha' as unspecified item although 'Katha' has medicinal properties for which necessary evidence/literature was produced before him particularly when the medicinal herbs has not been defined anywhere in Delhi Sales Tax legislation and the Sales Tax department has not given any list of items which were covered in medicinal herbs during the assessment years involved.
- (xi) That the Assessing Authority has erred in ignoring the submissions made during the course of assessment proceedings whereby medicinal properties of 'Katha' were explained in detail and literature explaining those properties were also submitted.
- (xii) That two conditions would be fulfilled to claim 'Katha' and 'Supari' as item of medicinal herbs. It should be an Herb product of a plant or tree. This condition is fulfilled by 'Katha' as it is a product of a small tree 'Khair' which grows naturally all over the Indian subcontinent forest areas. It is obtained by boiling small chips of Khairwood in specially designed earthen pitchers and allowing the concentrate to cool and crystallize and after cooking, the small pieces of Khairwood are called 'Katha'. The second condition is that it should be used as medicine. This condition is also fulfilled. 'Katha' is used as medicine to treat high blood pressure, diarrhea, stomach problem, dysentery, gastric cancer and pain in body etc. It is used for mouth wash and for throat diseases also. 'Katha' is also used extensively in Pan leaves after food to remove smell. Hence, 'Katha' is an item of class of medicinal herbs in fact and law.





- (xiii) That the dealer has not collected any tax on sale of Supari as the same was taxable at first point and has already suffered tax. The dealer paid tax at the time of purchases and sold the same as second seller as per notification, but the dealer has not charged any tax.
- (xiv) The First Appellate Authority has dismissed the appeal by a non-speaking order. No cogent reasons have been given for not accepting the grounds of appeal and for accepting the interpretation placed by the Assessing Authority.
- (xv) That the First Appellate Authority has erred in sustaining the order of the Assessing Authority ignoring the fact that 'Katha' was included as medicinal herb with effect from a later date which was only a clarification so as to avoid disputes between the dealer and the department.
- (xvi) That First Appellate Authority has also erred in understanding that by Notification No.F.101(11)/2000-Fin(A/cs)21-27 dated 28.11.2000, 'Katha' was made as an unspecified item ignoring that from the same date, a new entry of medicinal herbs was added in Schedule II and 'Katha' having medicinal properties gets automatically placed at the said Entry.
- (xvii) That the First Appellate Authority has also erred in understanding that 'Katha' has been removed from kirana items vide Notification dated 28.11.2000 whereas 'Katha' is a medicinal herb covered in Entry added w.e.f. 28.11.2000 in Schedule II. The First Appellate Authority further erred in mentioning in the order that prior to the Notification dated 01.05.2003, 'Katha' and 'Supari' did not figure in the category of even medicinal herbs.
- (xviii) Levy of interest is not justified in view of the ruling of the Supreme Court in J.K. Synthetics and Maruti Wire Industries Limited. The dealer has filed returns showing the sale as tax paid sales and made his claim accordingly. The Assessing Authority has been accepting these claims in the earlier years and hence the returns were bonafide. The appellant did not collect any tax from the buyers and hence there is no question of any interest in view of the clear provisions of Section 27 r/w Section 23 of the DST Act, 1975.





2. These appeals were entertained for hearing on merits vide separate orders passed by this Tribunal u/s 43 (5) of the DST Act in the respective appeals of which compliance has been placed on record by the respective appellants.
3. Heard Ld. Counsels for the appellants and the Ld. Counsels for Revenue and have perused the record on the case file including the grounds of appeals and the impugned orders as well as the relevant provisions of law carefully along with the written submissions filed when none appeared and the judgments quoted by the Ld. Counsel for the appellants.
4. Ld. Counsels for the appellants heavily relied upon the judgment passed on 19.01.2006 by one of the Members of this Tribunal Shri K. Sethuraman in the case of M/s Shree Ganga Kirana Co. and others. Reliance also placed upon the judgment of the Hon'ble High Court of Delhi in the case of M/s Uttam Agencies Vs. Govt. of NCT of Delhi and other judgments such as 12 STC 286, 37 STC 583, 131 STC 9, AIR 1977 SC 597, Sainet Pvt.Ltd. & Another Vs. Union of India & Another reported at 1984 (18) ELT 14 (Bombay), Indian Metals & Ferro Alloys Ltd. vs. CCE reported in 1991 (51) ELT 165, Hindustan Ferodo Ltd. Vs. CCE Bombay reported at 1997(89) ELT 16, Indian Cable Co.Ltd. Vs. CCE Calcutta reported in 1994(74) ELT 22, [1990] 079 STC 0051 – Shri Chitta Ranjan Saha Vs. State of Tripura, [1989] 072 STC 0140 – Kumar Agencies and Another Vs. Commissioner of Commercial Taxes and Another, Bharat Forge and Press Industries (P) Ltd., AIR 2003 Supreme Court 2448 – Commissioner of Central Excise vs. M/s Sharma Chemical Works, Supreme Court of India – Commissioner of Income Tax-I vs. Gold Coin Health Food Pvt. Ltd., [2013] 65 VST 227 (Mad), Zile Singh vs. State of Haryana [2004] 8 SCC 1 and Govt. of India vs. Indian Tobacco Association [2005] 5 RC





379, Seaford Court Estates Ltd. vs. Asher [1949] 2 KB 481, State of Tamil Nadu vs. Kodaikanal Motor Union (P) Ltd. [1986] 62 STC 272 (SC and Singh (O.S.) vs. Union of India [1996] 7 SCC 37, Radha Soami Satsang's case, Berger Paints case and the case of P. Rama Rao and Sons and Others vs. State of Orissa [77 STC 304]. On the issue of charging of interest, Ld. Counsels for the appellants submitted that interest was wrongly charged as there was no malafide intention in payment of tax due as per return on the part of the appellant when they filed the Returns. Ld. Counsels for the appellants relied upon the judgments in the case of J.K. Synthetics Ltd. Vs. CTO (1994) 94 STC 422 and Maruti Wire Industries Limited.

5. Ld. Counsels for the Revenue, on the other hand mainly relied upon the judgment passed by Shri Bharat Bhushan, one of the Members of this Tribunal in the above cited cases. Ld. Counsels for the Revenue further submitted that by no stretch of imagination, the word 'katha' and 'supari' can be held to be included in Schedule II as 'medicinal herbs' before 01.05.2003. Had the intention of the Legislature been to include 'katha' and 'supari' in Item No.63, the Legislature could have included the same as other items have been mentioned specifically. So far as construing the meaning of 'medicinal herbs' is concerned, there is ample judicial guidance of the Apex Court, especially the case of Ram Avtar's case [125 STC 286] wherein it was held that where a particular word has not been defined in the Act, then it must be construed not in any technical sense or from botanical point of view, but as understood in common parlance. It was further submitted that 'katha' and 'supari' are not prescribed by doctors as medicines to be obtained from medical shops and also they are not available in medical shops. Ld. Counsels for the Revenue, accordingly, submitted that

*[Handwritten signature]*



there is no infirmity or illegality of the orders of the authorities below and as such, they do not warrant any interference.

6. Having heard the Ld. Counsel for the parties, record on the file including the grounds of appeals, impugned orders as also the relevant provisions of law which have been perused carefully along with the written submissions and the judgments quoted by the Ld. Counsel for the appellants, this Tribunal is of the view that before proceeding with the issues involved in these appeals, it would be useful to have a look at the history of entire issue such as various entries, amendments, notifications, inclusion and exclusion of various items from different entries during different periods as involved in each appeal for better appreciation of the same in context with the admitted position of the respondent that 'katha' and 'supari' are medicinal herb as per Entry 63 of Schedule II w.e.f. 01.05.2003.
7. Delhi Sales Tax Act, 1975 was introduced w.e.f. 21.10.1975. It was for the first time on 29.10.1975 that the Ld. Governor of Delhi, in exercise of powers u/s 5 of the DST Act, issued the first Notification No.F.4(73)/74-Fin.(G) dated 29.10.1975 containing 45 items and specifying therein the point of sale at which goods specified in the Notification would be taxable at first point of sale. Thereafter, another Notification No.F.4(38)/84-Fin(G) dated 11.04.1986 was issued thereby including 'All Kirana Goods' at Sl. No.40 of the list of First Point Goods.
8. Katha and Supari, being unspecified in the First, Second and Third schedules to the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, was taxable at the rate specified u/s 5(1)(c) of the Act, which was 3.125% upto 30.09.1959, 4% from





01.10.1959 upto 31.05.1963 and 5% w.e.f. 01.06.1963. 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 continued to be unspecified in any of the schedules referred to in Sections 4 & 7 of the DST Act and as such, Katha & Supari was taxable at the rates specified u/s 4(1)(d) of the DST Act. The rate was 7% w.e.f. 21.10.1975 to 14.06.1995. 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 item 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.F.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 have either not undergone any processing, other than drying, or undergone some processing. There is no controversy in practice of taxation relating to the rate of tax applicable on sale of Katha & Supari as goods understood covered by the term 'kirana' during the period 15.06.1995 to 15.01.2000. The ceiling rate of 4% originally applicable to only declared goods was made applicable to some other non-declared goods also w.e.f. 16.01.2000 vide Notification No.F.4(52)/99-Fin(G)(iii) dated 15.01.2000. The class or category of goods so included in the Second Schedule w.e.f. 16.01.2000 taxable @ 4% covered -

"Kirana Items, that is to say -




- (a) all kinds of spices and condiments including cumin seeds, ajwain, haldi, dhania, hing, methi, sonth, kalaunji, saunf, khatai, amchur, imli, amla, harrad and bahera, ratanjot, 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;
- (e) aam papar, mushrum, khumba andguchchi;
- (f) gola, goley ka burada, seik narial;
- (g) til, rai;
- (h) postdana, khushk, pudina, magaj of all kind;
- (i) mungfali dana, sabudana;
- (j) hawan samagri, shikakai, roli;
- (k) sat-esabgoal, bhuj-esabgoal, bhusi-esabgoal;
- (l) mehendi patti, pisi mehendi, kesar;
- (m) herbs used in kitchen.**

The above items remained in force from 16.01.2000 to 31.03.2000.

9. However, the scope of Tariff entry No.16 in the Second Schedule was redefined vide Notification No.F4(75)/99-Fin(a)(iii) dated 31.03.2000 by excluding medicinal herbs out of the set of goods listed in the Govt. of India Notification dated 03.12.1997 and inclusion thereof in Entry No.63 as was inserted to read "Medicinal Herbs" and Entry No.16 was amended 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. Thus, from 01.04.2000 to 27.11.2000, Entry No.16 contained the following items taxable @ 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.

From 28.11.2000 to 23.04.2002, Entry No.16 included the following –

Kirana items that is to say –



*[Handwritten signature]*



- (a) all kinds of spices and condiments including cumin seeds, turmeric, ajwain, haldi, dhania, hing, methi, sonth, kalaunji, saunf, khatai, amchur, imli, amla, harrad and bahera, ratanjot, 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 andguchchi;
- (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) keser.

From 24.04.2002 to 30.04.2003, the Entry 16 included Kiryana items that is to say after omission is of certain items vide notification dated 24.04.2002 -

- (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) roli;
- (k) Mehendi patti, pisi mehendi;
- (l) keser.
- (m) Dry Fruits

From 01.05.2003 till date

Entry No.16 Kiryana items that is to say -

- (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;



*[Handwritten signature]*

- (c) ararote, singhara, kuttu and their atta;
- (d) kala namak, sendha namak, Heeng;
- (e) aam papar, mushrum, khumba andguchchi;
- (f) gola, goley ka burada, seik narial;
- (g) til, rai;
- (h) postdana, khushk, pudina, magaj of all kind;
- (i) mungfali dana, sabudana;
- (j) roli;
- (k) Mehendi patti, pisi mehendi;
- (l) keser
- (m) Dry fruits.

Entry No.63 items taxable @ 4% included –

From 01.04.2000 to 23.04.2002

Medicinal herbs

From 24.04.2002 to 30.04.2003

Medicinal herbs including amla, harrad and bahera, Sikakai, rattanjot and khushk pudina.

From 01.05.2003 till date –

Medicinal herbs including amla, harrad and bahera, Sikakai, katha, supari, rattanjot and khushk pudina

10. As noted above, admittedly katha/supari is an item in Schedule II Entry 63 defined as medicinal herb w.e.f. 01.05.2003. Before 01.05.2003 the term 'medicinal herb' was excluded from the items of kirana by the respondent vide Notification 31.03.2000 by excluding medicinal herbs out of the set of goods listed in the Govt. of India Notification dated 03.12.1997 and vide notification of the same date 31.03.2000 brought the same medicinal herb in Entry No.63 as was inserted to read "Medicinal Herbs" and Entry No.16 was amended 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. Earlier to it, there was entry in the kirana item under Entry No.16, vide Notification No.F.4(52)/99-





Fin(G)(iii) dated 15.01.2000. The class or category of goods so included in the Second Schedule w.e.f. 16.01.2000 taxable @ 4% contained Herbs used in kitchen.

11. The submissions 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 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 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 by 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.

12. The discussion as above inclined this Tribunal to accept the submissions made by respective Ld. Counsel for the appellants which is in consonance with the observations made by Their Lordships in case of M/s Uttam Agencies Vs. Govt. of NCT of Delhi (supra) 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, when by a notification a separate entry for tea was made. Prior to 28.11.2000, tea was treated as part of kiriyana goods. After notification of 28.11.2000, there was no mention of the tea in kiriyana goods but there was no mention of tea anywhere else also in 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 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 as 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."*





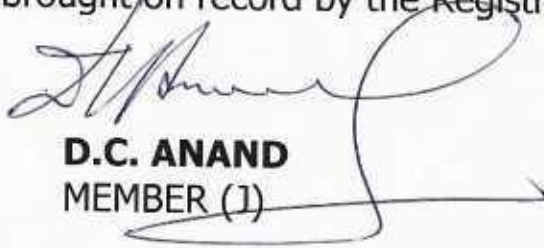

13. In view of the foregoing discussion and the observations of Their Lordships in the case of M/s Uttam Agencies and the peculiar facts which are creations of the respondents itself, this Tribunal is of the considered view that in such a scenario of notifications after notifications and different categorization with no purpose as the liability of payment of tax remained the same whether the item katha/supari is placed under Entry 16 or under Entry 63 of the same Schedule II, there exists no reason to have a second opinion that such a practice not only create doubts/confusions and an atmosphere of alarm among the traders community but also some times makes them keep on ransom which may amount to unfair trade and business dependent on the whims and wishes of the rule-making authority which is not at all justified on the part of the administration involved in the collection of tax on a generally used item like katha/supari. Such somersault practice which is unusual, certainly leads to unhealthy litigation and involvement of the traders in such litigation which is clear because of multiple entries, notifications, the appeals are pending and yet arguments are submitted that in accordance with medical terms, the katha/supari is a medicinal herb. As already noted, this fact has been admitted by bringing an entry by way of notification dated 01.05.2003 that medicinal herbs include katha and supari.
14. In view of observations as above, this Tribunal is of the considered judicious view that assessment of the appellants u/s 23(3) of the DST Act creating additional demand is neither justified nor legal and so is the finding in respect of the interest and as such, the impugned orders passed by Ld. FAA upholding such assessment orders are set aside as not passed in accordance with the law/entry at the relevant time as well as subsequent development as were available with the Ld. FAA for



decision on merits which are not taken into consideration and as such, impugned orders are not only misplaced but a case of mis-direction. The impugned orders are, accordingly, set aside and appeals accepted, however no order as to cost.

15. Order announced in the open court.

16. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

  
**D.C. ANAND**  
 MEMBER (I)

Date :20.06.2014

No.ATVAT/2014/Order/ 1785-1791

Dated: 24/8/14

Copy to:-

- (1) CST
- (2) Spl. Commissioner-I/Addl. Commissioner-I/Addl. Commissioner (Zone-II)/Addl. Commissioner (Zone-V)/Addl. Commissioner (Appeal-III & IV)/Jt. Commissioner (Appeal III & IV)/,
- (3) VATO (Ward-16)/VATO (Ward-45)/VATO (Ward-25)/VATO (Ward-27)/VATO (Ward-28)
- (4) Dealer
- (5) Second case file
- (6) Guard File
- (7) Govt. Counsel
- (8) Secretary (Sales Tax Bar Association)
- (9) Secretary (Tax Tribunal Bar Association)

  
 24/6/14  
**REGISTRAR**

