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I.T.C. AGRO TECH LTD.

v.

COMMERCIAL TAX OFFICER AND ORS.

JULY 25, 2001

B

[S.P. BHARUCHA, Y.K. SABHARWAL AND BRIJESH KUMAR, JJ.]

*Sales Tax :*

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*Andhra Pradesh General Sales Tax Act, 1957—First Schedule—Entries 24-A and 24-B—Refined oil and non-refined oil—Refined oil obtained from non-refined oil mentioned in Entry 24-A—Meaning of—Held, it means non-refined oil described or set-forth under the Entry and does not mean non-refined oil subjected to tax under the Entry.*

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*Words and Phrases :*

*'Mentioned'—Meaning in the context of an Entry in a Schedule to Sales Tax Laws.*

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Entry 24-A of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957 deal with non-refined vegetable oil and Entry 24-B deal with refined vegetable oil obtained from non-refined oil mentioned in Entry 24-A. Respondent-State issued Circulars under the Act clarifying Entry 24-B. The Circulars stated that the concessional rate of 2% sales tax under Entry 24-B is available only to those refined oils, which are obtained from non-refined oils that had suffered tax under Entry 24-A and that imposed refined oils, which have not suffered tax under Entry 24-A, are taxable at a higher rate of 10% under the Seventh Schedule to the Act. Appellants filed Writ Petitions before High Court challenging the Circulars issued by the respondent-State. The High Court quashed the Circulars but, however, interpreted Entry 24-B by holding that only those refined vegetable oils are taxable which have suffered tax in the non refined capacity under Entry 24-A.

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In appeals to this Court, the appellants contended that the word 'mentioned' used in Entry 24-B applied to all vegetable refined oils that were obtained from non-refined oil of the kind described in Entry 24-A; that the word 'mentioned' does not mean the words 'that has suffered tax' under Entry 24-A; that where the intention was to apply an Entry only to articles

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that had suffered tax under the Act, the Entry specifically stated so; and that Entry 24, before amendment, used the words 'if it had met the tax under the Act' and these words are not mentioned in the amended Entries 24-A and 24-B.

Allowing the appeals, the Court

**HELD :** 1.1. The words used in Entry 24-B of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957 plainly indicate that it is applicable to all vegetable oil (refined) that is obtained from the kinds of non-refined oil that are described in Entry 24-A. The word 'mentioned' only means 'described' or 'set forth' and no more. There was, therefore, no justification for the conclusion that only vegetable oil (refined) obtained from non-refined oil that had been subjected to tax under Entry 24-A of the Schedule could be taxed at the rate of 2%. Further, where the Schedule intended to refer to goods which were made from inputs that had suffered tax under the Act, the Schedule so stated. The fact that, before its amendment, Entry 24 had used the words 'if it had met tax under the Act' and these words were omitted after the amendment would show that the construction now placed by this Court upon Entry 24-B is correct. [20-A; 21-F-H]

1.2. The orders of assessment made on the basis of the interpretation placed by the State on Entry 24-B are set aside. The State shall refund to the appellants the sums deposited by them as a condition of stay. [22-A, B]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 6362 of 1998.

From the Judgment and Order dated 13.11.98 of the Andhra Pradesh High Court in W.P. No. 4752 of 1998.

WITH

C.A. Nos. 6363-73/98, 1862, 3683, 4049-4052, 4615-4620, 4584-4586/99, 4664 and 4665 of 2001.

F.S. Nariman, S. Ganesh and T.L.V. Iyer, Subhash Sharma, K. Kiran, N. Ganpathy, Rajan Narain, Aruneshwar Gupta, C.R. Sridharan, Ms. Sushma Sharma, Ms. Kumud Singh for M/s. Law Consults for M/s. JBD and Co., Ms. T. Anamika, G. Prabhakar, Anil Kumar Tandale and K. Ram Kumar for the appearing parties.

The Judgment of the Court was delivered by

A **BHARUCHA, J.** Leave granted in the special leave petitions.

These appeals call for the interpretation of Entry 24-B of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957.

B The controversy would be clearer if both Entries 24-A and 24-B are reproduced. They read thus:

Sl. No.	Description of Goods	Point of Levy	Rate of Tax	Effective from
C 24-A	Vegetable oils (non-refined) including groundnut, palm oil, sunflower oil, soya bean oil, mustard oil, kusum oil, tobacco seed oil, castor oil, washed cotton seed oil other than rice bran oil and coconut oil (1204)	At the point of first sale in the State	2 Paise in rupee	16.8.95
D 24-B	Vegetable oil (refined) obtained from non-refined oil mentioned in item 24-A other than rice bran oil (1205)	-do-	-do-	16.8.95

E The Government of Andhra Pradesh issued a circular on 16th September, 1997 in regard to Entry 24B. It said: "Since there is a specific mention of the non refined oils which are linked to refined oils in item 24-B the only interpretation that can be offered is that the concessional rate of 2% is applicable only to those oils which are obtained from non refined oils subject to tax under Entry 24-A of 1st Schedule. Imported refined oils are, therefore, taxable at 10% under VII Schedule." The same interpretation was reiterated F on 10th November, 1997 by the office of the Commissioner of Commercial Taxes.

G The two circulars aforementioned and assessments on that basis were impugned in writ petitions filed before the High Court of Andhra Pradesh. The two circulars were struck down, and there is no challenge to that part of the order. However, the High Court went on to interpret Entries 24-A and 24-B and said, "Item 24-B lays down that all refined vegetable oils obtained from non-refined oil mentioned in item 24-A other than rice bran oil are H subject to tax at the rate of 2% So, there is a condition laid down that only

those refined vegetable oils are taxable at 2% which have suffered tax in the non refined capacity under item 24-A. Those refined vegetable oils which have not suffered tax under item 24-A have been excluded from the application of 24-B." This interpretation of Entry 24-B of the High Court is impugned in the appeals before us. A

Learned counsel for the appellants stressed the word 'mentioned' used in Entry 24-B and submitted that it only signified that Entry 24-B applied to all vegetable oil (refined) that were obtained from non-refined oil of the kind described in Entry 24-A. The word 'mentioned' could not be equated with the words 'that has suffered tax' under Entry 24-A. Our attention was drawn to the fact that where the intention was to apply an entry in the Schedule only to articles that had suffered tax under the Act, the entry so stated: as for example, Entry 158, which read. "Betel-nut powder obtained from arecanut that has met tax under this Act". It was also pointed out that the very Entry 24, before it was amended, had used the words 'if it had met tax under the Act' and these words did not occur in the amended Entries 24-A and 24-B. B C D

Learned counsel for the State supported the decision of the High Court and submitted that, given the words of Entry 24-B, only that vegetable oil (refined) which was obtained from non-refined oil that had suffered tax under Entry 24-A could be taxed at the rate of two per cent. Vegetable oil (refined) obtained from non- retained oil which had not suffered tax under Entry 24-A fell within the residuary entry of the Schedule and was liable to tax at the rate of ten per cent. E

In our view, the words used in Entry 24-B plainly indicate that it is applicable to all vegetable oil (refined) that is obtained from the kinds of non-refined oil that are described in Entry 24-A, that is, from non-refined oil other than rice bran oil. The word 'mentioned' only means "described" or "set forth" and no more. There was, therefore, no justification for the conclusion that only vegetable oil (refined) obtained from non-refined oil that had been subjected to tax under Entry 24-A could be taxed at the rate of 2 paise. Further, where the Schedule intended to refer to goods which were made from inputs that had suffered tax under the Act, the Schedule so stated. Yet again, the fact that before its amendment, Entry 24 had used the words 'if it had met tax under the Act' and these words were omitted after the amendment shows that the construction that we have placed upon Entry 24 B is correct. F G H

**A** In this view of the matter, the civil appeals are allowed. The judgments and orders under challenge are set aside. The orders of assessment made on the basis of the interpretation placed by the State on Entry 24-B are set aside.

**B** Having regard to the relief so granted, the State shall refund to the appellants the sums deposited by them as a condition of stay. This shall be done within twelve weeks.

The respondents shall pay to the appellants the costs of the appeals.

B.S.

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Appeals allowed.