COMMISSIONER OF COMMERCIAL TAX, INDORE AND ORS.

v.

T.T.K. HEALTH CARE LTD.

APRIL 11, 2007

[S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

M. P. Commercial Tax Act, 1994—s.2(g)—Schedule II—Part I, Entry 2 and Part VII, Entry 1—'Fryums'—Not 'cooked food' within meaning of s.2(g) as it is not directly consumable and requires further process of frying and addition of preservatives to make it consumable—Consequently cannot be classified under Entry 2, Part I of Schedule II.

Interpretation of Statutes—Inclusive definition—Legislative intent—Held: Is to make definition enumerative and not exhaustive.

Words and Phrases—Term "cooked food"—Meaning of—In the context of s.2(g) of the M.P. Commercial Tax Act, 1994.

The question which arose for consideration in the present appeal is whether the 'fryums' made by assessee-respondent fall under Entry 2, Part I, Schedule II which refers to 'cooked food' or under the residual entry in Part VII, Schedule II of the of the M.P. Commercial Tax Act, 1994.

Allowing the appeal, the Court

HELD: 1.1. Section 2(g) of the M.P. Commercial Tax Act, 1994 defines the term 'cooked food'. It includes sweets, batasha, mishri, shrikhand, rabari, doodhpak, tea and coffee but excludes ice-cream, kulfi, ice-candy, cakes, pastries, biscuits, chocolates, toffees, lozenges and mawa. The item 'cooked food' is inclusive definition which indicates by illustration what the legislatures intended to mean when it has used the term 'cooked food'. Reading of the above inclusive part of the definition shows that only consumables are sought to be included in the term 'cooked food'. In the case of 'fryums' there is no dispute that the dough/base is a semi-food. There is also no doubt that in the case of 'fryums' a further cooking process was required. The 'fryums' came in plastic bags. These 'fryums' were required to be fried depending on the taste of the consumer. In the circumstances 'fryums' were like seviyan.

A **'Fryums' were required to be fried in edible oil. That oil had to be heated. There was certain process required to be applied before 'fryums' become consumable. In these circumstances the item 'fryums' will not fall within the term 'cooked food' under Item 2 Part I of Schedule II to the 1994 Act. It will fall under the residuary item "all other goods not included in any part of**
B **Schedule I". [Para 12] [5-D-G]**

1.2. When the word 'includes' is used in the definition, as is the case under Section 2(g) of the 1994 Act, the legislature does not intend to restrict the definition; it makes the definition enumerative and not exhaustive, that is to say, the term defined will retain its ordinary meaning but its scope would
C **be extended to bring within the term certain matters which in its ordinary meaning may or may not comprise. The term 'cooked food' in Section 2(g) of the 1994 Act uses the word 'includes' in the definition. The said term 'cooked food' makes the definition enumerative when it includes within the said term sweets, batasha, mishri, shrikhand, doodpat, tea and coffee. When it enumerates items like sweets, mishri, batasha, dhoodpak, tea and coffee the**
D **enumerated items help to probe into the legislative intent. The legislative intent under Section 2(g) is to include consumables. 'Fryums' at the relevant time were not directly consumable. They were under-cooked items. They were semi-cooked items. They required further process of frying and addition of preservatives to make them consumables even after the specified time. But**
E **for the preservatives the items would have become stale.**

[Para 13] [5-H; 6-A-C]

Bharat Co-operative Bank (Mumbai) Ltd. **v.** *Co-operative Bank Employees Union,* **(2007) 5 SCALE 57, relied on.**

F *Commissioner of Sales Tax M.P., Indore* **v.** *Shri Ballabhdas Ishwardas, Bombay Bazar, Khandwa,* **(1968) 21 STC 309 and** *Commissioner of Sales Tax, M.P.* **v.** *India Coffee Workers Co-operative Society Ltd., Jabalpur,* **(1970) 25 STC 43, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 309 of 2002.

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From the Judgment and Order dated 01.03.2001 of the High Court of Madhya Pradesh, Bench at Indore in LPA No. 40 of 2001.

Dr. N.M. Ghatate, C.D. Singh, Merusagar Samantaray and Vairagya Vardhan for the Appellants.

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Gautam Narayan, Amit Gupta, Ankit Singhal and Nikhil Nayyar for the Respondent.

The Judgment of the Court was delivered by

KAPADIA, J. 1. This civil appeal by grant of special leave petition concerns classification dispute. According to the assessee 'fryums' fall under item No.2 of Part I of Schedule II which refers to 'cooked food' and in which case the rate of tax is 4%. On the other hand, according to the Department the item 'fryums' falls under Part VII of Schedule II to the M.P. Commercial Tax Act, 1994, under which the rate of tax is 8% (earlier it was 6%)

2. The short question, therefore, which arises for determination in this civil appeal is the meaning of the term 'cooked food' in M.P. Commercial Tax Act, 1994. Though the expression 'cooked food' has been defined under Section 2(g) of the said 1994 Act in this civil appeal we are concerned with the Assessment Years 1992-93 and 1993-94. It is made clear that the assessee is a registered dealer under M.P. General Sales Tax Act 1958 and thereafter under M.P. Commercial Tax Act, 1994. It is not in dispute that the assessee has been assessed under the above entries of the 1994 Act. This is because the 1958 Act stood replaced by the 1994 Act and the original assessment made under the 1958 Act have been treated to have been made under the 1994 Act.

3. On 12th March, 1996 the Assistant Commissioner, Indore, assessed sale of 'fryums' at 8% sales tax under the residuary entry referred to above. He demanded tax of Rs.1.33 lakhs (rounded off) for the Assessment Years 1.4.92 to 31.3.93. The Commissioner of Commercial Tax, in an application made under Section 68 of the 1994 Act held that 'fryums' were neither Namkeen nor 'cooked food' nor 'papad' nor 'cereals', and therefore, they were taxable under the above residual entry of Part VII of Schedule II of the 1994 Act. On 20.6.1997 the Appellate Authority dismissed the appeal. The matter was carried in revision. The revision was also dismissed.

4. The Assistant Commissioner had assessed the sale of 'fryums' for the subsequent period commencing from 1.4.1993 to 31.3.1994 also under the above residuary entry at 8% and demanded sales tax amounting to Rs.66,202.

5. Aggrieved by the aforestated decision in respect of the above two years the assessee moved the Madhya Pradesh High Court in Writ Petition under Articles 226/227 of the Constitution praying for a declaration that

A 'fryums' be held as 'cooked food' liable to tax under Entry IV of Part I of Schedule II of the 1958 Act corresponding to Entry 2 of Part I of Schedule II of the 1994 Act. After hearing both the parties the learned single Judge came to the conclusion that 'fryums' are 'cooked food' liable to be assessed under Entry 2 Part I of Schedule II to the 1994 Act.

B 6. Aggrieved by the decision of the learned single Judge the Department carried the matter in appeal to the Division Bench which has confirmed the decision of the learned single Judge.

7. We quote hereinbelow Section 2(g) of M.P. Commercial Tax Act, 1944 which defines the term 'cooked food'

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> "2(g) 'Cooked food' includes sweets and sweetmeats, mishri, batasha, chironji, shrikhand, rabadi, doodhpak, prepared tea and prepared coffee but excludes ice-cream, kulfi, ice-candy, non-alcoholic drink containing ice-cream, cakes, pastries, biscuits, chocolates, toffees, lozenges, peppermint drops and mawa'

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8. We also quote hereinbelow item 2 of Part I of Schedule II to the said 1994 Act which levies the rate of tax at 4%.

SCHEDULE II
(Effective upto 31.12.1999)

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S.No.	Description of Good	Rate of Tax
	Part I	
1.	Unginned cotton	4%
2.	'Cooked food'	4%

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9. We also quote hereinbelow the residuary entry namely Item 1 of Part VII of Schedule II to the M.P. Commercial Tax Act 1994 which fixes the rate of duty at 8% (earlier 6%):

G "M.P. Commercial Tax Act, 1994

S.No.	Description of Good	Rate of Tax
	Part VII	
1.	All other goods not included in Schedule I or any other part of	

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this Schedule."

10. In the case of *Commissioner of Sales Tax M.P., Indore* v. *Shri Ballabhdas Ishwardas, Bombay Bazar, Khandwa,* (1968) 21 STC 309, it has been held that the term 'cooked food' cannot be read in a wider sense so as to include everything made fit for eating by application of heat, boiling, baking, roasting, grilling etc. The term is confined to these cooked items which one generally takes at regular meal hours.

11. In the case of *Commissioner of Sales Tax, M.P.* v. *India Coffee Workers Co-operative Society Ltd., Jabalpur,* (1970) 25 STC 43 the High Court has held that the term 'cooked food' excluded meals from description of words under Item 9 of Schedule I read with Section 10(1) of M.P. General Sales Tax Act, 1959. That, the term 'meal' was not defined under that Act, and therefore, one has to understand that word in terms of common parlance and popular meaning. It was therefore, held that supply of items like ice-cream, toast, fried eggs, vegetable and mutton cutlets did not constitute meals though the said items were also eatables.

12. In the present case we have quoted the definition of the term 'cooked food'. It is an inclusive definition. It includes sweets, batasha, mishri, shrikhand, rabari, doodhpak, tea and coffee but excludes ice-cream, kulfi, ice-candy, cakes, pastries, biscuits, chocolates, toffees, lozenges and mawa. That the item 'cooked food' is inclusive definition which indicates by illustration what the legislatures intended to mean when it has used the term 'cooked food'. Reading of the above inclusive part of the definition shows that only consumables are sought to be included in the term 'cooked food'. In the case of 'fryums' there is no dispute that the dough/base is a semi-food. There is also no doubt that in the case of 'fryums' a further cooking process was required. It is not in dispute that the 'fryums' came in plastic bags. These 'fryums' were required to be fried depending on the taste of the consumer. In the circumstances we are of the view that 'fryums' were like seviyan . 'Fryums' were required to be fried in edible oil. That oil had to be heated. There was certain process required to be applied before 'fryums' become consumable. In these circumstances the item 'fryums' in the present case will not fall within the term 'cooked food' under Item 2 Part I of Schedule II to the 1994 Act. It will fall under the residuary item "all other goods not included in any part of Schedule I".

13. In the case of *Bharat Co-operative Bank (Mumbai) Ltd.* v. *Co-*

A *operative Bank Employees Union,* [2007] 5 SCALE 57, this Court has held that when the word 'includes' is used in the definition, as is the case under Section 2(g) of the 1994 Act, the legislature does not intend to restrict the definition; it makes the definition enumerative and not exhaustive, that is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within the term certain matters which in its ordinary meaning B may or may not comprise. Applying the above test to the term 'cooked food' in Section 2(g) of the 1994 Act we find that the said term uses the word 'includes' in the definition. The said term 'cooked food' makes the definition enumerative when it includes within the said term sweets, batasha, mishri, shrikhand, doodpat, tea and coffee. When it enumerates items like sweets, C mishri, batasha, dhoodpak, tea and coffee the enumerated items help us to probe into the legislative intent. The legislative intent in the present case under Section 2(g) is to include consumables. 'Fryums' in the present case at the relevant time were not directly consumable. They were under-cooked items. They were semi-cooked items. They required further process of frying and addition of preservatives to make them consumables even after the D specified time. But for the preservatives the items would have become stale.

14. For the above reasons we set aside the impugned judgment and allow this civil appeal filed by the Department with no order as to costs.

B.B.B. Appeal allowed.