GAHC010121032015

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

WP(C) 5642/2015

M/S Eastern Infratech

..... **Petitioner**

VERSUS

The State of Assam and 4 Ors

..... **Respondents**

With

WP(C) 5644/2015

M/S Eastern Infratech

..... **Petitioner**

VERSUS

The State of Assam and Ors.

..... **Respondents**

With

WP(C) 5646/2015

M/S Jagdambay Enterprises (India) Pvt. Ltd.

..... **Petitioner**

VERSUS

The State of Assam and Ors.

..... **Respondents**

With

WP(C) 5647/2015

M/S Jagdambay Enterprises (India) Pvt. Ltd.

.....Petitioner

VERSUS

State of Assam & Ors.

.....**Respondents**

With

WP(C) 5651/2015

M/S Brahmaputra Udyog Pvt. Ltd.

.....Petitioner

VERSUS

State of Assam & 3 Ors.

.....**Respondents**

With

WP(C) 5661/2015

M/S Brahmaputra Udyog Pvt. Ltd.

.....Petitioner

VERSUS

State of Assam & 3 Ors.

.....**Respondents**

With

WP(C) 5670/2015

M/S Jagdambay Enterprises India Pvt. Ltd.

.....Petitioner

VERSUS

State of Assam & 3 Ors.

.....**Respondents**

With

WP(C) 5671/2015

M/S Brahmaputra Udyog Pvt. Ltd.

.....Petitioner

VERSUS

State of Assam & 3 Ors.

.....**Respondents**

With

WP(C) 5672/2015

M/S Jagdambay Enterprises (India) Pvt. Ltd.

.....Petitioner

VERSUS

State of Assam & Ors.

…….…… **Respondents**

With

WP(C) 5673/2015

M/S SRK Metals and Plastics Pvt. Ltd.

…….…… Petitioner

VERSUS

State of Assam & 3 Ors.

…….…… **Respondents**

With

WP(C) 5718/2015

M/S SRK Metals and Plastics Pvt. Ltd.

…….…… Petitioner

VERSUS

State of Assam & 3 Ors.

…….…… **Respondents**

BEFORE

HON'BLE MR. JUSTICE KARDAK ETE

Advocate for the petitioners : Ms. N. Hawelia
Ms. M.L. Gope,
Ms. N. Gogoi

Advocate for the Respondent : Mr. B. Gogoi, (SC, Finance and Taxation Dept.)

Date of Hearing : 21.05.2024

Date of Judgment : 28.06.2024

JUDGMENT & ORDER (CAV)

Heard Ms. N. Hawelia, learned counsel for the petitioners. Also heard Mr. B. Gogoi, learned standing counsel for the respondent Finance and Taxation Department.

2. Since issue involved in all the writ petitions is identical on facts and law, same are disposed of by this common judgement and order.

3. The petitioners have challenged the levy of Entry Tax under the Assam Entry Tax Act, 2008 on "PET Reisin" and "PVC Granuels" on the ground that the said items are nowhere mentioned in the Schedule attached to the Assam Entry Tax Act, 2008 to make the same taxable. The Respondent Authorities have imposed Entry Tax on import of the items "PET Reisin" and "PVC Granuels" by referring them as "Chemicals" which is mentioned at Entry No. 51 of the Schedule attached to the Assam Entry Tax Act, 2008. Challenge is also to the consequent assessment orders passed by the respondent authorities levying Entry Tax on "PET Reisin" and "PVC Granuels" treating the same as Chemicals as well as the orders passed by the Appellate and Revisional Authrities confirming the same against the petitioners.

4. The petitioners are engaged in the business of manufacturing and sale of PET Pre-form within and outside the State of Assam. Raw materials required are procured from outside the State of Assam for the manufacturing purpose. Amongst other materials utilized for manufacturing, the petitioners imports “PET Reisins” and “PVC Granuels” into the State of Assam.

5. In WP(C) 5642/2015 and WP(C) 5644/2015, the challenge made is to the impugned order dated 08.06.2015 passed by the Additional Commissioner of Taxes, Assam, impugned order dated 29.04.2014 passed by the Deputy Commissioner of Taxes (Appeals), Guwahati and the assessment demand notice dated 06.08.2013 issued by the Superintendent of Taxes, Unit-B, whereby, tax has been levied on the item “PET Reisin” imported from outside the State of Assam as “Chemicals” for the assessment year 2011-2012 and 2012-2013 respectively.

6. In WP(C) 5646/2015 and WP(C) 5647/2015, the challenge made is to the

impugned order dated 06.06.2015 passed by the Additional Commissioner of Taxes, Assam, impugned order dated 29.04.2014 passed by the Deputy Commissioner of Taxes (Appeals), Guwahati and the assessment demand notice dated 05.08.2013 issued by the Superintendent of Taxes, Unit-B, for the assessment year 2009-2010 and 2010-2011.

7. In WP(C) 5651/2015, WP(C) 5661/2015 and WP(C) 5671/2015, the challenge made is to the impugned order dated 25.07.2014 passed by the Additional Commissioner of Taxes, Assam, impugned order dated 25.07.2014 passed by the Deputy Commissioner of Taxes (Appeals), Guwahati and the assessment demand notice dated 24.07.2012 issued by the Superintendent of Taxes, Unit-B, for the assessment year 2009-2010, 2010-2011 and 2011-2012.

8. In WP(C) 5670/2015 and WP(C) 5672/2015, the challenge made is to the impugned order dated 06.06.2015 passed by the Additional Commissioner of Taxes, Assam, impugned order dated 29.04.2014 passed by the Deputy Commissioner of Taxes (Appeals), Guwahati and the assessment demand notice dated 05.08.2013 issued by the Superintendent of Taxes, Unit-B, for the assessment year 2011-2012 and 2012-2013.

9. In WP(C) 5673/2015 and WP(C) 5718/2015, the challenge made is to the impugned order dated 30.03.2015 passed by the Additional Commissioner of Taxes, Assam, impugned order dated 30.03.2015 passed by the Deputy Commissioner of Taxes (Appeals), Guwahati and the assessment demand notice dated 23.07.2013 issued by the Superintendent of Taxes, Unit-B, whereby, tax has been levied on the item "PET Reisin" and "PVC Granuels" imported from outside the State of Assam as "Chemicals" for the assessment year 2009-2010 and 2010-2011.

10. It is the contention of the petitioners that the items “PET Reisin” and “PVC Granuels” imported from outside the State of Assam is a Synthetic Fibre in solid form which cannot be considered as “Chemicals” under Entry 51 of the Schedule attached to the Assam Entry Tax, 2008.

11. The assessment orders were passed by the Assessing Officer under the provisions of Assam Entry Tax Act, 2008 in respect of the petitioners whereby Entry Tax was levied on the goods namely PET Reisin and PVC Granuels treating the same as covered by Entry 51 of the Assam Entry Tax Act, 2008, namely "Chemicals" for the periods 8.12.2009 to 14.08.2013 with interest.

12. Aggrieved by the impugned orders of assessment, the petitioners filed appeals before the Appellate Authority namely the Deputy Commissioner of Taxes (Appeals). The Deputy Commissioner (Appeals) accepted the fact that the items “PET Reisins” and “PVC Granuels” are not found or sold in a chemical shop. However, instead of interpreting and accepting the user test, the Deputy Commissioner (Appeals) first applied the "Definition Test" by stating that since as per the dictionary meaning chemical is a substance obtaining by chemical operation and therefore the items PET Reisin and PVC Granuels are chemicals. The Deputy Commissioner (Appeals) also applied the "Scientific Test" and held that the goods obtained from chemicals process are chemicals.

13. Thereafter, aggrieved by the order of the appellate authority, the petitioners filed revision petitions before the Commissioner of Taxes. The Additional Commissioner of Taxes even though agreed with the view of the Deputy Commissioner (Appeals) that the “PET Reisins” and “PVC Granuels” are not found in chemical shop. However, without accepting the common parlance test, the revisional authority went to apply the "Scientific Test" by stating that it has found an article whereby marketers, manufacturers and trade organizations

divide chemical industry's products into three categories: (A) Basic Chemicals, (B) Intermediate Chemicals, and (C) finished ready to use chemicals and PET reisin is not used in mass consumption but used in manufacture of plastic bottle/jars/containers for packaging drinking water or other liquid items and therefore are chemicals. Thereafter, the revisional authority applied the meaning from the Internet by holding that somewhere in the Internet, there was a broad category of chemicals and a sub-heading as plastic chemicals and therefore, applied the "Internet meaning Test" of interpretation. Further, it was held that even though Central Excise Act Tariff Schedule makes it clear that “PET Reisins” and “PVC Granuels” falls under different category and chemicals fall under other category and both are same, however, held that the meaning given in the Central Excise Act cannot be borrowed and applied in the Assam Entry Tax Act, 2008. Therefore, the interpretation under Central Excise Act was rejected by the Revisonal Authority and the Revision Petitions have been dismissed. Hence these writ petitions.

14. Ms. N. Hawelia, learned counsel for the petitioners, submits that the levy of Entry Tax under the Assam Entry Tax Act, 2008 on "PET Reisin" and "PVC Granuels" is illegal as both the items are nowhere mentioned in the Schedule attached to the Assam Entry Tax Act, 2008 to make the same taxable. The Respondent Authorities have illegally imposed Entry Tax on import of the items "PET Reisin" and "PVC Granuels" by referring them as "Chemicals" which is mentioned at Entry No. 51 of the Schedule attached to the Assam Entry Tax Act, 2008.

15. Referring to certificate from various dealers dealing in the purchase of products namely PET Reisin and PVC Granuels who have certificated that both the articles being raw materials are not considered as "Chemicals" by them, Ms.

N. Hawelia, learned counsel, submits that both the articles being raw materials cannot be considered by any stretch of imagination as "Chemicals". She submits that common parlance test / users test of interpretation needs to be applied for interpreting a commodity, meaning thereby the meaning which a common man would attribute to a particular product should be applied. Scientific meaning/ technical meaning/ internet meaning/ dictionary meaning etc. should be completely avoided.

16. She has submitted that the Appellate Authority namely the Deputy Commissioner of Taxes (Appeals) as well as the revisional authority namely the Additional Commissioner of Taxes have themselves accepted that the items PET Reisin and PVC Granuels are neither found in a Chemist Shop nor in a chemical Shop. Therefore, by applying common parlance test/ users test, the items “PET Reisins” and “PVC Granuels” cannot be held to be "Chemicals" by any stretch of imagination. As a hypothesis, she submits that a common man going to a Chemical Shop and asking for “PET Reisins” or “PVC Granuels” will not find it there. On the other hand if anyone goes to a shop and asks for chemicals, they will not be supplied with "PET Reisins” or “PVC Granuels". It is submitted that the items “PET Reisins” and “PVC Granuels” are considered by the common people in common parlance not as Chemicals.

17. Ms. N. Hawelia, learned counsel, submits that it is a settled principle of law that the taxing laws are to be interpreted very strictly, nothing is to be read into and nothing is to be read out, even a coma and full stop has to be given a meaning. In interpreting the entries of a schedule, all the entries should be interpreted strictly and to be read in harmony with each other and meaning can also be gathered from other entries in the Schedule.

18. She submits that the interpretation of an entry should be first traced from

the Act itself to see whether the particular term have been defined anywhere in the Act, it has to be seen whether the term is defined in the Act or an interpretation can be made plainly or applying analogy. In case the same is not so defined, resort can also be made to the other entries of the Act to understand the meaning of the term in the Entry. She submits that under the Assam Entry Tax Act, 2008, under Entry 51 Chemicals have been mentioned, when we looked at entries 55e, 55f and 55g which is mentioned as 55e- Caustic Soda, 55f- Sodium Silicate, 55g- Alum, it is by applying common sense one can understand that the same are nothing but Chemicals. These entries have been inserted afterwards. However, when the term "Chemicals" was already there in Entry 51, there was no need to insert these entries, the same have to be, therefore, interpreted to be given a meaning.

19. Ms. N. Hawelia, learned counsel, submits that the Additional Commissioner of Taxes, Assam having itself held that chemicals are broadly under three categories: Basic Chemicals, Intermediate and finished ready-to-use. From a reading of Entry 51 along with Entry 55 (e), (f) and (g) it becomes absolutely clear that Entry 51 refers to only Basic Chemicals in liquid Form generally understood by the common person as "Chemicals" in as much as the intermediary and final ready-to-use which are generally in solid form are given under different categories under Entry 55(e) Caustic Soda, 55(f) Sodium Silicate and 55(g) Alum and therefore even if the view of the Additional Commissioner of Taxes, Assam is accepted and read along with various entries of the Schedule attached to the Assam Entry Tax Act, 2008, the same leads to only one conclusion that the Entry 51 relates to only "Basic Chemicals" only in liquid Form.

20. Ms. N. Hawelia, learned counsel, submits that Government of India,

Ministry of Finance issued Notification No. 9(88) ST/57 which provides for goods eligible for purchase at concessional rate under CST. In the said Notification it has been specifically provided that in connection with Plastic Industries, the items “PET Reisin” has been specifically included under the heading" Raw Materials" and not under the heading "Chemicals". "Chemicals" have been stated separately which includes Phenol, Formal dehydie, acetic acids and other chemicals etc., to which the respondent authorities failed to take note of the same.

21. Ms. N. Hawelia, learned counsel, submits that it is a settled proposition of law that while interpretating an entry in the Schedule if it is discernible that the said Entry is capable of two interpretations, one in favour of assessee and the other against the assessee, then in the said event the interpretation in favour of the assessee/ beneficial to the assessee is always to be resorted to. In the instant case if the Respondent Authorities had any doubt as to whether the items PET Reisin and PVC Granuels falls under the Entry "Chemicals" or not than the interpretation that "PET Reisin and PVC Granuels" does not fall under the term "Chemicals" which is favourable to the assessee ought to have been resorted to.

22. Ms. N. Hawelia, learned counsel, submits that the Hon'ble Division Bench of this Hon'ble Court vide judgment and Order dated 22.08.2012 has clearly directed the Respondent Authorities to apply user test/ common parlance test. However, the Respondent Authorities applied the Scientific Test, Dictionary Meaning Test, Internet meaning Test in the instant case, thereby violated the judgment and order dated 22.08.2012 passed by this Hon'ble Court.

23. Ms. N. Hawelia, learned counsel, submits that if the interpretation given

by the department is accepted then every element will come under the heading chemicals and will make the interpretation ambiguous. Every element found in this universe has chemicals and physical properties just like PET Reisin and many elements are also obtained by chemical process but that does not make the same a chemical, for example Salt is combination of NA (Sodium) + CL (Chloride) but that does not mean salt is a chemical. Likewise Water is a combination of H2 (Hydrogen Gas) + O (Oxygen) that also does not mean that water is a chemical. Thus, she submits, the analogy given by the Respondents is completely impractical and ambiguous.

24. She submits that even though the Appellate Authority and the Revisional Authority have categorically accepted the common parlance meaning and held that the items "PET Reisins and PVC Granuels" are not found in a chemical shop or a chemists shop, the said Common Parlance Test is discarded by the Respondents which is not in terms with the Division Bench judgment of this Hon'ble Court dated 22.08.2012 and the judgments of the Supreme Court as well as other High Courts.

25. It is submitted that the internet meaning test relied on by the Respondents is not safe. The entire case of the Respondents is based on an article obtained from the internet which says Plastic Granuels are chemicals. But there are hundred more articles which says the opposite. The data available on internet is not always safe to rely on in as much as on internet one would always get two opposite views for same thing and both claims themselves to be correct. As for example on Internet if we search whether Peanut is good for health, we will get some articles which will say Peanut makes your life long, however, on the contrary there are some articles which claims the Peanuts are

very bad for health and can even lead to early death. Both Articles are opposite and contrary to each other and both can be found on internet with conviction. Therefore, the internet meaning test adopted by the Respondents is not at all safe and as such, she submits that the items "PET Reisins and PVC Granuels" are not "Chemicals" so as to fall within the provisions of Entry 51 of the Schedule attached to the Assam Entry Tax Act, 2008. Therefore, the impugned assessments and orders under the Assam Entry Tax Act, 2008 may be set aside and the tax paid by the petitioners during the assessment and at the appellate and revisional stages may kindly be ordered to be refunded back to the petitioners.

26. In support of her submissions, Ms. N. Hawelia, learned counsel for the petitioners, has paced reliance on the following judgements:-

1. **Gujarat Distributors vs. The State of Gujarat, reported in [1975] 36 STC 116 (Gujarat).**

2. **Additional Commissioner of Sales Tax, M.S., Bombay Vs. Afsons Industrial Corporation, reported in (1990) 78 STC 385, (Bombay).**

3. **Pepsico India Holding Pvt. Ltd. vs. State of Assam, reported in (2009) 25 VST 41 (Gau).**

4. **Collector of Central Excise, Kanpuru vs. Krishna Carbon Paper Co., reported in (1989) 72 STC 280(SC).**

5. **Commissioner of Central Excise vs. Wockhardt Life Sciences Limited, reported in (2012) 5 SCC 585.**

6. **Shen Enterprises vs. Commissioner of Customs, New Delhi, reported in (2006) 7 SCC 714.**

7. **Shri Chitta Ranjan Saha vs. State of Tripura, reported in (1990) 79 STC 51 (Gau).**

8. **Commissioner of Central Excise, Chennai-IV vs. Hindustan Lever Limited, reported (2015) 10 SCC 742,**

27. On the other hand, Mr. B. Gogoi, learned Standing Counsel for the Finance and Taxation Department, submits that the assessment has been completed treating the "PET Reisins" and "PVC Granuels" as chemicals mentioned at Sl. 51 of the schedule under the Assam Entry Tax Act, 2008. Therefore, the contention of the petitioners is not tenable in law. The question of acting illegally and arbitrarily claimed by the petitioners does not arise as tax has been levied treating the "PET Reisins" and "PVC Granuels" as chemicals mentioned at Sl. 51 of the schedule under Assam Entry Tax Act, 2008.

28. Mr. B. Gogoi, learned counsel, submits that since "PET Reisins" are obtained by chemical process applied to Petro Chemicals and plastic granules do not occur a fresh, they are processed from basic of petro chemicals and as the dictionary meaning of chemical is substance obtained by chemical operation, "PET Resins" have been considered as chemical. Referring to the case of Gujarat Distributors, reported in (1975) 36 STC 116, he submits that three broad categories of chemicals have been referred to by Division Bench of the High Court of Gujarat, as under:-

a. Basic chemicals.

b. Chemical products which are intermediary and which are used for producing other subordinate articles.

c. End products.

In the instant case, he submits, as "PET Reisins" are processed from Petro Chemicals and used in the manufacture of plastic pipes, bottles, tanks, etc; such item falls in the description of chemicals covered by clause (b) above. He submits that another point to be noted is that PET Reisins and Plastic granules were exempted from payment of Entry Tax w.e.f. 28.02.2005 to 08.12.2009 vide Government notification dated 11.07.2011. Therefore, it is very clear that w.e.f.

09.12.2009 PET Reisins and plastic granules lend itself exigible to entry tax. Therefore, the contention made by the petitioners is not tenable in the eye of law.

29. Due consideration has been extended to the submissions of the learned counsel for the parties and have examined the materials available on record.

30. Under Schedule to the Assam Entry Tax Act, 2008, the specified goods are provided. Chemical is provided at Entry 51. It is noticed that the State has amended the Schedule at Entry No. 51 of the Assam Entry Tax, (amended Act, 2013), by substituting the chemicals excluding plastic granules.

31. It is noticed that with effect from 14.08.2013 the Entry of Plastic Granuels was included as Entry 51 (2) in the Schedule attached to the Assam Entry Tax Act, 2008 vide Notification dated 14.08.2013 and therefore, the present petitions does not cover the period after 14.08.2013. So far as the period from 28.02.2005 to 28.12.2009 is concerned the entry tax on entry of "PET Reisin" and "PVC Granuels" for use as raw materials in the manufacture of Plastic Items were exempted from entry tax. Therefore, the writ petitions relates only for the period between 08.12.2009 to 14.08.2013.

32. The question/issue which arises for determination in the present cases is as to whether "PET Reisin" and "PVC Granuels" items can be considered as "chemicals" as stipulated at entry No. 51 of the Schedule to the Assam Entry Tax Act, 2008 and to make the same taxable or not.

33. The Respondent Authorities have imposed Entry Tax on import of the items "PET Reisin" and "PVC Granuels" by considering them as "Chemicals" which is specified at Entry No. 51 of the Schedule attached to the Assam Entry Tax Act, 2008. The petitioners have challenged the assessment orders passed by the respondent authorities levying Entry Tax on "PET Reisin" and "PVC

Granuels" treating the same as Chemicals as well as the Appellate and Revisional Orders confirming the same.

34. It is well settled that when a taxing statute does not give statutory meaning to a word, that word should be given its popular meaning, i.e. the meaning which is attributed to it in common parlance by people who daily deal with it as consumers or dealers in the market. It is held by the Hon'ble Supreme Court that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense. The courts have avoided the Scientific Test and Dictionary Meaning Test and have insisted on Common Parlance Test, User Test, Popular Meaning Test, Commercial Meaning Test for the purpose of interpretation of commodity and entries in Schedule.

35. In the light of above proposition of law, this court would consider the present issue. It is seen that though the Appellate Authority and the Revisional Authority have accepted and held that the items "PET Reisins and "PVC Granuels" are not found in a chemical shop or a chemists shop, the said Common Parlance Test is rejected in the present cases. It would not be that if the items "PET Reisins" and "PVC Granuels" are not found in a chemical shop or a chemists shop, ipso facto the common parlance test would apply. However, since the authorities have not made any attempt to apply the common parlance test in the attending facts of the matter as required to be done, such action cannot be countenanced.

36. On perusal of the impugned orders, shows that the test applied by the Authorities appears to be an internet meaning test to which in my view would not be safe as the authorities have entirely applied the case on an article

obtained from the internet which simply described Plastic Granuels as chemicals. But there would be many more articles which may describe differently. As rightly contended by the learned counsel for the petitioners, data available on internet is not always safe to rely on in as much as on internet one would always get different or opposite views. Thus, in my considered view the internet meaning test applied by the authority would be dangerous as the same is not safe.

37. The principles laid down by the courts in various decisions are that where no definition is provided in the statute for ascertaining the correct meaning of a fiscal entry the same should be construed as understood in common parlance or trade or commercial parlance. Such words must be understood in their popular sense. The strict or technical meaning or the dictionary meaning of the entry is not to be resorted to. The nomenclature given by the parties to the word or expression is not determinative or conclusive of the nature of the goods. The same will have to be determined by application of the well settled rules or principles of interpretation which have been referred to as "common parlance" rule, "trade or commercial parlance" rule, "common- sense rule of interpretation" and "user test". The application of the principles will again depend on the facts and circumstances of each case. No test or tests can be said to be validly applicable to all cases. There may be cases where the interpretation may be tested by applying more than one rule of interpretation as has been done by the courts in certain cases.

38. In the present case, no definition is provided to “Chemicals” in the Assam Entry Tax Act, 2008. Therefore, in my view, for ascertaining the correct meaning of a fiscal entry the same should be construed as understood in common parlance or trade or commercial parlance.

39. It has also been held by the Hon’ble Supreme Court that there is no fixed

test for classification of a taxable commodity. This is probably the reason why the 'common parlance test' or the 'commercial usage test' are the most common. Whether a particular article will fall within a particular tariff heading or not has to be decided on the basis of the tangible material or evidence to determine how such an article is understood in 'common parlance' or in 'commercial world' or in 'trade circle' or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted.

40. It is also noticed that some of the dealers have challenged a clarification by the Commissioner of Taxes, Assam treating the items “PET Reisin and PVC Granuels” as covered by Entry 51 of the Schedule attached to the Assam Entry Tax Act, 2008 i.e. chemicals. This Court has held that for interpretation of the expression "chemicals", the common parlance and user test have not been applied. The Division Bench of this Hon'ble Court therefore vide judgment and order dated 22.08.2012 remanded the matter back to the Assessing Officer with a direction to pass the assessment orders independently without being influenced by the view of the Commissioner of Taxes in its clarification order and to apply the common parlance and user Test for interpretation.

41. The revisional authority though agreed with the view of the Deputy Commissioner (Appeals) that the “PET Reisin” and “PVC Granuels” were not found in chemical shop. However, without resorting to the common parlance test, has purportedly applied the "Scientific Test" by holding that it has found an article whereby marketers, manufacturers and trade organizations divide chemical industry's products into three categories: (A) Basic Chemicals, (B) Intermediate Chemicals, and (C) finished ready to use chemicals and PET reisin

is not used in mass consumption but used in to manufacture of plastic bottle/jars/containers for packaging drinking water or other liquid items and therefore should be chemicals. Thereafter, the revisional authority applied meaning from the Internet, and stated that somewhere in the internet, there was a broad category of chemicals and a sub-heading as plastic chemicals and therefore applied the "Internet meaning Test" of interpretation in the instant case. Further, it is held that even though Central Excise Act Tariff Schedule makes it very clear that “PET Reisin” and “PVC Granuel” falls under different category and chemicals fall under other category and both are not same, however the meaning given in the Central Excise Act cannot be borrowed and applied in the Assam Entry Tax Act, 2008.

42. On perusal of the Central Excise Tariff Tax, it is noticed that “Chemicals” falls under chapter 28 and 29 of the Central Excise Tariff Tax on the other hand “PET Reisin and PVC Granuels” falls under Chapter 25 of the Central Excise Tariff Tax and appears to be not treated as chemicals. Applying the common parlance test/ users test the items "PET Reisins” and “PVC Granuels”, in my considered view cannot be held to be "Chemicals".

43. It is settled principle of law that the taxing laws are to be interpreted very strictly. In interpreting the entries of a schedule, all the entries should be interpreted strictly and to be read in harmony with each other and a meaning can also be gathered from other entries in a Schedule.

44. Rightly submitted so by the learned counsel for the petitioners that the interpretation of an entry should be first traced from the Act itself to see whether the particular term have been defined anywhere in the Act, it has to be seen whether the term is defined in the Act or an interpretation can be made plainly or applying analogy. In case the same is not so defined, resort can also

be made to the other entries of the Act to understand the meaning of the term in the Entry. In the present cases, in the Assam Entry Tax Act, 2008 under Entry 51, Chemical is specified separately, and at Entries at 55e, 55f and 55g as Caustic Soda, Sodium Silicate and Alum are specified separately. Thus, I am of the view that since the above items are separately specified, same are Chemicals but "PET Reisins" and "PVC Granuels" cannot be considered as chemicals.

45. The Government of India, Ministry of Finance issued Notification No. 9(88) ST/57. The said Notification provides for goods eligible for purchase at concessional rate under CST. In the said Notification it has been specifically provided that in connection with Plastic Industries, the item PET Reisin has been specifically included under the heading" Raw Materials" and not under the heading "Chemicals". "Chemicals" have been specified separately which includes Phenol, Formal dehydie, acetic acids and other chemicals etc., to which the respondent authorities failed to take into consideration of the same which would have been relevant as an analogy for classification of the items in question to apply the correct test.

46. Reference may be made to the relevant judgements relied on by the learned counsel for the parties.

47. In the case of **Gujarat Distributors** (Supra), the High Court of Gujarat on Common Parlance Test, has held which is reproduced hrein under:

> *"6. The short question which arises to be determined is whether the disputed articles can be considered as chemicals as stipulated by entry No. 4 or not. If they can be considered as such chemicals, then the petitioner should succeed, but if they are not found to be "chemicals" as stipulated by entry No. 4, then obviously they would fall within the ambit of entry No. 22 of Schedule E because there is no specific entry in any of the four schedules mentioning any*

of these four articles.

11. Even otherwise, applying the well-known test supplied by the Supreme Court in Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola ([1961] 12 S.T.C. 286 (S.C.)), when a taxing statute does not give statutory meaning to a word, that word should be given its popular meaning, i.e.. the meaning which is attributed to it in common parlance by people who daily deal with it as consumers or dealers in the market. This principle was further applied in Commissioner of Sales Tax, Madhya Pradesh, Indore v. Jaswant Singh Charan Singh ((1967) 19 S.T.C. 469 (S.C.)), wherein it was pointed out by their Lordships of the Supreme Court that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense. This principle is reiterated by the Supreme Court in Commissioner of Sales Tax v. S.N. Brothers ([1973] 31 S.T.C. 302 (S.C.); A.I.R. 1973 S.C. 78). If therefore the meaning which could be attributed in the commercial sense to the word chemical or to the word insecticides is accepted as a safe basis, the question which would arise to be considered is whether if a consumer of the articles which are disputed in this case goes to the market and asks for a "chemical" from a dealer of these articles in the market, would he be supplied any of these articles ? Would he understand that by demanding the "chemicals" he really wants to purchase Aldrex, Dieldrex or Endrex ? Since these articles are germicides, they would not be known in the commercial world as mere "chemicals", which would obviously represent a very wide category of articles. Therefore, even applying the principles supplied by the Supreme Court in Ramanatar's case ([1961] 12 S.T.C. 286 (S.C.).), it cannot be said that these three disputed articles fall within entry No. 4 of Schedule C.

13. Taking therefore all those facts and circumstances into consideration, we find that the Tribunal was right in taking a view that Aldrex, Dieldrex and Endrex are not the chemicals contemplated by entry No. 4 of Schedule C. Our answer to the question which is referred to us is, therefore, in the negative.

This reference is accordingly disposed of and it is ordered that the applicant shall bear the costs of the opponent State in the reference."

48. In **Afsons Industrial Corporation,** (Supra), the Hon'ble High Court of Bombay has held as under:-

"*8. It is pertinent to mention that the question as regards meaning of the word "paper" came up for consideration before the Supreme Court in the case of Collector of Central Excise v Krishna Carbon Paper Co [1989] 72 STC 280 It was observed It is well-settled that where no definition is provided in the statute itself for ascertaining the correct meaning of a fiscal entry, reference to a dictionary is not always safe The correct guide in such a case is the context and the trade meaning. The trade meaning is that which is prevalent in that particular trade where such goods are known or traded If a special type of goods is the subject- matter of a fiscal entry then that entry must be under stood in the context of that particular trade, bearing in mind that particular word Where, however, there is no evidence how the particular goods are understood in the particular market dealing with those goods, then the meaning following from the particular statute at the particular time would be the decisive test".*

In its other decision in Ramavatar Budhaiprasad v. Assistant Sales Tax Officer [1961] 12 STC 286 also, the Supreme Court observed that if a word was not defined in the Act and it was a word of every day use it must be construed in its popular sense and not in any technical sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." Again, in State of UP v Kores (India) Ltd [1977] 39 STC 8, the Supreme Court made similar observations. However, after referring to the meaning of the word "paper" in Encyclopaedia Britannica (Volume 13) (15th Edition) and in the unabridged edition of "The Randon House Dictionary of the English Language", the Supreme Court concluded-

From the above definitions, it is clear that in popular parlance the word 'paper' is understood as meaning a substance which is used for bearing writing or

printing or for packing, or for drawing on, or for decorating or covering the walls".

No doubt the Karnataka High Court in Business Forms Ltd v Commissioner of Commercial Taxes [1985] 59 STC 87 observed that the classification of goods for the purpose of levy under the Central Excise Act did not furnish any guidance for determining the rate of levy under the Sales Tax Act. However, no guidance is available in the decision as to why and on what basis those observations were made In our judgment, if the classification of goods under the Central Excises and Salt Act is also made in a similar manner and in the same context, there is no reason why decisions given under that Act cannot provide useful guidance for determining the question under the Sales Tax Act.

9. It is in this background that we have to consider whether "mill board" is paper within the meaning of entry 24 or 24 (2) as the case may be The word "paper" is admittedly not defined under the Bombay Sales Tax Act

All the same, it is a word of common use. In view of the Supreme Court decision (Collector of Central Excise v Krishna Carbon Paper Co [1989] 72 STC 280), the word "paper" will have to be given a meaning by which it is commonly known in the context of "paper" trade Under the UP Sales Tax Act also the word "paper was not defined Yet referring to the definition of the word in dictionaries, the Supreme Court held in State of UP v Kores (India) Ltd (1977) 39 STC 8, that in popular parlance the word "paper" is understood as meaning a substance which is used for bearing writing, or printing, or for packing, or for drawing on or for decorating, or covering the walls. Besides what was stated in the assessee's application dated April 17, 1971. under section 52 of the Act as regards the use of "mill board" on seeing the sample of "mill board" which was enclosed with the application (produced before the court by the counsel for the department at the behest of the court), we are inclined to hold that "mill board" manufactured by the assessee is nothing but a thick and rough paper which can be used for packing as well as for use as cover for the exercise-books and/or paperback publications. We thus, agree with the Tribunal that "mill board" is a kind of paper falling under entry 24 and/or 24(2) as the case may be."

49. In **Pepsico India Holding Pvt. Ltd.** (Supra), it is held that it has to be borne in mind that the words must be understood in popular sense, that is to say, these must be confined to the words used in a particular statute and then if in respect of that particular items, an artificial definition is given in the sense that a special meaning is attached to particular words in the statute then the ordinary sense or dictionary meaning would not be applicable but the meaning of that type of goods dealt with by that type of goods in that type of market, should be searched. The law laid down by the apex court in Collector of Central Excise, Kanpur v Krishna Carbon Paper Co. (1989) 72 STC 280, (1989) 1 SCC 150, therefore, has to be understood to mean that in the normal course the ordinary meaning according to the common parlance has to be ascribed but in a given case, if the situation so demands, a technical, scientific or special meaning that may be discernible may, have to be ascribed to the words used in the statute.

50. In **Krishna Carbon Paper Co**.(Supra), the Hon'ble Supreme Court has held that it is well-settled that where no definition is provided in the statute itself for ascertaining the correct meaning of a fiscal entry, reference to a dictionary is not always safe. The correct guide in such a case is the context and the trade meaning. The trade meaning is that which is prevalent in that particular trade where such goods are known or traded if a special type of goods is the subject- matter of a fiscal entry, then that entry must be understood in the context of that particular trade, bearing in mind that particular word where, however, there is no evidence how the particular goods are understood in the particular market dealing with those goods then the meaning following from the particular statute at the particular time would be the decisive test. It is well-settled, as mentioned before, that where no definition is

provided in the statute itself, as in this case, for ascertaining the correct meaning of a fiscal entry, reference to a dictionary is not always safe. The correct guide, it appears in such a case, is the context and the trade meaning. The trade meaning is one which is prevalent in that particular trade where those goods are known or traded. If special type of goods is subject matter of a fiscal entry, then that entry must be understood in the context of that particular trade, bearing in mind that particular word. Where, however, there is no evidence either way then the definition given and the meaning following from the particular statute at the particular time would be the decisive test. It is a well-settled principle of construction, as mentioned before, that where the word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature. This principle is well-settled by a long line of decisions of Canadian, American, Australian and Indian cases. Pollock, J., pointed out in Grenfell v. Inland Revenue Commissioners (1876) 1 Ex D 242 at 248 that if a statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to 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.

51. In **Shen Enterprises,** (Supra), the Hon’ble Supreme Court has held that while dealing with a taxing provision, the principle of "strict interpretation" should be applied. The court shall not interpret the statutory provision in such a manner which would create an additional fiscal burden on a person. It would

never be done by invoking the provisions of another Act, which are not attracted. It is also trite that while two interpretations are possible, the court ordinarily would interpret the provisions in favour of a taxpayer and against the Revenue.

52. In **Shri Chitta Ranjan Saha,** (Supra)**,** it is held that it is also by now well-settled that if two views are possible regarding classification of certain goods the benefit must go to the tax payer. If a tax payer seeks advantage, which was not intended by the legislature, but to which he was entitled on a construction of the statute he must be given that advantage. The principles laid down by the courts in various decisions discussed above can be summarised as follows. Where no definition is provided in the statute for ascertaining the correct meaning of a fiscal entry the same should be construed as understood in common parlance or trade or commercial parlance. Such words must be understood in their popular sense. The strict or technical meaning or the dictionary meaning of the entry is not to be resorted to. The nomenclature given by the parties to the word or expression is not determinative or conclusive of the nature of the goods. The same will have to be determined by application of the well settled rules or principles of interpretation which have been referred to as "common parlance" rule, "trade or commercial parlance" rule, "common-sense rule of interpretation" and "user test". The application of the principles will again depend on the facts and circumstances of each case. No test or tests can be said to be validly applicable to all cases. There may be cases where the interpretation may be tested by applying more than one rule of interpretation as has been done by the courts in certain cases."

53. In **Hindustan Lever Limited,** (Supra)**,** the Hon'ble Supreme Court has held that there is no fixed test for classification of a taxable commodity. This is

probably the reason why the 'common parlance test' or the 'commercial usage test' are the most common. Whether a particular article will fall within a particular tariff heading or not has to be decided on the basis of the tangible material or evidence to determine how such an article is understood in 'common parlance' or in 'commercial world' or in 'trade circle' or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted. However, there cannot be a static parameter for the correct classification of a commodity. The Hon'ble Supreme Court has observed that this Court in Indian Aluminium Cables Ltd. v. Union of India 10 has culled out this principle in the following words: (SCC p. 291, para 13)

> "13. To sum up the true position, the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff."

54. Coming back to the present cases, under the Assam Entry Tax Act, 2008, at Entry 51, Chemicals have been specified, however, at Entry- 55e, 55f and 55g it specified the items Caustic Soda, Sodium Silicate, and Alum, which would be mean and understood as Chemicals. As no mentioned is made of "PET Reisin" and "PVC Granuels" and no definition of Chemical is given in the Statute, same have to be therefore, in my view, interpreted that "PET Reisin" and "PVC Granuels" are not Chemicals.

55. The authority has held that chemicals are broadly under three categories: Basic Chemicals, Intermediate and finished ready-to-use. From a reading of Entry 51 along with Entry 55 (e), (f) and (g) it would be clear that Entry 51 refers to only Chemicals in liquid Form generally understood by the common

person as "Chemicals" in as much as the intermediary and final ready-to-use which are generally in solid form are given under different categories under Entry 55(e) Caustic Soda, 55(f) Sodium Silicate and 55(g) Alum and therefore even if the view of the authority is accepted and read along with various entries of the Schedule attached to the Assam Entry Tax Act, 2008, in my view under Entry 51 the items “PET Reisins” and “PVC Granuels” cannot be considered as Chemicals.

56. That apart, while interpreting an entry in the Schedule if it is discernible that the said Entry is capable of two interpretations, one in favour of assessee and the other against the assessee, then in the said event the interpretation in favour of the assessee/ beneficial to the assessee is always to be resorted to. In the instant case if the Respondent Authorities had any doubt as to whether the items PET Reisin and PVC Granuels falls under the Entry "Chemicals" or not than the interpretation that "PET Reisin and PVC Granuels" does not fall under the term "Chemicals" which is favourable to the assessee ought to have been resorted to in view of the settled proposition of law.

57. The respondents have failed to justify or show any tangible material and discharge the onus that “PET Reisin and PVC Granuels” falls under the Entry 51 "Chemicals" in the scheduled attached to the Assam Entry Tax Act, 2008, though the burden is on them, except relying on the Judgement of the High Court of Gujarat in **Gujarat Distributors** case (Supra) and supporting the view of the revisional authority whereby the dictionary and internet test have been applied. If the interpretation as given by the respondents and the authorities is accepted, it would make the interpretation ambiguous. Though there is no fixed test for classification of a taxable commodity, the 'common parlance test' or the 'commercial usage test' are the most common test. Whether a particular article

will fall within a particular tariff heading or not has to be decided on the basis of the tangible material or evidence to determine how such an article is understood in 'common parlance' or in 'commercial world' or in 'trade circle' or in its popular sense meaning. In the case in hand, the petitioners have established materials to determine the items- "PET Reisin" and "PVC Granuels" which would be understood in common parlance or in trade circle or its popular sense.

58. In view of what has been discussed above and in the light of the proposition of law referred to herein above, I am of the considered view that the common parlance/ user test would be applied. Thus, the items "PET Reisin" and "PVC Granuels" cannot be considered as Chemicals under Entry 51 of the Schedule attached to the Assam Entry Tax Act, 2008.

59. Upon a conspectus of the foregoing, this court is persuaded to take a considered view that the items "PET Reisin" and "PVC Granuels" would not be classified or considered as Chemicals under Entry 51 of the Schedule attached to the Assam Entry Tax Act, 2008 by applying the common parlance/ user test.

60. Consequently, the impugned assessment orders by the Assessing authority and impugned orders of the Appellate and revisional Authority are set aside and quashed on being not sustainable. Further, as a sequitur, the tax paid by the petitioners on the items "PET Reisins" and "PVC Granuels", if any, be refunded to the petitioners.

61. Writ petitions stands allowed and disposed, accordingly. However, no order as to costs.

JUDGE

Comparing Assistant