



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MAHARASHTRA VALUE ADDED TAX APPEAL NO.2 OF 2016
IN
VALUE ADDED TAX APPEAL NO.931 OF 2014

**The Commissioner of Sales Tax,
Maharashtra State, Mumbai
8th Floor, Vikrikar Bhavan,
Mazgaon, Mumbai – 400 010. Appellant**
V/s

**M/s. Neulife Nutrition System
A-11, Shriram Industrial Estate
Wadala, Mumbai – 400 031. Respondent**

WITH
MAHARASHTRA VALUE ADDED TAX APPEAL NO.3 OF 2016
IN
VALUE ADDED TAX APPEAL NO.932 OF 2014

**The Commissioner of Sales Tax,
Maharashtra State, Mumbai
8th Floor, Vikrikar Bhavan,
Mazgaon, Mumbai – 400 010. Appellant**
V/s

**M/s. Neulife Nutrition System Pvt.Ltd.
A-11, Shriram Industrial Estate
Wadala, Mumbai – 400 031. Respondent**

Mr. V.A. Sonpal, Special Counsel a/w Ms. Uma Palsuledesai, AGP for the State/Appellant in both Appeals.

Mr. Vinayak Patkar a/w Mr. Ishaan Patkar i/b Ms. Manjiri S. Parasnis for Respondent in both Appeals.

**CORAM : S.C. DHARMADHIKARI &
A.A. SAYED, JJ.**

RESERVED ON : 08 MARCH 2016

PRONOUNCED ON : 06 MAY 2016

JUDGMENT: (PER A.A. SAYED, J.)

1 Above two Appeals filed under section 27 of the Maharashtra Value Added Tax Act, 2002 (hereinafter referred to as 'MVAT Act') arise out of common judgment and order passed by the Maharashtra Sales Tax Tribunal, Mumbai dated 6 August 2015 in VAT Appeal Nos.931 and 932 of 2014.

2. The operative part of the impugned judgment and order of the Tribunal reads as under:

"In view of all above, the matter is disposed of are as under:-

ORDER

The VAT appeal bearing No.931/2014 is hereby allowed and the D.D.Q. order dated 18-07-2014 of the Commissioner of Sales Tax, Maharashtra State, Mumbai is set aside. The products of the appellant are classified under schedule entry C-107 (11)(g) during the relevant period i.e. from 15.01.2011 to 13.03.2013 liable for 5% of VAT Tax.

The VAT appeal bearing No.932 of 2014 is hereby allowed and the D.D.Q. order dated 18.07.2014 of the Commissioner of Sales Tax, Maharashtra State, Mumbai is set aside. The products of the appellant are classified under schedule entry C-107, (11) (g) during the relevant period i.e. from 15.01.2011 to 13.03.2013 liable for 5% of VAT Tax."

3 M/s. Neulife Nutrition System, the Respondent-Dealer in Appeal No.2 of 2016, had filed an Application under section 56 of the MVAT Act before the Commissioner of Sales Tax to decide the classification of its products and the rate of tax applicable for the relevant period i.e. 15-01-2011 to 31-03-2013. It had sought the rates of tax for the following products:

- “(1) 100% Whey Gold (French Vanilla 2 Lbs and Mocha Capuccino 1 Lbs)*
- (2) Platinum Hydrowhey (Turbo Chocolate 3.5 Lbs)*
- (3) Serious Mass (Straw 12 Lbs)*
- (4) PRO Complex GAINER (Choc 10.16 Lbs and Straw 10.16 Lbs)*
- (5) True Mass (Chocolate 5 Lbs)*
- (6) Syntha 6 (Chocolate 5 Lbs)”*

M/s. Neulife Nutrition System Pvt.Ltd., the Respondent-Dealer in Appeal No.3 of 2016 had also filed similar Application under section 56 of MVAT for classification of its products for same period and sought the rates of tax for the following products:

- “(1) 100% Whey Gold (Straw 2.07 Lbs, Cookie & Cream 2.073 Lbs, Choco Mint 2.073 LBs, Straw 5.174 Lbs and Vanilla Ice Cream 5 Lbs)*
- (2) Syntha 6 (Chocolate 5 Lbs)*
- (3) Serious Mass (Choc 6 Lbs)*
- (4) Platinum Hydrowhey (Chocolate 3.5 Lbs)*
- (5) True Mass (Chocolate 5.75 Lbs and Strawberry 5.75 Lbs)”*

The aforesaid products of the Respondent-Dealers are hereinafter referred to as 'the said products'.

4 It was the case of the Respondent-Dealers before the Commissioner of Sales Tax that they were dealers in non-alcoholic beverage concentrate in powder form and the said products are general purpose protein powders from which non-alcoholic beverages are prepared. These powders are manufactured in USA and the proteins are obtained from whey products which are remnants of cheese making process and are sold in flavours and the said products are therefore covered under Schedule Entry No.C-107 (11)(g) of MVAT Act which are exigible to tax @ 5%, which Entry reads as follows:

“Powders, Tablets, Cubes, Crystals and other solids or liquids from which non-alcoholic beverages and soups are prepared.”

5. The Commissioner of Sales Tax by his common order dated 18 July 2004 held that the said products were not covered by Schedule Entry C-107 (11)(g) of MVAT Act. The Commissioner was of the view that as there was no specific entry which can be held applicable to the said products, and classified the said products in Residuary Schedule Entry E-1 which is exigible to tax @ 12.5%.

6. Being aggrieved by the order dated 18 July 2014 of the Commissioner of the Sales Tax, the Respondent-Dealers preferred two Appeals before the Tribunal. After hearing the parties, the Tribunal set aside the order dated 18 July 2014 and allowed the two Appeals and held that the said products of the Respondent-Dealers are classifiable under Schedule Entry C-107 (11) (g) and liable for tax at the rate of 5%. Being aggrieved by the order of the Tribunal the Appellant-Commissioner of Sales Tax has preferred the present Appeals and has framed the following substantial questions of law to be decided in the Appeals:

- “(a) *Whether upon true and correct interpretation of Schedule Entry C-107 (11)(g) of MVAT Act, 2002 and upon the application of common parlance test in its true perspective, was the Tribunal justified in holding that the impugned products will fall within the purview of Schedule Entry C-107(11)(g) during the relevant period from 15.01.2011 to 31.03.2013 and hence taxable @ 5% of VAT and not covered by the Schedule Entry E-1 of MVAT Act, 2002 and therefore taxable @ 12.5%.*
- (b) *Whether on application of the common parlance theory and taking into consideration the true intent of legislature, can it be said that the Schedule Entry C-107 (11)(g) envisaged within itself the inclusion of the impugned products “Health Drinks” within the term “Beverages (Non-Alcoholic)” as enshrined the said Schedule entry under MVAT Act, 2002.”*

7. We have heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondent.

8. Learned Counsel for the Appellant submitted that the said products are consumed to achieve specific goals and the drink made therefrom are not 'beverages' as commonly understood and the principle of common parlance is required to be applied in the present case. The said products are targeted to be consumed by certain class of population who are into heavy work-out and/or intense physical activity and people who seek to be muscular or gain weight or become lean. He submitted that the said products carry a warning that they are not to be consumed by persons under 18 years of age and pregnant & feeding women. The said products are food supplements and/or health drinks and cannot be termed as 'beverages'. Learned Counsel for the Appellant submitted that the Commissioner of Sales Tax had rightly classified the said product and had rightly held that the said products are not 'powders from which non-alcoholic beverages are prepared' and they would be covered by Schedule Entry E-1 of MVAT Act and that the Tribunal had erred in classifying the product under Schedule Entry C-107 (11)(g) of the MVAT Act which was liable for the VAT for the relevant period at the rate of 5%. Learned Counsel for the Appellant, in support of his submission of principle of common parlance, has placed reliance upon the judgment of the Supreme Court in the case of **Commissioner of Central Excise, New Delhi vs. Connaught Plaze Restaurant Private Limited, New**

Delhi¹, and *inter alia* invited our attention to paragraph 20 of the judgment, which reads as under:

“20. Time and again, the principle of common parlance as the standard for interpreting terms in the taxing statutes, albeit subject to certain exceptions, where the statutory context runs to the contrary, has been reiterated. The application of the common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker; “It is an attempt to discover the intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts. (See Oswal Agro Mills Ltd.², para 4.)”

9. Learned Counsel for the Respondent-Dealers on the other hand supported that impugned order of the Tribunal and submitted that the reasons for classifying its products under Entry C-107 11(g) are that the said powders are meant for one and all and are being sold and bought by people for their flavors as well as their content. The Entry is clear and unequivocal. The onus to prove coverage under particular entry is on the Revenue. In view of the specific entry in the Schedule Entry C-107 11(g) to the taxing statute, it would override the general entry and only when

1 (2012) 13 SCC 639

2 1993 Supp (3) SCC 721

liberal construction of specific Entry cannot cover the goods in question, the residuary Entry viz. Schedule Entry E-1 would apply. He urged that no interference is called for with the impugned order of the Tribunal.

10. We have considered the rival contentions of the parties.

11. The issue arises for consideration is whether for the relevant period the said products of the Respondent-Dealers should be classified under Schedule Entry C-107 (11)(g), which is exigible to tax @ 5% OR whether the said products are classifiable under Residuary Schedule Entry E-1, which is exigible to tax @ 12.5%.

12. In our view, the Tribunal has rightly held that the said products are classifiable under Schedule Entry C-107 (11)(g) and has rightly set aside the order of the Commissioner of Sales Tax who had classified the said products under Residuary Schedule Entry E-1, for the reasons which shall presently indicate.

13. The Schedule Entry C-107 (11)(g) for the relevant period reads as follows:

Name of commodity	Rate of tax (%)
(g) Powders, tablets, cubes, crystals and other solids or liquids from which non-alcoholic beverages and soups are prepared.	5%

The Schedule Entry E-1 reads as follows:

Name of commodity	Rate of tax (%)
All goods not covered in any of the other schedules	12.5%

14. It is well settled that the Entry in the Schedule is to be construed as it stands and when the Entry is clear and equivocal, it does not demand any outside interpretation. There can no dispute that the said products of the Respondent-Dealers are 'powders' from which 'non-alcoholic' drinks are prepared for the purpose of consumption by mixing the said powders with liquids like water, milk, juice, etc. In our view, there is no warrant for restricting the meaning of term "beverages" in the Schedule Entry C-107 (11)(g) as sought to be contended by the learned Counsel for the Appellant. The Entry in our view is clear and unambiguous. The Entry is couched with the non-technical word "beverages", which has to be understood in its ordinary meaning. The meaning of "beverage" as stated in the Concise Oxford English Dictionary is "drink other than water". The question is, while construing the Entry as it stands, would the drinks made from the said powders be any less of "beverages" because they are "health drinks"? We think not! Merely because a drink has more nutritive value in the form of proteins and meant for a certain class of consumers, it would not cease to be a "beverage". In our view, even if the potable drink made from the said

powders are perceived as health drink, it does not fall out of the purview of the Entry. It has been held by the Supreme Court in **State of Maharashtra v/s. Bradma of India Ltd.**³ that the residuary entry could be resorted to only when by a liberal construction the specific entry cannot cover the goods in question. In the present case, in view of the specific Entry 107-C (11)(g) to the Statute, it would override the general Entry. Even otherwise, we do not think that the drink prepared from the said powders can be excluded from the term 'beverages', even assuming that the principle of common parlance were to apply. In our view, the Tribunal has rightly concluded that the 'powders' of the Respondent-Dealers are covered under Schedule Entry C-107 11(g). The judgment in the case of **Connaught Plaza Restaurant** (supra) relied upon by the learned Counsel for the Appellant would be of no assistance in the facts of the present case. As a matter of fact, in the aforesaid case in para 41 of the judgment, the Supreme Court held that the terms of the statutes must be adapted to developments of contemporary times rather than being held entirely inapplicable.

15. The Tribunal has reproduced the legislative history of the Schedule Entry 107-C (11)(g) in the impugned judgment and order in the following terms:

³ (2005) 2 SCC 669

C-II-47	Aerated waters and non-alcoholic beverages (including fruit juices, squashes, syrups and cardials) when sold in sealed, capsuled or carked bottles, jars, tins drums or other container	12%	1-7-1981 to 30-4-1982
C-II-47(i)	i) Aerated waters and non-alcoholic beverages (including fruit juices, squashes, syrups and cardials) when sold in sealed, capsuled or carked bottles, jars, tins, drums or other container ii) Soft drink powders, tablets and crystals for which non-alcoholic beverages are prepared by adding any potable liquid	12%	1-5-1982 to 30-4-1992
	iii) Powder, tablets Soft drink powders, tablets and crystals for which non-alcoholic beverages are prepared by adding any potable liquid	12%	1-4-1989 to 30-4-1992
C-II-47	i) Aerated, mineral, medicinal tonics, distilled or demineralised water and water sold in sealed, capsuled or carked container but excluding water for injection	12%	1-5-1992 to 8-9-1992
	ii) Non-alcoholic beverages including vegetable or fruit juices, squashes, syrups and cardials when sold in sealed, capsuled or carked bottle, jar, tins drums	2%	1-5-1992 to 8-9-1992
	iii) Powders, tablets, cubes, crystals, and other solids from which non-alcoholic beverages and soups are prepared	12%	1-5-1992 to 8-9-1992
C-II-47	i) Aerated waters and non-alcoholic beverages (including fruit juices, squashes, syrups, and cardials) when sold in sealed, capsuled or carked bottles, jars, tins, drums or other containers	12%	9-9-1992 to 31-3-1994

	ii) Powders, tablets, crystals from which non-alcoholic beverages are prepared by adding potable liquid	12%	9-9-1992 to 31-3-1994
C-II-47	i) Aerated, minerals, medicinals tonics, distilled or demineralised water and water sold under brand name in sealed, capsuled or carked containers but excluding water for injection	12%	1-4-1994 to 30-9-1995
	ii) Non-alcoholic beverages, including vegetable or fruit juices, squashes, syrups and cardials when sold in sealed, capsuled or carked bottle, jars, tins, drums or other container	12%	1-4-1994 to 30-9-1995
	iii) Powders, tablets, cubes, crystals and other solid from which non-alcoholic beverages and soups are prepared	12%	1-4-1994 to 30-9-1995
C-II-18	i) Non-alcoholic beverages including vegetable or fruit juices, squashes syrups and cardials when sold in sealed, capsuled and carked bottles, jar Tine or drums or other contained (But excluding those covered by Entry 21 of this part of the schedule)	13%	1-10-1995
	ii) Powders, Tablets Cubes, crystals and other solids from which non-alcoholic beverages and soups are prepared, (Cashew Juice is exempted from whole of tax w.e.f. 1-6-2004 vide notification entry A-158)	13%	1-10-1995
	(The entry C-II 21 is related to `Aerated and carbonated non-alcoholic beverages whether or not containing sugar or other sweetening matter as flavour or any other additives)	20%	1-10-1996
C-107(7)	Alcoholic and non-alcoholic beverages	4%	1-5-2005 to 31-3-2010
C-107(II)(g)	Powders, tablets, cubes, crystals and other solid or liquids from which non-	4%	1-2-2008 to 31-3-2013

	alcoholic beverages and soups are prepared. As C-107 (II)(g) is added w.e.f. 1-2-2008 hence during the period 1-4-2005 to 31-1-2008 the said entry will be covered by E-I schedule liable for 12.5% of tax.		
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The Tribunal *inter alia* has observed as follows:

“Therefore, now it is clear that impugned powders even if made with reference of achieving some goal they are nothing but beverages for which the above schedule entry is available in statute book from 1-2-2006 to 31-3-2013 hence the relevant schedule rate will be 4% upto 31-3-2010 and 5% w.e.f. 1-4-2010. We want to make it clear that during the period 1-4-2005 to 30-4-2005 and from 1-4-2005 to 31-1-2006 such products were no place in schedules A,B,C,D therefore, during that period they will be covered under schedule Entry E-1 and from 1-4-2013 onwards, that schedule entry is deleted hence that will be covered under E-1 only. As we have decided the classification as above, we don't think, any prospective effect be given from 01-04-2013 onwards when for a period of 01-04-2005 to 31-01-2006, there was no place to those products in Schedule Entry C.”

16. In our view the Tribunal has analyzed the issue in depth and by a well reasoned order rightly held that the said products of the Respondent-Dealers are classifiable under Schedule Entry C-107 (11)(g) for the relevant period. Having concluded that the Scheduled Entry C-107 (11)(g) is clear and unambiguous, in our opinion, no substantial questions of law arise in the facts and circumstances of the present case.

17. In light of the aforesaid discussion, no interference is warranted with the impugned order of the Tribunal. The Appeals are accordingly dismissed. There shall be no order as to costs.

(A.A.Sayed, J.)

(S.C.Dharmadhikari, J.)