**AFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**Reserved on 07.02.2018**

**Delivered on 12.03.2018**

**Writ Petition (T) No. 126 of 2014**

M/s WASAY'S SONS a partnership firm through its Managing Partner M. A. Khaliq, aged about 54 years, S/o M. A. Wasay, R/o House No. 11-2-557/37, 2nd Floor New Agapura P.S. Agapura, Hydarabad (A.P.)

**---- Petitioner**

**Versus**

1. Chhattisgarh State Minor Forest Produce (T&D) Cooperative Federation Limited, A -25 V.I.P. Estate near V.I.P. Club Khamardih, Shankar Nagar P.S. Shankar Nagar, Raipur through Managing Director
2. State of Chhattisgarh through Secretary, Department of Commercial Tax DKS Bhawan, PS Civil Lines, Mantralaya Bhawan, Raipur, Chhattisgarh
3. Commissioner, Commercial Tax Vanijyik Kar Bhavan, Civil Lines Raipur P.S. Civil Lines Raipur (C.G.)

**---- Respondents**

**Writ Petition (T) No. 151 of 2014**

Taskeen Abdul Bari S/o Mohd Abdul Basith, aged about 47 years, R/o House No. 11-2-557/37 New Agapura Habeeb Nagar P.S. Habeeb Nagar Hyderabad A.P.

**---- Petitioner**

**Versus**

1. Chhattisgarh State Minor Forest Produce (T&D) Cooperative Federation Limited A -25 V.I.P. Estate near V.I.P. Club Khamadih Shankar Nagar P.S. Shankar Nagar, Raipur (C.G.) through Managing Director
2. State of Chhattisgarh through Secretary Department of Commercial Tax New Raipur, Mantralaya, P.S. New Raipur, C.G.

**---- Respondents**

**Writ Petition (T) No. 225 of 2017**

1. M/s Shobha Enterprises, a sole proprietorship firm having office beside Archana Talkies Dhabara road, Kharisa, District Raigarh Chhattisgarh, through its Propriter Mayank Kedia, aged about 32 years, S/o Shri Shankar Kedia R/o Archana Talkies Dhabara Road, Kharisa, District Raigarh, Chhattisgarh.
2. Mayank Kedia, S/o Shri Shankar Kedia, aged about 32 years, R/o Archana Talkies Dhabara Road, Kharisa, District Raigarh, Chhattisgarh.

**---- Petitioners**

**Versus**

1. Chhattisgarh State Minor Forest Produce (T&D) Cooperative Federation Limited A-25, V I P Estate near V.I.P Club, Khamardih, Shankar Nagar, Chhattisgarh through its Chairman.
2. State of Chhattisgarh, through Secretary Department of Commercial Taxes, Mantralaya, Naya Raipur Chhattisgarh.

**---- Respondents**

**Writ Petition (T) No. 151 of 2016**

1. M/s Gayatri Traders a Sole Proprietorship having its office near Axis Bank, Kharsia District Raigarh, Chhattisgarh, through its Proprietor Shri Naresh Kumar Agrawal, aged about 56 years, S/o Late Hariram Agrawal, R/o near Axis Bank Kharsia, District Raigarh, Chhattisgarh.
2. Shri Naresh Kumar Agrawal S/o Late Hariram Agrawal, aged about 56 years, R/o near Axis Bank, Kharsia, District Raigarh, Chhattisgarh.

**---- Petitioners**

**Versus**

1. Chhattisgarh State Minor Forest Produce (T&D) Co-operative Federation Limited A -25 V.I.P. Estate near V.I.P. Club Khamardih, Shankar Nagar, Chhattisgarh through it's Chairman
2. State of Chhattisgarh through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur, Chhattisgarh.

**---- Respondents**

**Writ Petition (T) No. 152 of 2016**

1. M/s Gayatri Traders a sole Proprietorship having it's office near Axis Bank Kharsia District Raigarh Chhattisgarh, through it's Proprietor Shri Naresh Kumar Agrawal aged about 56 years, S/o Late Hariram Agrawal R/o near Axis Bank, Kharsia, District Raigarh, Chhattisgarh.
2. Shri Naresh Kumar Agrawal, S/o Late Hariram Agrawal, aged about 56 years R/o near Axis Bank, Kharsia, District Raigarh, Chhattisgarh.

**---- Petitioners**

**Versus**

1. Chhattisgarh State Minor Forest Produce (T&D) Cooperative Federation Limited A-25 V.I.P. Estate near V.I.P. Club Khamardih, Shankar Nagar, Chhattisgarh, through it's Chairman
2. State of Chhattisgarh through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur Chhattisgarh.

**---- Respondents**

**Writ Petition (T) No. 153 of 2016**

1. M/s Gayatri Traders a sole proprietorship having its office at Axis Bank, Kharsia Distirct Raigarh Chhattisgarh through it's proprietor Shri Naresh Kumar Agrawal, aged about 56 years, S/o Late Hariram Agarwal R/o Near Axis Bank, Kharsia District Raigarh, Chhattisgarh.

2. Shri Naresh Kumar Agrawal S/o Late Hariram Agrawal, aged about 56 Years R/o near Axis Bank, Kharsia, District Raigarh, Chhattisgarh.

**---- Petitioners**

**Versus**

1. Chhattisgarh State Minor Forest Produce (T&D) Coopertive Federation Limited A- 25 V.I.P. Estate Near V.I.P. Club Khamardih, Shankar Nagar, Chhattisgarh through it's Chairman
2. State of Chhattisgarh through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur Chhattisgarh.

**---- Respondents**

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| For Petitioners | : | Shri Siddharth Dubey, Advocate |
| For Respondent no.1 | : | Shri Ashutosh Singh Kachhawaha along with Shri B. L. Sahu, Adovocates |
| for Respondents/State | : | Shri Garry Mukhopadhyay, Govt. Advocate |

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**Hon'ble Shri Justice P. Sam Koshy**

**C A V O R D E R**

These six writ petitions are being decided by this common judgment since the facts and grounds raised are identical in nature.

**2.** The issue involved in the present bunch of writ petitions is whether Tendu leaves can be brought within the ambit of notification issued by the State Government in exercise of its powers under Section 15(B) of the Chhattisgarh Value Added Tax Act, 2005 whereby tax on minor forest produce has been reduced to 5%.

**3.** The facts of the case, in nutshell, are that all the petitioners in the present petitions are engaged in the business of Tendu leaves. Each of the petitioners had entered into an independent purchase agreement with the CG State Minor Forest Produce (Trading & Development) Cooperative Federation Limited authorizing the petitioners to purchase Tendu leaves. As per the purchase agreement, each of the purchasers had to pay VAT under Chhattisgarh VAT Act at the rate as prescribed by the State Government from time to time. Schedule 2 of the VAT Act prescribes the rate of tax that would be applicable. Part-III of Schedule-II has a specific entry at serial no.5 i.e. Tendu leaves and the rate prescribed is 25%. Section 15B of the CG VAT Act which is a saving clause empowers the State Government, by notification as may be specified therein, to grant exemption prospectively or retrospectively in whole or in part from the payment of tax under this Act, for such period as may be specified in the notification.

**4.** Initially the State Govt. vide notification dated 30.03.2006 granted exemption to some of the class of goods specified in whole of the tax and some of the goods specified, the taxes were partly reduced. One such class of goods specified was minor forest produce where the exemption was partly granted so as to reduce the rate of tax to 4% initially but vide subsequent notification for the subsequent period, the rate has been reduced to 5%.

**5.** Contention of the counsel for the petitioners is that once when the State Government in exercise of its powers under Section 15B of the CG VAT Act has granted an exemption of payment of tax in part to the minor forest produce and the rate of tax fixed by way of reducing the rate of tax at 5%, the respondents thereafter cannot demand VAT on Tendu leaves purchased by the petitioners at 25%. According to the petitioners, there is no dispute so far as whether Tendu leaves is a minor fores produce or not. Once when it is a minor forest produce, the rate of tax leviable would be as per the notifications issued by the Govt. from time to time which is the reduced rate. Thus, prayed for an appropriate direction to the State Government in this regard.

**6.** Per contra, Shri Garry Mukhopadhyay, Govt. Advocate submits that Tendu leaves find place as a specific entry at serial no.5 in part III of Schedule-II under the VAT Act. The rate of tax also is specified. According to the State counsel, once when the Schedule itself is very emphatic and clear, unless a specific notification is issued specifically in respect of the entry so made, the claim of the petitioners would not be sustainable. According to him, external aid is not permitted to be taken into account for fixing the rate of tax. He refers to (2008) 5 SCC 680 in this regard. He submits that once when the Act and the Schedule are clear and unambiguous and that there is no confusion and ambiguity in understanding the entries, unless a specific notification in respect of the specific entry is made in the Schedule, the rate so fixed shall remain the same. According to the State counsel, since the notification from which the benefit is claimed does not refer to Tendu leaves, it is implied that Tendu leaves have been specifically excluded from the exemption category of goods under the entry of minor forest produce.

**7.** Likewise, counsel for respondent no.1 Shri A. S. Kachhawaha also relied upon the arguments raised by the State counsel and submitted that it was agreed between the parties that they would pay taxes as fixed by the Govt. from time to time and since Tendu leaves find place in Part-III of Schedule-II, the rate of tax levied has to be as fixed under the Schedule unless specifically altered. According to the counsel for respondent no.1, a general notification by itself would not affect the specific entry made, unless the notification also refers or deals with the specific entry also.

**8.** According to counsel for the respondents, it has to be construed as if there is a deliberate exclusion of Tendu leaves from the notification issued under Section 15-B of the VAT Act. He relied upon the judgments of Supreme Court in cases of 2008(5)SCC-680, Mauri Yeast India Pvt. Ltd. Vs. State of Uttar Pradesh and Another, 2014(8) SCC-319, Commercial Tax Officer, Rajasthan Vs. Binani Cement Ltd. & Another, and 2015(15) SCC-455, Larsen & Toubro Ltd. and Another Vs. Commissioner of Central Excise, Hyderabad.

**9.** Having heard the contentions put forth by the counsel for the parties, what is not in dispute is that all the petitioners have entered into an agreement with the respondent No.1-Corporation for purchase of Tendu leaves. As per terms & conditions, the payment for the purchase of Tendu leaves have to be made in installments and since the product is exigible to tax, the purchasers were required to pay the full VAT tax under the VAT Act and the petitioners were directed to pay VAT @ 25 percent.

**10.** Subsequently, the State Government issued a notification on 31.03.2006 granting exemption partly reducing the rate of tax on minor forest produce to 4 percent. Initially, the validity of the notification was from 01.04.2006 to 31.03.2008, however, by another notification dated 31.03.2008, the exemption was further extended from 01.04.2008 to 31.03.2012 and vide notification dated 24.03.2012, the validity of notification was further extended up to 31.03.2013.

**11.** Now what has to be seen is, the VAT Act does not contain a definition of minor forest produce.

**12.** It is all the more relevant to mention at this juncture that even in the schedule fixing the rate of tax leviable, there is no entry or an item known as minor forest produce. At the same time, the Chhattisgarh State Forest Policy, 2001 defines non Timber forest produce and which includes Tendu leaves also as minor forest produce. However, Tendu leaves finds place in Part-III of Schedule-II of the VAT Act wherein at Serial No.5, the rate of tax mentioned is 25 percent. So far as power of the State Govt. is concerned, there is absolutely no quarrel so far as the State having full competence to impose different rates of taxes for the different items including minor forest produce as also for the other items.

**13.** What is primarily to be considered is whether a particular product is exigible to tax or not under the VAT Act. Section 8 of the VAT Act is the charging section wherein the provision deals with levy of tax and which envisages that there shall be levied on goods, specified in Schedule-II, a tax at the rate mentioned in the corresponding Entry in the Schedule.

**14.** Section 15-B of the VAT Act, which is a saving clause, empowers the State Govt. to grant exemption prospectively or retrospectively in whole or in part as regards payment of tax on any goods or class of goods. As has been discussed earlier minor forest produce does not find place in any of the entries made in the Schedule fixing the rate of tax under the VAT Act though there are specific entries of products which are otherwise minor forest produce such as Entry 17-Bamboo, Entry-54 Herb, bark, dry plant and dry root, Entry-55 Honey and Entry-109 Tamarind, tamarind seed and powder.

**15.** Coming to the legal position if we look at the judgment of the Supreme Court in the case of M/s Zunaid Enterprises & Ors. Vs. Stated of Chhattisgarh & Ors, 2012 SCC OnLine SC 187 and (2012) 50 VST 7 (SC) decided on 23.02.2012, it would reflect that Tendu leaves being minor forest produce stood established from the fact that the Chhattisgarh State Minor Forest Produce (Treading and Development) Cooperative Federation Limited have initiated the tender process for sale of Tendu Leaves which establishes the fact that Tendu Leaves are minor forest produce. If we look into the facts of the instant case, it would establish that the respondent no.1 is the same Federation which had published tender earlier also for purchase and sale of Tendu Leaves stocked by the Federation. What further has to be understood is that the applicability of exemption notification issued from time to time will be applicable only to those goods or class of goods which are exigible to tax as specified in Schedule-II of the Act of 2005. Likewise, it is also noteworthy to find that there is no taxable entry separately provided for a minor forest produce. The exemption notifications referred to provides granting exemption to minor forest produce. The notifications clearly reflect of having been issued invoking the powers under Section 15 B of the CG VAT Act. Thus, it clearly reflects that the exemption notifications were issued for those items which were taxable under Schedule II of the VAT Act. Since the generic term minor forest produce has been used in the notification, it has to be presumed that it would bring under it all those products which are minor forest produces more particularly all those minor forest produces which have been found to be taxable items under Schedule II. The Chhattisgarh State Forest Policy, 2001 defines minor forest produce under Clause 4.5 of the Policy which reads as under:

> "4.5 Conservation of Minor Forest Products (MFP)
> Non timber forest produce called the Minor Forest Products or MFP like Tendu leaves, Sal seed, Imli, Chironji, Kullu and Dhawra gum, Kosa cocoon, honey etc...."

Minor forest produce is also defined under Section 2 (i) of the Forest Rights Act, 2006 which reads as under:

> "2 (I) 'minor forest produce' includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like:"

**16.** There is no dispute of the fact that under Schedule-II of VAT Act there are various entries/items which are otherwise minor forest produces. Once when a notification has been issued invoking the powers under Section 15B of the VAT Act, there cannot be different conclusion drawn than that of the exemption so granted being in respect of those items which under the schedule are minor forest produces or else the notification would have been specific or at least the notification would have mentioned that the said notification would be applicable except for Tendu Leaves. There can be no dispute of the fact that the exemption certainly would be applicable only to those minor forest produces which are exigible to tax.

**17.** Though the State counsel relied upon the case of Mauri Yeast India Pvt. Ltd. (supra) to harp the argument while interpreting different entries, attempt shall be made to find out as to whether the same answers the descriptions of the contents of the basic entry or not. However, if we look into the principles of law laid down in the said judgment, it would clearly reflect that when two views are possible, the one which favours the assessee should be adopted. In paragraphs 34 & 48 of the said judgment it has been held as under:

> "34. It is now a well-settled principle of law that in interpreting different entries, attempts shall be made to find out as to whether the same answers the description of the contents of the basic entry and only in the event it is not possible to do so, recourse to the residuary entry should be taken by way of last resort.
> 48. There cannot be any quarrel with the proposition that construction of the word is to be adopted to the fitness of the matter of the statute. But for determining the said question, several factors which would be relevant are required to be gone into. The trade or commercial meaning or the end-user context would, thus, be a relevant factor."

**18.** Once when a generic term has been used by the legislature, it has to be construed as if the legislature meant all those items which fall under the said generic term which in the instant case is minor forest produce and which includes Tendu Leaves. Further there is no exclusion carved out in respect of any item including Tendu leaves from its applicability so far as the notification granting exemption under Section 15 B of CG VAT Act is concerned. The Supreme Court in the case of Padinjarekara Agencies Limited v. State of Kerla, (2008) 13 VST 151 (SC) in paragraph-12 has held as under:

> "Exigibility to tax is a concept which is different from the concept of exemption/concession. As stated above, when it came to exigibility, the department contended that after April 1, 1988, field latex and centrifuged latex were two distinct and separate commodities and, at the same time, when it came to exemption, the same department contended that field latex and centrifuged latex are one and the same commodities, hence, assessee was not entitled to claim concessional rate of duty under circular No. 16/98 dated May 28, 1998. Exigibility to tax is different from the concept of exemption/concession. The rules of interpretation which apply to classification of items in a taxing statute can differ in appropriate cases from the terms and conditions of exemption notification. Interpretation adopted in a classification dispute need not be the same as interpretation of exemption notification under the same Act. Every exemption notification has to be read on its own terms. One cannot confuse the terms used in the notification by comparing the language of the notification with the language of the taxing statute."

A similar view has also been adopted by this Court in an earlier case pertaining to cereals i.e. in the case of Vikas Poha Mill v. Divisional Deputy Commissioner of Commercial Tax and others, (2013) 63 VST 132 (CG)

**19.** Given the aforesaid facts and circumstances of the case, this Court is of the opinion that vide notifications issued under Section 15 B of the VAT Act from time to time, the State Government has granted an exemption to a generic term known as minor forest produce which includes Tendu leaves as there is no clarification or exclusion in any of these notifications. Since minor forest produce has not been separately entered in the Schedule, it would be inclusive of all those items which are shown as taxable products under Schedule-II. Unless a product is exigible to tax, there can be no exemption or reduction in rate of tax.

**20.** Given the aforesaid factual matrix of the case, all these petitions deserve to be and are accordingly allowed. It is held that the petitioners are liable to pay tax only at the rate as specified in the notification issued under Section 15 B of the CG VAT Act, 2005 reducing the rate of tax to 5%. In case of any excess payment made by the petitioners, as a consequence, shall have either to be refunded or adjusted with the tax to be paid for the subsequent period. As a consequence, the impugned notices and orders under challenge in each of the petitions get quashed and the Authorities are directed to recalculate the VAT payable by each of the petitioners at the rate prescribed as per the notifications under Section 15 B of CG VAT Act, 2005 issued from time to time.

**21.** All the petitions thus stand allowed and disposed of.

**Sd/-**
(**P. Sam Koshy)**
**JUDGE**

Bhola