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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 03/12/2018****Judgment Delivered on : 07/01/2019****Writ Appeal No. 632 of 2018***{Arising out of order dated 12.03.2018 passed in Writ Petition (T) No.225 of 2017 by the learned Single Judge}*

State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mantralaya Naya Raipur, Chhattisgarh (Now Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh)

---- Appellant**Versus**

1. M/s Shobha Enterprises, a sole proprietorship firm having office beside Archana Talkies Dhabara Road, Kharisa, District Raigarh, Chhattisgarh through its proprieter Mayank Kedia, aged about 32 years, S/o Shri Shankar Kedia, R/o Archana Talkies Dhabara Raod, Kharsia, Disrtict- Raigarh, Chhattisgarh
2. Mayank Kedia S/o Shri Shankar Kedia, aged about 32 Years, R/o Archana Talikes Dhabara Road, Kharsia, District- Raigarh, Chhattisgarh
3. Chhattisgarh State Minor Forest Produce (T & D) Cooperative Federation Limited A-25, VIP Estate, Near VIP Club, Khamardih, Shankar Nagar, Chhattisgarh through its Chairman

---- Respondents**Writ Appeal No. 642 of 2018***{Arising out of order dated 12.03.2018 passed in Writ Petition (T) No.152 of 2016 by the learned Single Judge}*

State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur Chhattisgarh (Now Mahanadi Bhawan Mantralaya Naya Raipur, Chhattisgarh)

---- Appellant**Versus**

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, Distirct 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
3. Chhattisgarh State Minor Forest Produce (T & D) Cooperative Federation Limited, A 25, VIP Estate Near VIP Club, Khamardih, Shankar Nagar, Chhattisgarh Through Its Chairman., District : Raipur, Chhattisgarh

---- Respondents

Writ Appeal No. 675 of 2018

{Arising out of order dated 12.03.2018 passed in Writ Petition (T) No.126 of 2014 by the learned Single Judge}

1. State of Chhattisgarh, through Secretary, Department of Commercial Tax, DKS Bhawan, Police Station Civil Lines, Mantralaya, Bhawan Raipur Chhattisgarh. (Now Mahanadi Bhawan Mantralaya, Naya Raipur Chhattisgarh.
2. The Commissioner, Commercial Tax, Vanijyik Kar Bhawan, Civil Lines Raipur Police Station Civil Lines Raipur Chhattisgarh.

---- Appellants

Versus

1. 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. 11-2557/37, 2nd floor New Agapura, Police Station Agapura, Hyderabad (A P)
2. Chhattisgarh State Minor Forest Produce (T & D) Cooperative Federation Limited, A-25, VIP Estate, Near VIP Club, Khamardih, Shankar Nagar Raipur, Chhattisgarh through its Managing Director.

---- Respondents

Writ Appeal No. 709 of 2018

{Arising out of order dated 12.03.2018 passed in Writ Petition (T) No.225 of 2017 by the learned Single Judge}

Chhattisgarh State Minor Forest Produce (T & D) Cooperative Federation Limited A-25, VIP Estate, Near VIP Club, Khamardih, Shankar Nagar, Raipur Chhattisgarh Through its Chairman.

---- Appellant

Versus

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

2. Mayank Kedia, S/o Shri Shankar Kedia, aged about 32 Years, R/o Archana Talkies, Dhabara Road, Kharsia, District Raigarh Chhattisgarh.
3. State of Chhattisgarh, Through the Secretary, Department, Department of Commercial Taxes, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.

---- Respondents

Writ Appeal No. 731 of 2018

{Arising out of order dated 12.03.2018 passed in Writ Petition (T) No.151 of 2016 by the learned Single Judge}

Chhattisgarh State Minor Forest Produce (T & D) Cooperative Federation Limited, A- 25, VIP Estate, Near VIP Club, Khamardih, Shankar Nagar, Raipur, Chhattisgarh, Through its Chairman

---- Appellant

Versus

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.
3. State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mantralaya, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.

---- Respondents

Writ Appeal No. 727 of 2018

{Arising out of order dated 12.03.2018 passed in Writ Petition (T) No.152 of 2016 by the learned Single Judge}

Chhattisgarh State Minor Forest Produce (T & D) Cooperative Federation Limited A 25 V.I.P. Estate Near V.I.P. Club Khamardih, Shankar Nagar, Raipur, Chhattisgarh Through its Chairman

---- Appellant

Versus

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, Distirct Raigarh Chhattisgarh.

2. Shri Naresh Kumar Agrawal, S/o Late Hariram Agrawal aged about 56 Years R/o Near Axis Bank, Kharsia, Distirct Raigarh Chhattisgarh
3. State of Chhattisgarh Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur Chhattisgarh (Now Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.).

---- Respondents

Writ Appeal No. 728 of 2018

{Arising out of order dated 12.03.2018 passed in Writ Petition (T) No.153 of 2016 by the learned Single Judge}

Chhattisgarh State Minor Forest Produce (T & D) Cooperative Federation Limited, A 25 V.I.P. Estate Near V.I.P. Club Khamardih, Shankar Nagar, Raipur Chhattisgarh Through its Chairman

---- Appellant

Versus

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, Distirct Raigarh Chhattisgarh.
2. Shri Naresh Kumar Agrawal, S/o Late Hariram Agrawal aged about 56 Years R/o Near Axis Bank, Kharsia, Distirct Raigarh Chhattisgarh
3. State of Chhattisgarh Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur Chhattisgarh (Now Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.)

---- Respondents

Writ Appeal No. 732 of 2018

{Arising out of order dated 12.03.2018 passed in Writ Petition (T) No.151 of 2014 by the learned Single Judge}

Chhattisgarh State Minor Forest Produce (T & D) Cooperative Federation Limited A-25 VIP Estate, Near VIP Club, Khamardih, Shankar Nagar, Raipur, Chhattisgarh, Through its Chairman

---- Appellant

Versus

1. 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, Aandhra Pradesh
2. State of Chhattisgarh, through Secretary, Department of Commercial Tax, New Raipur, Mantralaya, P.S. New Raipur, Chhattisgarh

3. State of Chhattisgarh through Secretary, Department of Commercial Tax, New Raipur, Mantralaya Police Station New Raipur, Chhattisgarh.

---- Respondents

For Appellant/State	: Shri Prasoon Bhaduri, Government Advocate
For Appellant/Federation	: Shri A.S.Kachhwaha, Advocate.
For Private Respondents	: Shri Siddharth Dubey and Shri Abhishek Agrawal, Advocates

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment

Per Ajay Kumar Tripathi, Chief Justice

1. This batch of writ appeals arise from a common order dated 12.03.2018 passed by the learned Single Judge allowing the writ applications and holding that the notification issued by the State Government in exercise of its powers under Section 15-B of the Chhattisgarh Value Added Tax Act, 2005 (*for short 'the VAT Act'*) where tax on minor forest produce has been reduced to 5% will also be applicable to Tendu leaves by treating the Tendu leaves also as a minor forest produce despite the Tendu leaves having been separately shown as a taxable item in Part III of Schedule II.

2. The private Respondents, who were the Petitioners before the writ court, had entered into purchase agreements with the Chhattisgarh State Minor Forest Produce (Trading and Development) Cooperative Federation Limited (*for short 'the Federation'*) authorising the Respondents to purchase Tendu leaves from them. As per the purchase agreement, the purchasers had to pay VAT under the VAT Act at the rate prescribed by the State Government from time to time.

3. The VAT Act lays down obligations on every dealer who is liable to pay tax under the said Act in respect of sales or supplies of goods effected by

him in the State of Chhattisgarh. Section 4 of the VAT Act creates obligation under the law.

4. Chapter IV of the VAT Act deals with levy of tax. Section 8 is one of the provisions dealing with levy of tax which reads as under:

"8. Levy of Tax. - There shall be levied on goods specified in Schedule II, a tax at the rate mentioned in the corresponding entry in column (3) thereof; and such tax shall be levied on the taxable turnover of a dealer liable to pay tax under the Act."

5. Section 9 of the VAT Act deals with levy of purchase tax which too has significance, therefore, is reproduced as under:

9. Levy of Purchase Tax. - (1) Every dealer who in the course of his business purchases any goods specified in schedule II from any person other than a registered dealer or from a registered dealer in the circumstances in which no tax under section 8 is payable by that registered dealer on the sale price of such goods except where the goods are tax-paid goods within the meaning of clause (x) of section 2, shall be liable to pay tax on the purchase price of such goods if,-

(a) after their purchase, the goods are not sold within the State of Chhattisgarh or in the course of inter-State trade or commerce or in the course of export out of the territory of India but are sold or disposed of otherwise, or consumed or used in the manufacture of goods declared tax-free under section 15 and Section 15(b) which are disposed off otherwise than by way of sale in the course of export out of the territory of India; or

(b) such goods covered by Part III of Schedule III and/or Schedule III are used or consumed in the manufacture of goods; or

(c) such goods covered by Parts I, II and IV of Schedule II and not covered by Schedule III, after use or consumption in the manufacture of any goods specified in schedule II, the manufactured goods are disposed of otherwise than by way of sale in the State of Chhattisgarh or in the course of inter-state trade or commerce or in the course of export out of the territory of India;

and such tax shall be levied:-

(i) in respect of goods referred to in clauses (a), clause (b) at the rate specified in column (3) of Schedule II, and

(ii) in respect of goods referred to in clause (c) at 4% or at the rate specified in column (3) of Schedule II whichever is lower.

Explanation: - The rate of tax specified in Schedule II shall be the rate at which tax would have been levied on the sale of such goods within the State on the date of such purchase.

(2) No tax under this section shall be levied in respect of any year on -

(a) a dealer whose turnover in a year does not exceed the limit prescribed under sub-section (1) of section 4;

(b) any other dealer who has no turnover, if his aggregate of purchase prices of all the goods does not exceed such amount as may be prescribed.

(3) Every dealer who has no turnover and is liable to pay tax under sub-section (1) shall, for the purpose of Sections 19,21,22,25,26 and 41 be deemed to be a registered dealer."

6. The other Sections which also have some bearing are Sections 15, 15-A and 15-B. They are reproduced for ready reference as under:

"15. Tax free goods. - (1) No tax shall be payable on the sale or purchase of goods specified in Schedule-I, subject to the conditions and exceptions, if any, set out in the corresponding entry in the third column thereof.

(2) The State Government may in respect of any goods, by notification amend Schedule-I so as to include therein any goods not already specified or may relax or omit any of the conditions and exceptions set out in the corresponding entry in the third column thereof.

15-A. Power of State Government to amend Schedule II- The State Government may, by notification, amend the Schedule II and thereupon the said Schedule shall stand amended accordingly;

Provided that the rate of tax in respect of any goods specified therein other than the declared goods shall not exceed the rate of tax prescribed in the next higher slab of the rate of tax specified in the Schedule:

Provided further that if any goods are transposed by deleting them from one of the parts of the Schedule and inserting or adding them to another, the rate of tax in respect of such goods shall not exceed the rate of tax prescribed in the next higher slab of the rate of tax specified in the Schedule.

(2) No notification enhancing the rate of tax, shall be issued under this Section without giving in the Gazette such previous notice as the State Government may consider reasonable of its intention to issue such notification;

(3) Every notification issued under sub-section (1) shall, as soon as may be, be laid on the table of the Legislative Assembly.

15-B. **Saving-** The State Government may, by notification and subject to such restrictions and conditions as may be specified therein, exempt whether prospectively or retrospectively,-

(i) (a) any class of dealers; or

(b) any goods or class of goods, in whole or in part,

from the payment of tax under this Act for such period as may be specified in the notifications;

(ii) any dealer or class of dealers from any provision of this Act or any provision of a rule made under section 71 for such period as may be specified in the notification.

(2) Any notification issued under this section may be rescinded before the expiry of the period for which it was to have remained in force and on such rescission such notification shall cease to be in force. A notification rescinding an earlier notification shall have prospective effect.

(3) Notwithstanding the repeal of the Chhattisgarh Commercial Tax Act, 1994 (C.G. Act No. 5 of 1995) (hereinafter referred to as the repealed Act) the State Government may, by notification exempt -

(i) (a) any class of dealers; or

(b) any goods or class of goods in whole or in part,

from the payment of tax under the repealed Act; or

(ii) any dealer or class of dealers from any provision of the repealed Act or the provision of any rule made there under, for any period before the commencement of this Act and for that purpose it shall and shall always be deemed that the provision of Section 17 of the repealed Act have been revived for the purpose of such exemption."

7. From the scheme of VAT Act, the goods shown in Schedule I are treated as tax free goods which has been envisaged under Section 15 of the VAT Act. Schedule II contains the lists of goods on which rate of tax is decided and notified in terms of Section 8. There are three parts to Schedule II. Part I contains a list of goods or items which carry least incidence of tax. Part II contains the list of goods which broadly has incidence of 5% tax and Part III contains certain goods or items which have the highest incidence of tax *i.e.* at the rate of 25%. The items include the products like diesel, petrol, aviation turbine fuel, natural gas, kerosene sold through PDS and Tendu leaves. By the very look of the goods which have been placed in Part III of Schedule II, these are items which are supposed to earn maximum revenue for the State of Chhattisgarh.

8. In terms of Section 15-A of the VAT Act, the power has been vested in the State Government to amend Schedule II for which appropriate notifications are required to be issued.

9. On 01.04.2006, the State Government issued a notification under the VAT Act listing of goods which were either granted part or full exemption uptill 31.03.2008. Minor forest produce was one such class of goods where rate of taxation was reduced to 4%. Subsequently, minor forest produce was notified to carry an incidence of taxation of 5%.

10. When the Federation imposed VAT at the rate of 25% on purchase of Tendu leaves upon the purchasers, they made such payments but decided to challenge such demands on the ground that since the Tendu leaves is also

a minor forest produce, therefore, it will come within the ambit of concessional rate of tax of 5% and the Federation should be directed to refund the excess 20% VAT, which they were compelled to pay or demand was made.

11. It was urged before the learned Single Judge that the VAT Act does not contain a definition of 'minor forest produce'. A submission was made that no entry or item known as 'minor forest produce' was initially indicated. The Chhattisgarh State Forest Policy, 2001 (*for short 'the Forest Policy'*) defines non timber forest produce which includes Tendu leaves as a 'minor forest produce' and therefore, when exemption or a reduced rate of tax is notified, the exemption notification should be given the widest meaning.

12. The Petitioners before the writ court relied on a judgment of Hon'ble Supreme Court in the case of ***M/s. Zunaid Enterprises & Others v. State of Chhattisgarh & Others***, reported in (2012) SCC Online SC 187, decided on 23.12.2012 for the proposition that Tendu leaves are minor forest produce and the Federation has been specially created to deal with minor forest produce, which includes Tendu leaves.

13. The submission before the learned Single Judge was that 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 and found mention as taxable items under Schedule II. The learned Single Judge took note of clause 4.5 of the Forest Policy which defined minor forest produce, which included Tendu leaves and in terms of Section 2(I) of the Forest Rights Act, 2006, minor forest produces included non-timber forest produce including Tendu leaves. The learned Single Judge going by the logic that when generic term has been used by the Legislature, then it has to be construed as if the Legislature meant all those items which

fall under the said generic term, therefore, Tendu leaves being minor forest produce should also be read into that exemption notification and therefore, allowed the writ applications with a direction that the Tendu leaves will carry only 5% tax. This batch of writ appeals has arisen against the impugned decision of the learned Single Judge dated 12.03.2018, both on behalf of the State as well as the Federation.

14. The stand of the Appellants is that the learned Single Judge has committed error of law, if not of fact by dragging the Tendu leaves in the category of minor forest produce and allow the benefit of concessional rate of tax of 5% even though Tendu leaves stands as a taxable item in Schedule II Part III at serial No. 5 untouched and carrying a rate of tax of 25%.

15. The learned Government Advocate representing the State and the learned counsel for the Federation submits that the law laid down by the Hon'ble Supreme Court in the case of ***Mauri Yeast India Pvt. Ltd. v. State of Uttar Pradesh & Another***, reported in (2008) 5 SCC 680, is a complete answer as to how taxing statutes and different entries are required to be understood and interpreted. The Hon'ble Supreme Court had this to say in paragraphs 34 and 48, which are reproduced hereinbelow:

"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."

16. It was further argued that where a statute contains both a general provision as well as a specific provision, the specific provision will prevail over the general provision.

17. Attention of the Court was also drawn to a decision of the Hon'ble Supreme Court rendered in the case of **Commercial Tax Officer, Rajasthan Vs. Binani Cement Ltd. & Another**, reported in (2014) 8 SCC 319. The issue before the Hon'ble Apex Court was whether the Company's application for grant of eligibility certificate for exemption from payment of Central Sales Tax and Rajasthan Sales Tax under the Sales Tax New Incentive Scheme for Industries, 1989, would be applicable in the facts of the case. While dealing with the issue of such exemption, the Hon'ble Supreme Court laid down the following ratio:

"32. Before we deal with the fact situation in the present appeal, we reiterate the settled legal position in law, that is, if in a Statutory Rule or Statutory Notification, there are two expressions used, one in General Terms and the other in special words, under the rules of interpretation, it has to be understood that the special words were not meant to be included in the general expression. Alternatively, it can be said that where a Statute contains both a General Provision as well as specific provision, the later must prevail.

42. This Court has noticed the application of the said rule in construction of taxing statutes along with the proposition that the provisions must be given the most beneficial interpretation in CIT v. Shahzada Nand & Sons, (1966) 3 SCR 379

"8. ...The classic statement of Rowlatt, J., in Cape Brandy Syndicate v. IRC, (1921) 1 KB 64, 71 still holds the field. It reads:

".....in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

To this may be added a rider: in a case of reasonable doubt, the construction most beneficial to the subject is

to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. *"The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just or expedient."* The expressed intention must guide the court. Another rule of construction which is relevant to the present enquiry is expressed in the maxim, *generalia specialibus non derogant*, which means that when there is a conflict between a general and a special provision, the latter shall prevail. The said principle has been stated in Craies on Statute Law, 5th Edn., at p. 205, thus:

"The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

...When the words of a section are clear, but its scope is sought to be curtailed by construction, the approach suggested by Lord Coke in Heydon case, (1584) 3 Rep 7a, yield better results:

"To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act: to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy."

(emphasis supplied)

49. It leaves no doubt that what is specific has to be seen in contradistinction with the other items/entries. The provision more specific than the other on the same subject would prevail. Here it is subject specific item and therefore as against items 1, 4, 6 and 7, which deal with units of all industries and not only cement, item 1E restricted to only cement units would be a specific and special entry and thus would override the general provision."

18. In the case of **Larsen & Toubro Ltd. and Another v. Commissioner of Central Excise, Hyderabad**; (2015) 15 SCC 455, the Hon'ble Apex Court again had this to say:

"29. On these facts, as far as appeal of L&T is concerned that warrants to be dismissed when we find that the assessee was producing RMC and the exemption notification exempts only CM and the two products are different. Even if there is a doubt, which was even accepted by the assessee, since we are dealing with the exemption notification it has to be strict interpretation and in case of doubt, benefit has to be given to the Revenue. Appeals of L&T, therefore, fails and are dismissed."

19. Reliance has also been placed on a very recent Constitution Bench decision of the Hon'ble Apex Court, which is the case of ***Commissioner of Customs (Import) Mumbai v. Dilip Kumar & Company & Others***, (2018) 9 SCC 1. The Hon'ble Apex Court while dealing with the issue of exemption notification, having taken note of various decisions dealt with on such issue, the Constitution Bench sums up the principle in the following words:

"66. To sum up, we answer the reference holding as under:

66.1 Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

66.2 When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

66.3 The ratio in *Sun Export case Corporation v. Collector of Customs*, (1997) 6 SCC 564, stands overruled. "

20. The arguments based on the principles laid down by the Hon'ble Apex Court which have been relied upon by the Appellants that there was no occasion for the learned Single Judge to drag the Tendu leaves which has been shown as a separate goods for taxation at the rate of 25% into fold of exemption which has been extended to minor forest produce. The stand of the State is that if the State wanted to grant concession or exemption from a higher rate of tax to Tendu leaves then the notification issued under Section 15-B of the VAT Act would have specifically included the Tendu leaves,

but that not having been done, it was not open to the learned Single Judge to expand the ambit of the exemption notification and try to read into it even goods which have been separately shown as an entry carrying different rates of tax leviable thereon.

21. The State has also, in their appeal which is Writ Appeal No. 632 of 2018 has brought on record a notification dated 23.07.2004 as Annexure A/4 which is issued by the Commercial Tax Department to show the list of minor forest produce. This Schedule issued under the power conferred under Section 17 of the Chhattisgarh Vanijyik Kar Adhiniyam, 1994 gives a clear idea as to what kind of minor forest produce was exempted even then under the old legislation and significantly, Tendu leaves does not figure in the said Schedule.

22. Argument is further advanced especially on behalf of the State that the Tendu leaves is a valuable forest produce and is one of the major sources of revenue for the State. It has special significance from the point of view for revenue and that is the reason why it has been included in Part III of Schedule II alongwith the products like diesel, petrol, aviation fuel, *etc.* carrying highest rate of tax. If the State really wanted for forego the revenue generated from the Tendu leaves, it would have surely included the said item or goods in the exemption or concessional notification issued under Section 15-B of the VAT Act. But when the said Legislature have themselves decided not to dilute the rate of tax imposed upon the Tendu leaves, then keeping in mind the principles of interpretation in relation to exemption notification laid by the various authorities of the Hon'ble Apex Court, the learned Single Judge obviously seems to be in error by drawing analogy from some other decisions to bring the Tendu leaves also as part of exemption notification dealing with minor forest produce.

23. It is their contention that the decisions relied upon by the Petitioners/private Respondents in the matter of ***Reliance Trading Company, Kerala v. State of Kerala***, (2011) 15 SCC 762 and ***M/s. Shanti Fragrances v. Union of India & Others***; Civil Appeal No. 8485 of 2011, decided on 21.09.2017, will have to be understood in the context in which those decisions were rendered.

24. An exemption notification is not like a blackhole that it will suck out all entries given in the taxing statutes even though those goods and items are specifically notified and stand as they are without being altered or modified or indicated in the exemption notification. When they are specific taxable goods which are stand alone entries and are identifiable as such of commercial value, then unless the exemption notification specifically touches upon such entries for the benefit of exemption or concession, the Courts will not rush in to bring all such items which can fit into the general notification even though those items may come within a broad definition.

25. Keeping in mind the propositions of law and the well-settled principle that while interpreting different entries, attempts shall be made to find out whether the same answers the descriptions of the contents of the basic entry and only if it is not possible to do so, that recourse to residuary entry should be taken as a last resort.

26. Since the notification extending benefit of 5% VAT has been issued by the State only for minor forest produce and the entry 'Tendu leaves' stands untouched as an item of highest incidence of tax and has been clubbed with some such goods like diesel, petrol, aviation fuel, etc., entries in Part III of Schedule II cannot be pulled out and read into a general notification with the object of extending benefit of the said notification.

27. We are satisfied that serious error of interpretation has been committed by the learned Single Judge by treating the Tendu leaves as a minor forest produce to allow benefit of reduced rate of tax at 5% when the said Schedule in VAT Act still stands and the incidence of tax shown therein is 25%.

28. The writ appeals therefore stand allowed. The impugned order dated 12.03.2018 of the learned Single Judge stands set aside.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE