Serial No.08
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No.32/2019 with
MC (CRP) No.17/2019

Date of Order: 14.03.2022

M/s Saj Food Products Pvt. Ltd. Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant (s) : Dr. A Saraf, Sr.Adv
For the Respondent (s) : Mr. A Kumar, Advocate General with
Ms. S Laloo, GA

JUDGMENT: (per the Hon'ble, the Chief Justice)

The matter calls for a fresh consideration on rebound.

2. The petition for revision of an appellate order dated January 23, 2015 passed by the Meghalaya Board of Revenue was rejected on the ground that it was barred by limitation. Such order of this Court of January 28, 2020 was set aside by the Supreme Court by its order of December 10, 2021 and the petition for revision along with the application for condonation of delay were restored to the board of this Court for being considered afresh.

3. The petitioner manufactures a product that is generically known as rusk. Rusk is a form of toasted bread that, unlike untoasted bread which is soft, is crunchy and it is consumed more as a biscuit than as bread or even toasted bread. Bread is exempted from value added tax in the State. The petitioner passed off its product as a form of bread and took advantage of the exemption. Upon the Department regarding rusk as different from bread and seeking to impose VAT under the miscellaneous entry which pertains to

unspecified products, the petitioner challenged the same. At the end of the adjudication at three levels before the Department and the Board of Revenue, the petitioner failed to impress the authorities that rusk had to be treated as bread and permitted the exemption. Hence, the present revision.

4. By the judgment and order of January 28, 2020, this Court rejected the petition for revision without going into the merits thereof and solely on the ground that the revision had been carried to this Court beyond the time envisaged in Section 70 of the Meghalaya Value Added Tax Act, 2003. This Court held that since Section 70(1) of the said Act required a revision to be carried to the High Court "within sixty days after being notified of the decision" and the present petition for revision was instituted long thereafter, such petition could not be entertained as Section 70 of the Act has not conferred any authority on the High Court to condone the delay when a petition for revision is filed beyond the 60 days' stipulated period. Thus, the judgment of January 28, 2020 did not address the grounds urged by the petitioner to condone the delay and, as a consequence, did not enter into the merits of the matter as to whether the product rusk was liable to be treated as bread and extended the benefit of exemption from VAT that bread enjoys in the State.

5. As is evident from the previous discussion, it has first to be assessed whether Section 70 of the said Act permits this Court to entertain a petition for revision beyond the 60 days' period indicated in such provision. It is only upon the petitioner succeeding on such first issue will it be necessary to assess whether sufficient cause has been shown for not bringing

the revision within the statutory time-limit. If the petitioner succeeds on both such counts, the merits of the matter may be gone into, to ascertain whether rusk and bread deserve the same treatment when it comes to VAT being charged or the exemption being extended.

6. On the first limb, pertaining to the authority to condone the delay and receive a petition for revision after 60 days of the petitioner being notified of the order under revision, the State has relied on Chapter VII of the said Act and referred to the provisions for appeal, review and revision contained therein. The fundamental submission of the State is that the said Act is the full repository of the law pertaining to VAT in the State, including the provisions for challenging any order passed thereunder; and, as such, for the purpose of any order pertaining to VAT or the challenge thereto, it is impermissible to refer to or rely upon any other statute as the said Act is a complete code by itself.

7. In the same vein, the State contends that when comparable provisions in the same statute, particularly covered under the same chapter, confer the authority on a relevant forum to condone the delay in receiving a matter and other provisions do not confer such authority, the only inference to be drawn is that in the absence of the authority to condone the delay being conferred, such authority is deemed not to vest in the relevant forum.

8. The State also places Section 110 of the said Act, which is found in Chapter XI of the statute covering miscellaneous matters, to suggest that since such provision specifically refers to the applicability of Sections 4 and

12 of the Limitation Act, 1963 in certain cases, the other provisions of the Act of 1963 are deemed to have been expressly excluded.

9. Without prejudice to the State's contention that this Court has no inherent authority to condone the delay, as in the present case, as no provision in such regard exists in the said Act, the State asserts that the invocation of Section 14 of the Act of 1963 is completely misplaced as it cannot be said that the twin conditions of having filed the proceedings bona fide in a forum without jurisdiction and prosecuting such proceedings in good faith before such forum lacking jurisdiction, were complied with; or, any case of such compliance has been made out.

10. At the outset, it must be observed that any process of adjudication has to be fair and reasonable. Both in judicial and quasi-judicial proceedings, a party has to be afforded a reasonable opportunity to present its case; the case presented must receive due consideration of the adjudicating authority; and, the adjudicating authority must disclose reasons to indicate the application of its mind to the matters in issue and how it applied the applicable law to the facts to arrive at the conclusion. It also goes without saying that the principles of natural justice must always be adhered to, subject to any limitation in such regard in the provision under which the adjudication is made.

11. Thus, even if the Evidence Act, 1872 may not apply in terms of arbitration proceedings, the fundamental canons of evidence cannot be breached in arbitration. Similarly, as to whether the claim before it is live or not, or whether the remedy that is sought may be pursued or not, has to be

first ascertained by a judicial or quasi-judicial authority and it is the obligation of such authority so to do, despite no objection being taken on such ground. It goes to the very root of the jurisdiction of the adjudicating authority since a claim or remedy that can no longer be pursued by the prescription of limitation cannot be adjudicated upon.

12. Whether or not a particular statute can be regarded as a code by itself in respect of the subject-matter that it covers, the inapplicability of the principles embodied in Section 3 or Section 29 of the Act of 1963 can never be inferred. There are several principles of public policy included in the Code of Civil Procedure, 1908 – res judicata and the finality of judgments, by way of examples – which apply to all proceedings that are civil in nature, even where the applicability of such Code is not indicated or may otherwise be expressly excluded. The exclusion will amount to the procedural and even some substantial aspects of the Code not being attracted, but the provisions of the Code that pertain to fundamental tenets of public policy may not be inferred to have been excluded. Indeed, it may not be possible to expressly exclude such principles of public policy.

13. Since the State has referred to the appellate, review and revisional provisions contained in Chapter VII of the said Act, Sections 65 to 70 of the Act, in their material parts, may be noticed:

> "65. **Appeal against assessment**– (1) Any dealer may, in the prescribed manner, appeal to the prescribed authority against any assessment within forty-five days or such further period as may be allowed by the said authority for cause shown to his satisfaction from the receipt of a notice of demand in respect thereof:
>
> Provided that no appeal shall be entertained by the said authority unless he is satisfied that such amount of tax, penalty or interest, as the case may be, as the appellant may admit to be due

from him and such percentage of the disputed tax, as may be prescribed, has been paid.

(2) ...

(3) ...

(4) ...”

“66. **Suo motu revision and revision by Commissioner upon application**– (1) Subject to such rules as may be made and for reasons to be recorded in writing, the Commissioner, may on his own motion, revise any assessment made or order passed by a person appointed under sub-section (1) of Section 25 to assist him.

(2) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner may, upon application revise any order, passed by a person appointed under Section (1) of Section 25 to assist him.”

“67. **Review of order**– (1) Subject to such rules as may be made, any assessment made or order passed under this Act or the rules made there under by any person appointed under sub-section (1) of Section 25, may be review by the person passing it, upon applicable or on his own motion, and subject to the rules as aforesaid, the Appellate and Revisional Authority may, in the like manner and for reasons to be recorded in writing, review any order passed by it, either on its own motion or upon an application.”

“68. **Appeal to the High Court**– *(a)* Any assessee objecting to an order passed by the Commissioner under Section 66 or 67 may appeal to the High Court within sixty days from the date on which the order was communicated to him.

(b) The High Court may admit an appeal preferred after the period of sixty days aforesaid if it is satisfied that the assessee had sufficient cause for not preferring the appeal within that period.

(c) ...

(d) ...”

“69. **Appeal to the Appellate Tribunal**– (1) A person dissatisfied with the decision of the Appellate Authority and Revisional Authority may, within sixty days after being served with notice of the decision.

(a) file a second appeal before the Appellate Tribunal; and

(b) serve a copy of the notice of appeal on the Commissioner as well as the authority whose original order is under second appeal before the Appellate Tribunal.

(2) The Appellate Tribunal may admit an appeal after expiry of sixty days if it is satisfied that the appellate had sufficient reason for not filing the appeal within the time specified in sub-section (1), provided it is within one year.

(3) ...

(4) ..."

"70. **Revision to High Court**– (1) An assessee who is dissatisfied with the decision of the Appellate Tribunal or Commissioner may, within sixty days after being notified of the decision, file a revision with the High Court; and the assessee so appealing shall serve a copy of the notice of revision on the respondent to the proceeding.

(2) ...

(3) ...

(4) ..."

14. Section 110 of the Act from Chapter XI thereof has also to be seen since the State submits that it throws some light on the matter which has arisen for consideration:

"110. **Application of Section 4 and 12 of Limitation Act**– In computing the period of limitation under [Chapter VI]*, the provisions of Sections 4 and 12 of the Limitation Act, 1963 shall, so far as may be, apply."

15. The State next refers to a judgment reported at (2017) 2 SCC 350 *(Patel Brothers v. State of Assam)* and the reliance placed therein on the dictum in the judgment reported at (2009) 5 SCC 791 *(Commr. of Customs and Central Excise v. Hongo India (P) Ltd.)*. In *Patel Brothers*, Section 81 of the Assam Value Added Tax Act, 2003, fell for consideration as to whether such provision permitted a belated petition for revision to be entertained by condoning the delay. The Supreme Court referred to Section 29 of the Act of 1963 and held that even in a case where the special law does not expressly exclude the power of an adjudicating authority to

condone any delay or the nature of the subject-matter and the scheme of the special law does not expressly exclude such power, a Court cannot interpret the law in such a manner so as to read into the statute an inherent power for condoning the delay when the special law excludes the operation of Section 5 of the Act of 1963 by necessary implication. The judgment in *Patel Brothers* referred to the decision in *Hongo India* and the reasons in support of the dictum in *Hongo India* found in paragraphs 30 to 35 of the report.

16. The petitioner herein has sought to distinguish the ratio in *Patel Brothers* and *Hongo India* by relying on a judgment reported at (2020) 17 SCC 692 *(Superintending Engineer v. Excise and Taxation Officer)* that limited the dicta in *Patel Brothers* and *Hongo India* by observing that both the decisions turned on the scheme of the applicable statutes. Paragraph 29 of the report in *Superintending Engineer* is set out:

> "29. The High Court has relied upon the decision of this Court in *Patel Bros.* in the context of the Assam VAT Act in which the abovementioned provision of Section 84 made the difference, which makes specific provision that only Sections 4 and 12 of the Limitation Act are applicable. Consequently, it follows that other provisions are not applicable. The decision in *Hongo (India) (P) Ltd.* also turned on the scheme of the Excise Act. The scheme of the Excise Act is materially different than that of the Himachal Pradesh VAT Act. Thus, the decision in *Hongo (India) (P) Ltd.* also cannot be said to be applicable to interpret the Himachal Pradesh VAT Act. As the revision under the 2005 Act lies to the High Court, the provisions of Section 5 of the Limitation Act are applicable, and there is no express exclusion of the provisions of Section 5 and as per section 29(2), unless a special law expressly excludes the provision, Sections 4 to 24 of the Limitation Act are applicable. When we consider the scheme of the Himachal Pradesh VAT Act, 2005, it is apparent that its scheme is not ousting the provisions of the Limitation Act from its ken which makes principles of Section 5 applicable even to an authority in the matter of filing an appeal but for the said provision the authority would not have the power to condone the delay. By implication also, it is apparent that the provisions of Section 5 of the

> Limitation Act have not been ousted; they have the play for condoning the limitation under Section 48 of the 2005 Act. Suo motu provision of revisional power is also provided to the Commissioner within 5 years. Thus, the intendment is not to exclude the Limitation Act. We condone the delay in filing of revision."

17. For the purpose of assessing the applicability of Section 5 of the Act of 1963 in the present context, Section 29(2) of the Act of 1963 is of paramount importance:

> "29. **Savings.**– (1) ...
>
> (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.
>
> (3) ...
>
> (4) ..."

18. Section 29(2) of the Act of 1963 has several components. For a start, the provisions of any special or local law should prescribe a period of limitation different from the period prescribed by the Schedule to the Act of 1963; secondly, the provisions of Section 3 of the Act of 1963 would then apply as if the specially prescribed period by the applicable law were the period prescribed by the Schedule to the Act of 1963; and, Sections 4 to 24 (inclusive) of the Act of 1963 would apply for the purpose of determining the period of limitation under the special or local law to the extent to which such provisions "are not expressly excluded by such special or local law".

19. In the present case, Section 70 of the said Act prescribes a period of 60 days after being notified of the decision subjected to revision for the petition for revision to be carried to the High Court. Section 70 of the said Act does not expressly provide for any power to condone any delay, nor does it expressly prohibit a petition for revision to be entertained beyond the period of 60 days upon sufficient cause for the delay being shown. There is, therefore, no express exclusion in the said Act, within the meaning of the expression "expressly excluded" contained in the final limb of Section 29(2) of the Act of 1963.

20. However, the expression "expressly excluded" has to be reasonably understood in the sense that if, by necessary implication, there is exclusion of any of the provisions contained in Sections 4 to 24 (inclusive) of the Act of 1963 in the special or local law, such implied exclusion would also fall within the fold of the expression "expressly excluded." For such purpose, the principle embodied in the Latin maxim *expressio unios est exclusio alterius* may be referred to since it is a cardinal rule that when one or a few matters out of several possible are exclusively referred to, the obvious necessary implication is that the others have been excluded. But the implication must be obvious; and, merely because nothing is referred to, whether as to their exclusion or inclusion, it may not be inferred that the entirety stands excluded. That is the true purport of Section 29(2) of the Act of 1963 and the obligation of an adjudicating authority cast by Section 3 of the Act of 1963.

21. It is apparent from a plain reading of Section 65 of the said Act that the ordinary time for preferring an appeal under such revision is 45 days but there is no outer limit for condoning the delay as long as the appellate authority is satisfied as to the sufficiency of the cause shown for the delay. Section 66 of the said Act does not indicate any time limit, though sub-section (2) thereof permits rules to be prescribed pertaining to the operation of Section 66 of the said Act. Again, Section 67 of the said Act is on similar lines and does not prescribe any time, though it contemplates rules being made under such provision.

22. Section 68 of the said Act sets a time-limit of 60 days for the High Court to receive an appeal, but confers authority on the High Court to entertain an appeal beyond such period upon sufficient cause for the delay being shown to the satisfaction of the High Court. There is no outer limit fixed for the authority to condone the delay to be exercised.

23. Section 69 of the said Act pertains to appeals to the Appellate Tribunal and permits an appeal to be entertained after the period of the stipulated 60 days if sufficient cause for the delay is shown, but fixes an outer time-limit of one year from the date of being served with the notice of the decision impugned. In other words, by the prescription contained in Section 69(2) of the said Act, however genuine the cause may be for the delay, there is a jurisdictional bar for the appellate tribunal to entertain an appeal under such provision if it is not filed within one year of the appellant being served with the notice of the impugned decision. Section 69 of the said Act is somewhat similar to Section 34 of the Arbitration and

Conciliation Act, 1996 and a host of similar provisions in various statutes which allow the delay beyond the stipulated period to be condoned but fix an outer limit for such purpose. Such provisions are perfectly in consonance with Section 29(2) of the Act of 1963 and, by virtue of the express outer limit as to time stipulated in such provisions, there is a statutory prohibition for entertaining matters carried beyond such outer limit of time. The exercise of the authority to condone the delay beyond the outer time-limit, in such a scenario, would amount to inherent lack of jurisdiction; since the disability fastens to the court or the forum and not merely to any party before such court or forum.

24. Section 70 of the Act, which is relevant for the present purpose, neither expressly confers any authority to entertain a revision beyond the stipulated period of 60 days nor does it expressly prohibit a revision being entertained beyond such period of 60 days. At any rate, since such provision does not expressly confer any authority to receive a petition beyond the period of 60 days, there is no outer limit indicated within which the delay may be condoned and beyond which the High Court will not have any power to condone the delay.

25. There is no express exclusion within the meaning of the relevant expression in Section 29(2) of the Act of 1963 which operates on or in respect of Section 70 of the said Act pertaining to petitions for revision carried to this Court. Though it is wholly unnecessary to surmise why there is no express inclusion or express exclusion of the power to condone the delay in Section 70 of the said Act, it may be conjectured that considering

the status of the High Court, the legislature deemed it fit to leave the matter open to discretion for the principles of justice, equity and good conscience to be applied by the highest judicial forum in the State. Equally, the legislature may have overlooked the aspect. But whatever may be the reason, it cannot be said that the provision for revision to this Court is hedged with the condition that it must be filed within the 60-day period or it cannot be entertained at all. Such exclusion cannot be easily read into a provision and the word "expressly" used in Section 29(2) of the Act of 1963 precludes such inference being drawn.

26. It is evident from the other provisions contained in Chapter VII of the said Act pertaining to appeals and reviews at different levels that either the time-limits have been indicated or the power to condone has been left to the discretion of the relevant forum without any outer limit of time being stipulated; or, rules have been permitted to be prescribed under the relevant provision. In the solitary case where a power to condone the delay has been conferred and an outer limit of time for the exercise thereof has been stipulated, as in Section 69 of the Act, both the power to condone and the outer time limit for a party to seek condonation have been expressly indicated.

27. Quite plainly, in the scheme of Chapter VII of the said Act, notwithstanding such chapter being the entire repository of the right to challenge any order passed under the said Act, there does not appear to be any express exclusion of the power to condone the delay pertaining to

revision under Section 70 of the Act. Such view is supported by the dictum in *Superintending Engineer*.

28. Section 110 of the Act is a red herring. Such provision expressly pertains to Chapter VI of the said Act and confines the applicability of only Sections 4 and 12 of the Act of 1963 in respect of matters covered by Chapter VI of the said Act. By no stretch of imagination, may Section 110 of the said Act be seen to have any bearing on Chapter VII of the said Act or on Section 70 thereof, which are material for the present purpose.

29. It is for the same reason that the dictum in *Hongo India*, as accepted in *Patel Brothers*, would have no manner of application in the present case. By virtue of Section 84 of the Assam Act relevant in *Patel Brothers*, only Sections 4 and 12 of the Act of 1963 were made applicable to petitions for revision filed under Section 81 of such Act. Obviously, Section 84 of the relevant statute implied that the other provisions of the Act of 1963, including Section 5 thereof, would not apply. As such, there was obvious exclusion of the power to condone the delay that had to be read into Section 81 of the relevant Assam Act as a necessary and unavoidable implication of Section 84 thereof.

30. In *Hongo India*, two considerations weighed with the Supreme Court: first, that the relevant provisions pertaining to appeals and revisions expressly contained the power to condone the delay for a further period of 30 days after the expiry of the stipulated time-limits; and, secondly, that there was no period prescribed beyond the 180 days stipulated to receive an appeal and reference by the High Court.

31. It is in view of such self-contained scheme, as evident from a bunch of provisions clubbed in a particular chapter, together with a larger period of 180 days to approach the High Court, that the Supreme Court inferred that any delay beyond 180 days to file an appeal and to make a reference to the High Court could not be condoned by the High Court. Apart from the fact that the operation of the dictum in *Hongo India* has been restricted in the more recent judgment of *Superintending Engineer*, the period for filing a revision under Section 70 of the said Act is not significantly more than the time to prefer an appeal under Section 65 of the said Act and it is exactly the same period stipulated in both Sections 68 and 69 of the said Act.

32. Upon a reading of the relevant provisions of the statute pertaining to VAT in the State, notwithstanding such enactment being a complete code pertaining to all VAT matters, Section 70 of the said Act cannot be said to have expressly excluded the authority of the High Court to condone any delay in the institution of a petition for revision thereunder.

33. It is now to be assessed as to whether sufficient cause has been shown by the petitioner in preferring the petition for revision after the seemingly inordinate delay. As to the sufficiency of the cause of the delay, it must be remembered that the Court or the relevant forum is conferred the authority to be subjectively satisfied as to the cause for the delay and no objective criteria have been specified in such regard. It must also be said in the same breath that the element of subjectivity that is available must be guided by judicially established principles and the subjectivity cannot

depend on the day of the week that the matter falls for consideration or the weather outside or like irrelevant considerations.

34. Ordinarily, Courts are slow in shutting out a party on the prescription of limitation unless negligence on the part of the party or the lack of diligence is crass and obvious. It is elementary that there can be no presumption that a party seeking to assert a right will deliberately while away the time and approach a judicial or quasi-judicial forum beyond the permissible period without there being some semblance of a cause. Indeed, the presumption is otherwise: that a party seeking to undo a prejudice or canvass a right would, definitely, be diligent and the delay, if any, must have been genuine. The prescription of limitation originated in the Justinian times and is founded on the equitable principle that a person who sleeps over his rights will not be allowed to disturb a situation that has been settled by the passage of time.

35. Though it is not unknown in the present times for litigants to deliberately choose an erroneous forum and cite the pendency of the matter before such forum to avoid any immediate prejudice, such conduct would be apparent from the facts. When a party seeks to avoid the consequence of an adverse order by approaching a superior forum, it may not be easily inferred that it deliberately chose a wrong forum only to temporarily avoid the inevitable.

36. In this case, the petitioner invoked the authority of the Board of Revenue under a statute that was applicable to undivided Assam and prior to the State of Meghalaya being carved out. There is no doubt that with a bit

more diligence and appropriate industry the revision ought to have been carried to this Court within the stipulated time. But it does not follow that the petitioner herein proceeded mala fide before the Board of Revenue or did not attempt to diligently pursue its challenge to the order impugned in the present proceedings. There is no doubt that the twin tests under Section 14 of the Act of 1963 have to be complied with, but in the absence of deliberate mischief being shown, the Court would not readily infer that the petitioner had not acted bona fide in carrying its challenge to the relevant order before a forum that did not possess jurisdiction; or, in so doing, the petitioner has to be seen to be lacking in diligence to pursue the challenge.

37. It was a mistake on the part of the petitioner to approach the Board of Revenue, but it does not appear that the petitioner did not seek to pursue the challenge to the order impugned herein with any degree of diligence. While a glass-half empty may not always be described as a glass half-full, the conduct of the petitioner in approaching the Board of Revenue, erroneous as it was, may not be seen as not being bona fide. After all, the petitioner has always attempted to contend that its rusk product ought to be regarded as a form of bread and it diligently pursued the matter before the lower revisional and appellate fora. In such light, there appears to be sufficient cause in the petitioner not having brought this revision earlier than it did and this Court is satisfied as to the sufficiency of the reasons proffered by the petitioner in such regard.

38. The matter, therefore, progresses to the business end for consideration on merits and as to whether the exemption applicable to bread

in the State may be availed of by the petitioner for its manufacture of rusk which may contain the same material that goes into bread.

39. At first blush, the argument put forth by the petitioner appears to be attractive; after all, it is nobody's case that the petitioner buys bread from the market and manufactures rusk therefrom. According to the petitioner, the activity conducted by the petitioner is as indicated at page 9 of the present petition:

> "The petitioner further begs to state that the item 'Rusk' is nothing but a form of bread and is in the nature of toasted bread and there is no manufacturing process that can be said to have taken place making the item 'rusk' as separate from 'bread'. 'Rusk' is a form of bread which can last longer as its moisture content is reduced by toasting the sliced bread to a given specification. After the preparation of bread is completed, the process of its conversion into rusk begins by slicing the bread into small pieces which are then dried/toasted in an oven to form 'rusk' so that the moisture of the bread comes down to a given specification. For the purpose of preparing 'rusk', neither any ingredients are added to bread nor, the chemical composition of bread gets changed in any manner. Rusk is prepared by simply drying/toasting the bread and therefore, by no stretch of imagination 'rusk' can be treated as anything other than 'bread'."

40. The parties have referred to several judgments of the Supreme Court to throw light on whether the rusk that the petitioner manufactures may be seen only to be bread in another form. On behalf of the State, the judgments reported at (2014) 4 SCC 87 (*Mamta Surgical Cotton Industries v. Assistant Commissioner (Anti-Evasion))* and (1995) 5 SCC 289 *(Vasantham Foundry v. Union of India)* have been brought. In *Mamta Surgical*, the issue was whether ordinary cotton and surgical cotton could be regarded to be the same for the purpose of sales tax or VAT. In *Vasantham*

Foundry, the question that arose was whether cast iron in the list of declared goods in the relevant statute would include cast iron casting.

41. On behalf of the petitioning-assessee, reliance has been placed on the judgments reported at (1953) 4 STC 387 *(Kayani and Co. v. Commissioner of Sales Tax)* and (1978) 2 SCC 552 *(Alladi Venkateswarlu v. Govt. of Andhra Pradesh)*. In *Kayani and Co.* the question that fell for determination was "whether double roti, shirmal, parata and chapathi etc.", can be called bread for the purpose of attracting sales tax thereon. In *Alladi Venkateswarlu*, the Supreme Court considered whether parched rice and puffed rice were distinct from rice within the meaning of the relevant entry for different rates of sales tax to be applicable to parched rice and puffed rice than that applicable to ordinary rice. In *Kayani and Co.*, the Supreme Court refused to presume that the legislature had intended the word 'bread' to imply the article of food going by that description in European countries and held that roti, shirmal, parata and chapathi and the like in this country had to be seen to be included within the meaning of the word 'bread' in the relevant entry. Similarly, in *Alladi Venkateswarlu*, the Court applied the dictum in the judgment reported at (1961) 2 SCR 14 *(Tungabhadra Industries Ltd. v. C.T.O.)* to hold that merely because chemical changes had been brought about in parched rice and puffed rice, it would not imply that such varieties cease to be rice within the meaning of the relevant entry. In *Mamta Surgical*, the issue was somewhat different, and, as such, the dictum therein may not be applicable to the present case. It was the admitted position in that case that the appellant before the Supreme Court carried on

business of procuring cotton and transforming it into surgical cotton. Apart from the Supreme Court holding that cotton and surgical cotton were completely different products, it is evident that the raw material procured by the assessee in that case was subjected to a manufacturing process to be converted into surgical cotton. As such, merely because the assessee paid sales tax in procuring its raw material, it could not claim exemption of sales tax on its manufactured product. In the present case, there is nothing in the order impugned that brings out that the petitioner herein buys bread and converts such bread into rusk. If such were to be the case, obviously rusk would be subject to VAT, notwithstanding bread being exempted.

42. What is apparent in this case is that the petitioner may be using the same raw material as in the manufacture of bread, whereupon the petitioner manufactures a form of bread and refines the same to rusk. The process has been explicitly described at page 9 of the petition as quoted above. Thus, it is plain to see that the petitioner manufactures bread and subjects such bread to a further process, which activity falls within the meaning of 'manufacture' as used in the said Act for an altogether different product to be produced.

43. The scenario herein is the same as noticed in *Vasantham Foundry*. The final products were not cast iron but the cast iron produced by the assessee was subjected to a further process of manufacture to be converted into pipes or manhole covers or bends. Just as the Supreme Court held in *Vasantham Foundry* that cast iron casting could not be regarded as cast iron since the manufactured cast iron was subjected to a further process of

manufacture to be converted into cast iron castings, in the present case, the same ingredients that go into the manufacture of bread may, doubtless, be used by the petitioner but upon bread being manufactured by the petitioner, the petitioner subjects such bread to a further process of manufacturing activity to arrive at its finished product of rusk. Quite obviously, some value is added to bread to make it into rusk and that would attract VAT.

44. As a consequence, it cannot be said that the petitioner's product rusk is bread or the VAT exemption available to bread in the State must be extended to rusk. Several of the Supreme Court judgments placed also applied a common parlance test. Upon applying the common parlance test in this case, the question that arises is whether a person desirous of buying bread would ask for rusk or whether a person who goes to a shop and asks for rusk would be given bread in its place. The answer is obvious: bread is bread and rusk is rusk and never may the twain be equated. Accordingly, there is no flaw found in the appellate judgment and order under revision and no ground seen for interfering therewith.

45. Before parting, a couple of points of order need to be recorded. The petitioner demonstrates, by referring to the impugned judgment, that the petitioner had relied on several Supreme Court judgments but the Tribunal may not have referred to such judgments, whether in a sweeping manner or individually. It is possible that with judgments being available online these days, little discretion is exercised in trying to place what is appropriate and refraining from relying on the judgments that are irrelevant in the context. However, when precedents are cited before it, it is the bounden duty of an

adjudicating authority to consider the same and, if irrelevant, indicate briefly, say in a sentence, as to why they may be irrelevant. The judgments cited cannot be ignored, particularly if such judgments are binding on the relevant forum. The second aspect is the use of the expression "inclined to concur" while referring to a judgment of the Supreme Court. No authority in this country has to condescend to concur with any judgment of the Supreme Court since it is binding on all authorities by virtue of Article 141 of the Constitution. If the dictum in a Supreme Court judgment is applicable to the facts of a case in the milieu of the law that is relevant for the purpose, it is binding; and, whether or not any authority or adjudicating forum may agree with such dictum, it has to be applied. The expression "inclined to concur" appears to be inappropriate and exceptionable; though it must be kept in mind that not every person may be adept in the foreign language to be able to comprehend the inappropriateness of an expression casually used.

46. CRP No.32 of 2019 fails and the judgment and order of the appellate Tribunal dated January 23, 2015 are left undisturbed.

47. MC (CRP) No.17 of 2019 is disposed of.

48. There will be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
14.03.2022
"Lam DR-PS"