



REPORTABLE

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 27th DAY OF JUNE, 2022

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE CHANDER BHUSAN BAROWALIA

CIVIL WRIT PETITION NO. 5218 OF 2010 a/w CIVIL WRIT PETITION
NOS. 7644 & 7645 OF 2010 AND CIVIL REVISION NO. 135 OF
2010

CIVIL WRIT PETITION NO. 5218 OF 2010

Between:-

M/S S.S. FOOD KATHER, BYE
PASS ROAD SOLAN, DISTRICT
SOLAN THROUGH ITS
PROPRIETOR SH. SWAYAM ARYA
S/O SH. RAVINDER SINGLA, R/O
KATHER BYE PASS ROAD, SOLAN

...PETITIONER

(MS. SHALINI THAKUR,
ADVOCATE)

AND

1. STATE OF HIMACHAL PRADESH
THROUGH SECRETARY (EXCISE
AND TAXATION) TO THE
GOVERNMENT OF HIMACHAL
PRADESH.
2. THE EXCISE AND TAXATION
OFFICER FLYING SQUAD SOUTH
ZONE HIMACHAL PRADESH,
SHIMLA.
3. THE ADDL. EXCISE AND
TAXATION COMMISSIONER-CUM-

**APPELLATE AUTHORITY SZ
SHIMLA.**

- 4. THE EXCISE AND TAXATION
OFFICER, SOLAN, DISTRICT
SOLAN.**

...RESPONDENTS

**(SH. AJAY VAIDYA, SENIOR
ADDITIONAL ADVOCATE
GENERAL).**

CIVIL WRIT PETITION NO. 7644 OF 2010

Between:-

**BRITANNIA INDUSTRIES LTD.
HAVING ITS OFFICE AT SHOP NO.
2, SECTOR-3, SHASHTRI
BHAWAN, KALKA SHIMLA
NATIONAL HIGHWAY, PARWANOO
(H.P.) NORTHERN REGIONAL
OFFICE AT 33, LAWRENCE ROAD,
NEW DELHI-35 THROUGH ITS
AUTHORIZED SIGNATORY MR. V.
K. PRUTHI.**

...PETITIONER

**(SH. R. JAWAHARLAL AND SH.
ATUL JHINGAN, ADVOCATES)**

AND

- 1. THE ADDITIONAL EXCISE &
TAXATION COMMISSIONER-CUM-
APPELLATE AUTHORITY (SOUTH
ZONE), HIMACHAL PRADESH,
SHIMLA-9.**

- 2. EXCISE & TAXATION OFFICER-
CUM-ASSESSING AUTHORITY, FS
(SZ), SHIMLA.**

...RESPONDENTS

**(SH. AJAY VAIDYA, SENIOR
ADDITIONAL ADVOCATE
GENERAL).**

CIVIL WRIT PETITION NO. 7645 OF 2010

Between:-

**BRITANNIA INDUSTRIES LTD.
HAVING ITS OFFICE AT SHOP NO.
2, SECTOR-3, SHASHTRI
BHAWAN, KALKA SHIMLA
NATIONAL HIGHWAY, PARWANOO
(H.P.) NORTHERN REGIONAL
OFFICE AT 33, LAWRENCE ROAD,
NEW DELHI-35 THROUGH ITS
AUTHORIZED SIGNATORY MR. V.
K. PRUTHI.**

...PETITIONER

**(SH. R. JAWAHARLAL AND SH.
ATUL JHINGAN, ADVOCATES)**

AND

- 1. THE ADDITIONAL EXCISE &
TAXATION COMMISSIONER-CUM-
APPELLATE AUTHORITY (SOUTH
ZONE), HIMACHAL PRADESH,
SHIMLA-9.**
- 2. EXCISE & TAXATION OFFICER-
CUM-ASSESSING AUTHORITY, FS
(SZ), SHIMLA.**

...RESPONDENTS

**(SH. AJAY VAIDYA, SENIOR
ADDITIONAL ADVOCATE
GENERAL).**

CIVIL REVISION NO. 135 OF 2010

Between:-

**BRITANNIA INDUSTRIES LTD.,
CARE OF M/S SYAL &
ASSOCIATES, SWARAJ BUILDING,
KASAUJI ROAD, SECTOR 4,
PARWANOO, DISTT. SOLAN,
HIMACHAL PRADESH AND ALSO
AT: BRITANNIA INDUSTRIES
LIMITED, 33 LAWRENCE ROAD,
DELHI - 110035 THROUGH ITS
AUTHORISED SIGNATORY, MR. V.
K. PRUTHI, UNIT HEAD, DELHI.**

...PETITIONER

(SH. R. JAWAHARLAL AND SH.
ATUL JHINGAN, ADVOCATES)

AND

1. THE EXCISE & TAXATION
COMMISSIONER-CUM-APPELLATE
AUTHORITY, SHIMLA.
2. THE DEPUTY EXCISE AND
TAXATION COMMISSIONER,
FLYING SQUAD (SZ), SHIMLA,
HIMACHAL PRADESH.
3. THE ASSISTANT EXCISE AND
TAXATION COMMISSIONER AND
ASSESSING OFFICER, SOLAN,
DISTRICT SOLAN, HIMACHAL
PRADESH.

...RESPONDENTS

(SH. AJAY VAIDYA, SENIOR
ADDITIONAL ADVOCATE
GENERAL).

RESERVED ON: 20.06.2022

*These Petitions coming on for orders this day, **Hon'ble Mr. Justice Tarlok Singh Chauhan**, delivered the following:-*

JUDGMENT

The common question of law arises in these petitions including the civil revision petition, which relates to the classification adopted by the petitioner on sale of 'Bread-Rusk' under Entry 9 of Schedule B under the HPVAT Act as "Bread", exempted from VAT. It is the case of the respondents that Bread-Rusk is not classifiable and does not fall under Entry 9 of Schedule B of the HPVAT Act and is classified as an unlisted item

under the residual entry i.e. Part III of Schedule A of the HPVAT Act and subject to VAT @ 12.5% (subsequently increased to 13.5%), whereas the Assessing and Taxing Authority including the Tax Tribunal has proceeded to levy VAT @ 13.5% by treating it an unlisted item and not as Bread, which is exempted under the VAT.

2. It is contended by Shri R. Jawahar Lal, learned counsel for the petitioner(s) that the Rusk is also a Bread and is made up of the same ingredient by adopting the same method of manufacturing. It is ultimately the moisture content, which makes the distinction between the Bread or Rusk. Therefore, since the Taxing Authority has not notified Rusk as Bread in any one of the Schedules thereof, then the thumb rule of interpretation would be required to apply. The rusk is akin to bread will have to be read under the broad head of 'Bread', therefore, no duties will be chargeable or taxed leviable on the same.

3. It is further contended that nothing prevented the Taxing Authorities to sub classify products which have the origin from bakery and tax them separately on the basis of their commercial use or common parlance by which the products are known as such, but when no such efforts have been made by the State Authority in the notification issued under the VAT Act,

2005, then such items will have to be interpreted under the broad head of Bread and since bread carries zero percent duty, rusk cannot be charged by bringing it under the residuary head.

4. While on the other hand, Shri Ajay Vaidya, learned Senior Additional Advocate General, would argue that Rusk should be read in residuary Entry as it is entirely different product and, therefore, the assessment or demand so made is based on the interpretation by the authorities below should be sustained.

We have heard learned counsel for the parties and have gone through the record of the case.

5. At the outset, it needs to be borne in mind that it is now 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.

6. This was so held by the Hon'ble Supreme Court in ***Mauri Yeast India Pvt. Ltd. vs. State of Uttar Pradesh and Another, 2008 (5) SCC 680***. It shall be fruitful to reproduce relevant observations as contained in paras 34, 48 and 56, which read 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. (emphasis supplied)

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.

56. We, therefore, are of the opinion that if there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred."

7. As regards the contention of the respondents that the Rusk would fall under residuary entry, the burden of proof is on the respondents and the onus also lies on them to first establish conclusively that by no conceivable process of reasoning can the said product be brought under any of the tariff items and hence the product was being brought under any of the tariff items, hence the product was being brought under the residuary item.

8. In taking this view, we are fortified by the judgment rendered by the Hon'ble Supreme Court in **Commissioner of**

Central Excise, Calcutta vs. Sharma Chemical Works,
2003 (5) SCC 60, wherein in para 12, it was held as under:-

"12. We have heard the parties and considered the submissions made by them. We have also read the opinion of the majority Bench and the minority opinion of the Technical Member. It is a settled law that the onus or burden to show that a product fall within a particular Tariff Item is always on the revenue. Mere fact that a product is sold across the counters and not under a Doctors prescription does not by itself lead to the conclusion that it is not a medicament. We are also in agreement with the submission of Mr. Lakshmikumaran that merely because the percentage of medicament in a product is less does not ipso facto mean that the product is not a medicament. Generally the percentage or dosage of the medicament will be such as can be absorbed by the human body. The medicament would necessarily be covered by fillers/vehicles in order to make the product usable. It could not be denied that all the ingredients used in Banphool Oil are those which are set out in the Ayurveda text Books. Of course the formula may not be as per the text books but a medicament can also be under a patented or proprietary formula. The main criteria for determining classification is normally the use it is put to by the customers who use it. The burden of proving that Banphool Oil is understood by the customers as an hair oil was on the revenue. This burden is not discharged as no such proof is adduced. On the contrary we find that the oil can be used for treatment of headache, eye problem, night blindness reeling head weak memory, hysteria amnesia blood pressure, insomnia etc. The dosages required are also set out on the label. The product is

registered with Drug Controller and is being manufactured under a drug licence."

9. Similar view was taken by the Hon'ble Supreme Court in ***Puma Ayurvedic Herbal (P) Ltd. vs. Commissioner, Central Excise, Nagpur, 2006 (3) SCC 266***, wherein in para-8, it was observed as under:-

"It is settled law that the burden of showing correct classification lies on the revenue." If we look at the facts of the instant case there does not appear to have been any strong evidence led by the revenue before the authorities to establish the fact that the matter would not fall within the entry item "bread" as is reflected under schedule-1, entry-7 of the [VAT Act](#)."

10. Noticeably, only reason to conclude that the Rusk and Bread are entirely two different products, the learned Tribunal below has accorded the following reasons:-

3. The difference between the two are apparent and conspicuous, firstly, more items are required for preparation of rusk like suji, elaichi, saunf and additional sugar. Secondly, the baking system is also different. The rusk will be baked twice whereas bread is not to be baked like rusk. Thirdly, the rusk cannot be used in place of bread. The user test is also not qualified by rusk. The bread is a raw-material for small entrepreneurs who sell bread pakora, bhondas, bread rolls, butter slices, sandwich, butter toasts and so many other items. Whereas rusk is itself a final product and cannot be further used except for eating as it is, bread is duly required and commonly used in families at the break-fast

or in routine during morning time. A labourer takes half-break alongwith tea like-wise, it also fails the user tests.

4. The bread has to be consumed within a period of two days or three days, whereas rusk has a stock capacity for a longer period and further the Legislature wisdom has to be obeyed and the entry in the Schedule is plain, unambiguous and clear and Legislature did not want to equate bread with other items like rusk which does not qualify the test of bread. Bread cannot include the rusk or read for the work rusk by any stretch of interpretation. The Legislature is very clear that the bread or similar item which stands to the test of bread only be tax-free. Bread always used by the poor people and rusk used by the medium and rich families as it is costly also.

11. In order to appreciate the submissions of both the sides, it would be relevant to refer to the definition of Rusk and Toast as appeared in the dictionaries.

12. According to Black's Law Dictionary, the definition of Toast so also definition of Rusk is as under:-

Toast- Sliced bread that has been browned by heat.

Rusk – A slice of sweet raised bread dried and again in the oven.

13. So far as Webster dictionary is concerned, Toast has been defined as “sliced Bread browned on both side by heat”. Likewise, Rusk has also been defined as “the sweet or a plain Bread baked until dry and crisp”.

14. The “Rusk” as also “Bread” is made up of the same ingredients and the method of manufacturing is also the same.

As observed above, the difference is the moisture contents which differentiate the Bread with a Toast. The moisture content in Bread is very high whereas the moisture content in Rusk is relatively low. The dough which is used for its preparation and the method of manufacturing i.e. baking process, is similar except that the Rusk is baked for a longer period so that moisture content gets evaporated with which the shelf-life of the product get enhanced. Likewise, the Bread is baked for a very short duration so that it does not lose moisture contents and because of which the shelf-life of Bread is relatively short.

15. Even otherwise the only difference between two products, i.e., Bread and Rusk is that dough used for preparation of Rusk is baked in a manner whereby in the process of baking it is dehumidification to remove the moisture contents.

16. Thus, it is evidently clear that the majority of the ingredients in Rusk and Bread are the same and the difference of ingredients in two products are minuscule and it is only the duration of the baking which makes the difference between two products. The process of baking Bread is for a lesser period so that moisture content does not finish. On the other hand, the Rusk is baked for a longer period of time and the moisture content is reduced to the minuscule by adopting the process of dehumidification.

17. As per the dictionary meaning of Rusk, it would be established that it is nothing but virtually a slice of Bread dried and cooked again in the oven.

18. That apart, as already observed above, the burden or onus is on the respondent authorities to establish by placing on record cogent, convincing and substantive evidence to show that Rusk is not Bread so as to bring it under the residuary entry under Part-IV of Schedule-B so as to impose tax on Rusk and Toast at the rate specified under the residuary entry.

19. Now advertng to the issue in question, it would be noticed that in the year, 1953, the High Court of Hyderabad while dealing with the similar issue in the case of ***Kayani and Co. vs. Commissioner of Sales Tax, 1953 (4) STC 387***, while considering the definition of bread under the provisions of Hyderabad General Sales Tax Act, in paragraph No. 2, it was observed as under:-

"When the Legislature uses a term relating to any article of food, we must construe it in the sense in which it is understood in this country and not elsewhere. In fact bread which is commonly labelled as a loaf of bread in European countries has a particular name in this country and is called a "double roti" thereby distinguishing it from ordinary "roti" which is synonymous with a loaf of bread. In this country, it is not unusual for a descriptive prefix to cannote the kind of bread such as "Jawari-ki-roti, Bajre-ki-roti, Makai-ki-roti, Gheon-ki-roti" etc. In our view the intention of the Legislature is to include all kinds of bread

which are consumed by the citizens of India, whether prepared in different ways or called by 12 different names. There is no justification for limiting the scope of the term bread to a particular kind, such as "double roti" as contended by the learned Advocate for the Commissioner of Sales Tax. The intention of the Legislature is further made clear in the amended Schedule I which was substituted by Act XXVIII of 1952, where the term "bread" in item 3 thereof includes "double roti, chapathi, kulcha and shirmal". This inclusive definition of the word "bread" negatives the contention of the learned Advocate that by "bread" is only meant "double roti", and no other kind of roti. If his contention was right, there was nothing to prevent the word "double roti" for the word "bread" nor can we justifiably infer that the exemption is only meant for the very limited class of citizens who consume "double roti" while levying the tax on vast majority of citizens who do not consume that article of food. We are, therefore, not impressed by the contention that articles for which exemption is claimed were not included in the word "bread". In our view, "bread" includes and should include all forms or kinds of bread which are prepared by moistening, kneading, baking, frying or roasting meal or flour with or without the addition of yeast, leaven or any other substance for puffing or lightening the article."

20. Somewhat similar issue came up for consideration before a Division Bench of the Kerala High Court in ***Modern Food Industries (India) Ltd. vs. Assistant Commissioner (Assessment) Sales Tax Special Circle and others, 1993 (88) STC 9 (KER)***, wherein the dispute between "Bun" and

“Bread” arose for consideration while dealing with the issue in paragraphs No. 9 to 11, it was held as under:-

“9. It is emphasised that bread is manufactured and marketed in different names and forms to suit the tastes and requirements of the consumers.

10. Further factual details about the components and the process have been given in the additional affidavit dated July 30, 1990. It is stated:

"The ingredients of bread and bun are maida, sugar, salt, fat, yeast, glycerine mono stala, vitamin premix, potassium bromate, acetic acid and calcium propionate. The manufacturing process is also the same. The flour is sifted and the raw materials are mixed with water to form a dough. It is then fermented and remixed. The remixed dough is allowed a short resting period before it is divided to form each bread or bun. It is then founded, moulded, panned, pruned to the required volume and baked. The baked bread is cooled to room temperature and sliced and packed. The cooled bun is directly packed without slicing. In bun the percentage of yeast is more than bread."

11. The variety of the breads made and sold by the petitioners is reflected in the enumeration: "White bread, sweet bread, Kairali special, milk bread and fruity". The ingredients are virtually the same with marginal difference in their percentage. Bun contains more of yeast. Additional ingredients are there in milk bread and in fruity. A document daily production and raw material control report-has been produced along with the affidavit to demonstrate the ingredients of each variety of bread and

bun. That statement confirms the correctness of the allegations of the petitioner."

21. In ***M/s S. R. Foils and Tissues Limited vs. The State of Haryana and another decided in VATAP No. 73 of 2011 (O&M) on 27.10.2016***, it was held in para 23 as under:-

"23. If the case of the appellant is considered in the light of enunciation of law, as referred to above, Entry 57 in Schedule 'C' only prescribes 'paper', 'paper board' and 'newsprint'. It does not provide for any inclusions or exclusions. It further does not provide for any user test. The word 'paper' used in the Entry is in generic form, which will include all types of paper, which has its essential characteristics. It is not in dispute that even the tissue paper, napkin, toilet paper rolls etc. retain the essential characteristics of paper. It is only that it is in different strength and is used for different purposes. There is no competing entry to find out whether product falls in entry 'A' or 'B'. The residuary entry is to be invoked in case with liberal construction to the specific entry, the product could not be found to be forming part thereof."

22. It would be fruitful to refer to the judgment of the learned Single Judge of Allahabad High Court in ***Manik Bakers vs. Union of India, 2014 (3) CLR 653 = 2015 144 FLR 90***, wherein while considering the process of manufacturing of Rusk and Bread is the same after relying upon the dictionary meaning to the word "Rusk". It was held that Rusk can either be treated as Biscuit or Bread or both.

23. It shall be apt to quote the relevant observations as under:-

“4. The word “Rusk” has been defined in Concise Oxford English Dictionary Eleventh Edition, Revised (Indian Edition) to mean a dry biscuit or a piece of twice-baked bread especially as prepared for use as baby food.

5. Similar is the meaning attached to the word 'Rusk' in Collins Cobuild Advanced Learner's English Dictionary, New Edition as hard, dry biscuits that are given to babies and young children.

In common parlance also Rusks are treated as item of bread.

6. In the view of the above, Rusks can either be treated as biscuit or a bread both of each are covered under the above entry of Schedule 1 of the Act. Accordingly, any industry manufacturing Rusks would be covered by the provisions of the aforesaid Act.”

24. The question of Bread-Rusk as Bread under the Rajasthan VAT Act came up for consideration before the Rajasthan Tax Board, Ajmer, which took note of the fact that the process of manufacture, raw materials used in the process of manufacturing as well as machinery used for Bread and Rusk were the same and further took note of the question adopted and accepted (classified Bread-Rusk as Bread) under various States held that Bread-Rusk is classifiable as Bread.

25. Aggrieved by the judgment rendered by the learned Rajasthan Tax Board, the State of Rajasthan filed a revision

petition before the Hon'ble Rajasthan High Court being case **Reference No. 136/2016, titled as Assistant Commissioner vs. M/s Britannia Industries Ltd.**, and the same was dismissed by observing as under:-

14. Taking into consideration the aforesaid, intent of the other various States cannot be ignored when a similar product is being considered under the Act. Taxing statute has to be strictly construed does not mean the product can be differentiated merely because the Assessing Officer say so and in my view "Rusk" can be said to be falling within the ambit of bread and it cannot be carried to any other entry or Schedule V as claimed by counsel for the revenue.

15. In my view it does not make any difference whether it is sold by the present assessee or by a small manufacturer/producer of "Rusk" and, the intention of Government was just to exempt such items for daily consumption by even lower middle class people.

16. Taking in view the aforesaid, in my view, the view expressed by the Tax Board is just and proper and no interference is required by this Court. The judgments relied upon by the counsel for the Revenue are inapplicable to the facts of the instant case. Accordingly, the petitions being devoid of any merit, are hereby dismissed.

26. In **Samsung India Electronics Private Limited vs. Government of NCT and Ors., 2017 (97) VST 417 (Delhi)**, it was observed in paragraphs No. 41 to 44 as under:-

"41. In Commissioner of Sales Tax v. Agarwal & Co. 1983 (12) ELT 116 (Bom), the question was whether 'milk'

occurring in Entry 36 of Schedule A of the Bombay [Sales Tax Act](#), 1959 includes 'milk powder' as well. It was held that milk would not only include milk in liquid form but all types of milk. It was held that while looking at the words of an Entry in the Sales Tax legislation, it was permissible to examine the legislative history of the said Entry. It was pointed out that "while interpreting a general term used for describing any commodity in any fiscal legislation, the general term so used covers that commodity or item or article in all its forms and varieties". It was accordingly observed that milk in powder form can be looked upon as a result of this continually evolving technology. There is no reason why it should be excluded from the generic term 'milk'.

42. In [Dunlop India Ltd. v. Union of India](#), reported in 1983 (13) ELT 1566, it was reiterated that "when an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the percentage and consign it to an orphanage of the residuary clause".

43. In [HPL Chemicals Ltd. v. Commissioner of Central Excise](#) reported in 2006(197) ELT 324 (SC), the question was of classification of 'denatured salt'. The Court disagreed with the Department of Excise in that case that the said product was classifiable under the residuary Heading No.38.23 and not Heading 25.01 of the [Central Excise Tariff Act](#), 1985 which was a specific heading. The Court observed as under:

"This apart, classification of goods in a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue. On the one hand, from the trade and market enquiries made by

the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is quite clear that the goods are classifiable as "Denatured Salt" falling under Chapter Heading No. 25.01. The Department has not shown that the subject product is not bought or sold or is not known or is dealt with in the market as Denatured Salt. Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject matter is to be treated as Sodium Chloride."

44. In *Sun Export Corporation v. Collector of Customs, Bombay* reported in 1997 (93) ELT 641 (SC), the Supreme Court reiterated the well settled principle that if in a matter of classification of goods two views were possible, the one favouring the Assessee has to be preferred."

The basic form of Rusk is Bread even as per the standard prescribed by the Indian Standard Institute.

27. All these judgments have been taken into consideration by learned Division Bench of the Chattisgarh High Court in a batch of appeal arising out of the judgment of the learned Single Judge, lead case whereof ***Appeal No. 760 of 2018, titled as State of Chattisgarh vs. Saj Food Product (P) Ltd., decided on 18.02.2019***, wherein while affirming the judgment rendered by the learned Single Judge, it was observed as under:-

"8. The State is aggrieved by the decision so taken by the Learned Single Judge and, therefore, these appeals have been preferred on their behalf. Again since these appeals arise out of a common order dated 05.03.2018 and the issue raised before us are identical in nature which was urged before the Learned Single Judge, therefore, after

hearing the parties all these appeals were clubbed together and heard together.

9. Before us, the Deputy Advocate General representing the State reiterates his submission that since toast and rusk are understood as different goods in common parlance by different people, therefore, they should be treated as different goods and in absence of the same being specifically incorporated in any of the Schedule, the residuary clause i.e. entry in Part IV of Schedule II will come to the rescue of the revenue.

10. Such arguments have to be rejected keeping in mind the judicial precedents which the learned Single Judge had taken note of while interpreting different entries. The settled position in law is that attempts has to be made to find out as to whether the same answers to 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 has to be taken as a last resort.

11. Applying such a principle we cannot accept the arguments of the State that the Rusk and Toast should be dragged into the residuary item away from the broad head of Bread, which finds entry and is exempted from levy of any tax under the [VAT Act](#).

12. The view so taken by the Learned Single Judge is well fortified and supported by the settled principles of law and binding precedents in relation to such interpretation, therefore, we are not enthused by the argument made on behalf of the State that the decision of the Learned Single Judge needs to be interfered with by treating Rusk and Toast as different items to be brought under residuary entry and allow the Taxing Authorities to assess such items as such and demand tax."

28. As against the aforesaid judgments, Shri Ajay Vaidya, learned Senior Additional Advocate General, would rely upon a recent judgment rendered by learned Division Bench of the High Court of Meghalaya in **CRP No. 32/2019, titled as M/s Saj Food Products Pvt. Ltd. vs. State of Meghalaya & Ors.**, which incidentally again has been given in M/s Saj Food Products Pvt. Ltd. (respondents before the Chattisgarh High Court (supra), wherein it was observed as under:-

"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.

29. Having gone through the aforesaid judgment, we are unable to subscribe to the view taken therein. Once the Court agrees that the raw material as also the manufacturing process for Bread and Rusk is same and thereafter only the moisture is extracted, would not term that activity to be falling within the meaning of "manufacturer" as used in the Act, for the reasons as stated in paras 12 to 18 and in view of the precedent as taken note of in paras 19 to 26 here-in-above. Consequently, we find merit in these writ petitions and the same are allowed.

31. As regards the civil revision petition, the issue raised in this petition has been squarely answered in the aforesaid judgments, accordingly the same is allowed.

Pending application(s), if any, stand(s) disposed of.

(Tarlok Singh Chauhan)
Judge

(Chander Bhusan Barowalia)
Judge

27th June, 2022
(sanjeev)