

(2018) 10 GAU CK 0036

In the Gauhati High Court

Case No : Civil Writ Petition No.7863 Of 2017, Civil Writ Petition No.7888, 7896 Of 2017

Apeejay Tea Ltd. And Anr @APPELLANT@Hash Union Of India And 3 Ors

Date of Decision : 12-10-2018

Acts Referred:

Finance Act 1994 — Section 65B(5), 68(2), 73, 73(1), 75, 78
Uttar Pradesh Sales Tax Act, 1948 — Section 2(i)

Citation : (2018) 10 GAU CK 0036

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : A. Mazumder, B. Sarma

Final Decision : Dismissed

Judgement

1. Heard Mr. A. Mazumder, learned senior counsel for the petitioners. Also heard Mr. B. Sarma, learned counsel for the respondent authorities. In all

the three writ petitions a common question of law is involved to be determined on the same set of facts, except that the demand notices under section

73 of the Finance Act of 1994 are in respect of different tea estates of the petitioner company and accordingly, the three writ petitions are taken up

for a final consideration, resulting in the common judgment and order.

2. The petitioners are engaged in the business of plantation, manufacture, sale and transportation of tea under the petitioner No.1 company, which has

various tea gardens in India. In course of their business, the petitioners engage various goods transport agencies for transportation of the tea from its

tea gardens in Assam to its ware houses. The question involved is as to whether the petitioners are liable to pay service tax under Chapter-V of the

Finance Act of 1994 for availing the service of transportation of the tea. To that effect, demand cum show-cause notices of different dates were

issued by the Assistant Commissioner of Excise Customs and Good & Services Tax, Guwahati to the different tea estates operated by the petitioner

No.1.

3. In respect of Budlapara tea estate, a demand cum show cause notice dated 07.09.2017 was issued for the period from April 2013 to March 2016 by

arriving at a conclusion that service tax including cess for an amount of Rs.3,52,556/- was evaded. Consequent thereto, the Budlapara tea estate was

called upon to show cause notice within thirty days as to why service tax including cess amounting to Rs.3,52,556/- should not be recovered under

Section 73(1) of the Finance Act of 1994 and further as to why appropriate interest should not be charged and recovered under Section 75 and further

as to why penalty should not be imposed under Section 78 of the said Act of 1994.

4. Similar demand cum show cause notices were also issued to the other tea estates of the petitioner No.1. In respect of Talup Tea Estate a demand

cum show cause notice dated 14.09.2017 was issued for an amount of Rs.4,50,005/- and in respect of Pengree Tea Estate it was issued for an amount

of Rs.1,42,796/-. The demand cum show cause notice in respect of Budlapara tea estate has been assailed in WP(C) No.7863/2017, in respect of

Taluk tea estate, it has been assailed in WP(C) No.7888/2017 and in respect of Pengree tea estate, it has been assailed in WP(C) No.7896/2017.

5. Mr. A. Mazumder, learned senior counsel for the petitioners assails the aforesaid three demand cum show cause notices by raising a contention

that under the relevant notifications in force, there is an exemption on the imposition of service tax including cess in respect of transportation of tea.

Hence according to Mr. A. Mazumder, learned senior, counsel all the three demand cum show cause notices are therefore, without any authority of

law and as such liable to be interfered.

6. In order to substantiate his contention, Mr. Mazumder, learned senior counsel refers to the Notification No.30/2012-ST dated 20.06.2012 of the

Govt. of India in the Ministry of Finance, Department of Revenue. The said notification issued in exercise of the powers under Section 68(2) of the

Finance Act of 1994 notifies certain taxable services as stated therein and also the extent to which service tax is payable thereto by the persons liable

to pay service tax for the purpose. The taxable services referred in the

notification of 20.06.2012 also included the services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person who would be liable to pay the freight for such transportation is, amongst others, a factory registered under Factories Act of 1948, a society registered under the Societies Registration Act, 1860, a cooperative society established by or under any law, a dealer of excisable goods registered under the Central Excise Act of 1944, a corporate body established by or under any law, or any partnership firm whether registered or not.

7. According to Mr. A. Mazumder, learned senior counsel, the activities carried out by the petitioners are included within the meaning of a person

liable to pay freight as provided in Sub-Clauses (a) to (f) of Entry I(A)(ii) of the notification of 20.06.2012. Accordingly, as per the notification of

20.06.2012, the petitioners would be liable to pay service tax including cess. But by another Notification No.25/2012-ST also dated 20.06.2012 of the

Govt. of India in the Ministry of Finance, Department of Revenue, certain services included in the Notification No.30/2012-ST dated 20.06.2012 were

exempted from the purview of levy of service tax including cess. In other words, although by the notification No.30/2012-ST dated 20.06.2012, service

tax had been imposed on certain category of services in general, the Notification No.25/12-ST dated 20.06.2012 exempts certain categories of service

from the purview of service tax. Subsequently, another Notification No.3/2013-ST dated 01.03.2013, an amendment was brought in to the Notification

No.25/2012-ST dated 20.06.2012, by which some more specific services were also exempted from the purview of service tax by bringing in addition

to the list of services earlier exempted by the Notification No.25/2012-ST dated 20.06.2012. By virtue of such amendment whereby, some further

specific services were also included within the purview of the notification No.25/2012-ST dated 20.06.2012, the same also stood exempted from the

purview of imposition of levy of service tax.

8. In the Notification No.25/2012-ST dated 20.06.2012, Entry-21 thereto is as follows:

(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;

(b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one

thousand five hundred rupees; or

(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven

hundred fifty;

9. By the later Notification No.3/2013-ST dated 01.03.2013 Entry 21 of the Notification No.25/12-ST dated 20.06.2012 was substituted in the following

manner:-

â?? 21. Services provided by a goods transport agency, by way of transport in a goods carriage of-

a) agricultural produce,

b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand

five hundred rupees,

c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty,

d) foodstuff including flours, tea, coffee, jiggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages,

e) chemical fertilizer and oilcakes,

f) newspaper or magazines registered with the Registrar of Newspapers,

g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap or

h) defence or military equipments.â??

10. As the notification No.25/2012-ST dated 20.06.2012 provides for the specific services that are exempted from the purview of service tax including

cess, the substitution of Entry 21 thereto by the Notification No.3/2013-ST dated 01.03.2013 the specific services mentioned in the substituted Entry

21, would now stand exempted from the purview of service tax. Entry-21(a) as substituted by the Notification No.3/13-ST dated 01.03.2013 refers to

the services provided by a goods transport agency by way of transport in a goods carriage of agricultural produce, whereas, Entry-21(d) thereto

provides for the services provided by a goods transport agency by way of transport in a goods carriage of food staff including flours, tea, coffee,

jaggery, sugar, milk, salt, edible oil including alcoholic beverages. As per the substituted Entry-21(d), transportation of tea by way of goods carriage,

stood exempted from the purview of levy of service tax.

11. By a subsequent notification No.6/2015-ST dated 01.03.2015, a further amendment was brought in to Entry 21 of the Notification No.25/2012-ST dated 20.06.2012 by which, the clause (d) stood substituted as follows:-

(d) "milk, salt and food grain including flours, pulses and rice."

12. The effect of the substitution of Entry-21(d) would be that Clause-d of the Notification No.3/2013-ST dated 01.03.2013 stood removed and

substituted by the later Clause-d providing for milk, salt and food grain including flours, pulses and rice. What is noticeable is that the later substituted

Clause-d of Entry-21 excludes tea from being included for the purpose of exemption from the purview of service tax.

13. In other words, upon tea being excluded from the provision of Entry-21 Clause-d, the exemption granted for transportation of tea by a goods

transport agency in a goods carriage, now stands withdrawn.

14. In the aforesaid circumstance, it is the submission of Mr. A. Mazumder, learned senior counsel that in the common parlance meaning of the

expression agricultural produce and also as decided by the Supreme court in its pronouncement rendered in Commissioner of Sales Tax, Lucknow

"vs- M/s D.S. Bist and Sons, Nainital reported in (1979) 4 SCC 741 in paragraph-15, tea in its basic nature continues to be an agricultural produce.

According to Mr. A. Mazumder, learned senior counsel transportation of agricultural produce by a goods transport agency in a goods carriage having

been retained for exemption from the purview of service tax including cess as per Entry-21 (a) and tea also being an agricultural produce as held by

the Supreme Court, therefore, the petitioners continue to be entitled for an exemption from the purview of service tax including cess for transportation

of tea by a goods carriage agency in a goods carriage. Mr. A. Mazumder, learned senior counsel in order to substantiate his submission refers to the

provisions in paragraph 6, 7 and 15 of the decision rendered in DS Bist (supra) which is as follows:-

"6. The question for consideration is whether on the findings aforesaid it can be justifiably held in law that the leaves lost their character of being an

agricultural produce and became something different. It should be remembered that almost every kind of agricultural produce has to undergo some

kind of processing or treatment by the agriculturist himself in his farm or

elsewhere in order to bring them to a condition of non-perishability and to make them transportable and marketable. Some minimal process is necessary to be applied to many varieties of agricultural produce. As for example, when wheat stalks are cut from the farm, threshing and winnowing have to be done. The product so obtained has to be dried for a few days. The husk and dust have to be separated. Thereafter packing the wheat in bags or other containers it is taken to the markets for sale. One can never suggest that such a wheat product becomes a commodity different from the one which was produced in the process of agriculture. To pursue that example further, if the agriculturist who produces the wheat has a flour mill and crushes the wheat produced by him in that mill and then if the flour so produced is sold by him one can never reasonably suggest that the flour sold by him is an agricultural produce, because in that event, the manufacturing process goes beyond the limit of making the agricultural produce fit for marketing as such and turns it into a different commodity altogether i.e. flour. But there may be some other kinds of agricultural produce which required some more processing to make it marketable. In the case of such a commodity what one has to judge is to find out whether in relation to that agricultural produce the process applied was minimal or was it so cumbersome and long drawn that either in common parlance, or in the market, or even otherwise, any body would not treat the produce as an agricultural produce. The mere fact that in the case of a particular product the process is a bit longer or even a bit complicated will not rob the produce of its character of being an agricultural produce.â??

7. Unlike many agricultural products tea-leaves are not marketable in the market fresh from the tea gardens. No body eats tea-leaves. It is meant to be boiled for extracting juice out of it to make tea liquor. Tea-leaves are, therefore, only fit for marketing when by a minimal process they are made fit for human consumption. Of course, the processing may stop at a particular point in order to produce inferior quality of tea and a bit more may be necessary to be done in order to make it a bit superior. But that by itself will not substantially change the character of the tea-leaves, still they will be known as tea-leaves and sold as such in the market. In my opinion all the six processes enumerated above from the primary findings of fact recorded in the order of the Revising Authority were necessary for the purpose of saving

the tea-leaves from perishing, making them fit for transporting and marketing them. The process applied was minimal.

15. The question before us is whether after the tea leaf had been put through the process of withering, crushing, roasting and fermentation it continued

to be agricultural produce. If the Calcutta High Court can be said to have laid down that as a result of those processes the tea leaf ceased to be

agricultural produce, I am unable to agree with it. To my mind, the tea leaf remained what it always was. It was tea leaf when selected and plucked.

and it continued to be tea leaf when after the process of withering, crushing and roasting it was sold in the market. The process applied was intended

to bring out its potential qualities of flavour and colour. The potential inhered in the tea leaf from the outset when still a leaf on the tea bush. The

potential surfaced in the tea leaf when the mechanical processes of withering, crushing and roasting, fermenting by covering with wet sheets and

roasting again were applied. The tea leaf was made fit for human consumption by subjecting it to those processes. At no stage. did it change its

essential substance. It remained a tea leaf throughout. In its basic nature, it continued to be agricultural produce.â??

15. Mr. A. Mazumder, learned senior counsel by relying upon the proposition laid down by the Supreme Court in Collector of Central Excise, Patna

â?"vs- Usha Martin Industries reported in (1997) 7 SCC 47 in paragraph 19, 20 and 21 submits that the notifications and circulars issued by the

department have a binding effect and the authorities cannot take a view which would be contrary to the provision of such notifications. The learned

senior counsel also seeks to raise the contention that agricultural produce having been retained as an exempted service for the purpose of service tax

including cess and tea being held to be included as an agricultural produce, therefore, the authorities cannot take a stand which would be contrary to

the provision of the notifications inasmuch as, such provision of the notifications are binding on the department. Paragraph 19, 20 and 21 Usha Martin

Industries (supra) is as follows:-

â??19. No doubt the court has to interpret statutory provisions and notifications thereunder as they are with emphasis to the intention of the

legislature. But when the Board made all others to understand a notification in a particular manner and when the latter have acted accordingly, is it

open to the Revenue to turn against such persons on a premise contrary to such instructions?

20. Section 37-B of the Act enjoins on the Board a duty to issue such instructions and directions to the excise officers as the Board considers

necessary or expedient for the purpose of uniformity in the classification of excisable goods or with respect to levy of duty excised on such goods." It

is true that Section 37b was inserted in the Act only in December, 1985 but that fact cannot whittle down the binding effect of the circulars or

instructions issued by the Board earlier. Such instructions were not issued earlier for fancy or as rituals. Even the pre-amendment circulars were

issued for the same purpose of achieving uniformity in imposing excise duty on excisable goods. So the circular, whether issued before December

1985 or thereafter should have the same binding effect on the Department.

21. Through a catena of decisions this Court has pronounced that Revenue cannot be permitted to take a stand contrary to the instructions issued by

the Board. It is a different matter that an assessee can contest the validity or legality of a departmental instruction. But that right cannot be conceded

to the department, more so when others have acted according to such instructions.â??

16. Mr. A Mazumder, learned senior counsel also refers to the proposition laid down by the Supreme Court in *State of Karnataka and Others* â??vs-

Balaji Computers and others reported in (2007) 2 SCC 743 in paragraphs 35, 39 and 42 to substantiate his submission that in case of there-being any

doubt in the event where an exemption notification admits two views, which is not clear and unambiguous, the view which is beneficial to the assessee

will have to be taken and further the rule of construction by reference to contemporanea exposition is a well established rule for interpreting a statute

by reference to exposition it had received from the contemporary authority, though it must give way where the language of the statute is plain and

unambiguous and further that even if it is assumed that the provision of an exemption notification is not clear and explicit, it is proper and reasonable to

place the construction which is beneficial to the assessee by exempting the levy of a tax . Paragraphs 35, 39 and 42 of *Balaji* is as follows:-

35. In case there is any doubt that if the language employed in exemption Notification admits of two views and is not clear and ambiguous, the

Division Bench in the impugned judgment aptly observed, the view which is beneficial to the assessee, will have to be taken.

39. This Court in the case of K. P. Varghese v. Income Tax Officer, Ernakulam reported in (1981) 4 SCC 173, while considering the binding nature

on the circulars issued by the Central Board of Direct Taxes on the department, has also observed that the Rule of construction by reference to

contemporanea expositio is a well established rule for interpreting a statute by reference to exposition it has received from contemporary authorities,

though it must give way where a language of the statute is plain and unambiguous.

42. (5) It is well settled that even if it is assumed that the things are not made clear and explicit in the exemption notifications, it is proper and

reasonable to place the construction which is beneficial to the assessee by exempting levy of tax on parts of computer and computer peripherals;

17. The core contention of Mr. A. Mazumdar, learned senior counsel for the petitioners is that the Supreme Court in DS Bist (Supra) having decided

that the expression agricultural produce also includes the manufactured tea, therefore, the expression agricultural produce as appears in Entry-21(a) of

the Notification No.3/2013-ST dated 01.03.2013 also includes manufactured tea. According to Mr. A. Mazumdar, learned senior counsel, it is another

factor that Entry-21(d) of the said notification also provides for tea to be included under the category of food stuff. According to Mr. Mazumdar, tea

having been included under Entry-21(d) in the category of food stuff will not change the meaning given by the Supreme Court in DS Bist (Supra),

where tea is also included as an agricultural produce.

18. In the aforesaid circumstance, according to the learned senior counsel for the petitioner, the amendment effected by the subsequent notification

No.6/2015-ST dated 01.03.2015, by which the earlier Entry-21(d) had been withdrawn and substituted by a new Entry-21(d), which does not provide

for tea to be included as a food stuff, does not in any manner take away the inclusion of tea as an agricultural produce under Entry-21(a), which

remains as such even after the amendment incorporated by the notification of 01.03.2015.

19. To arrive at a conclusion as to whether the aforesaid contention of Mr. A. Mazumdar, learned senior counsel for the petitioners is to be accepted

in the manner it had been contended, it would be relevant to examine as to under what context the Supreme Court in DS Bist (Supra) had arrived at the conclusion that tea is also included as an agricultural produce and as to whether the meaning to be attributed to the expression agricultural produce appearing in the Notification No.3/2013-ST dated 01.03.2013 as well as in the Notification No.6/2015-ST dated 01.03.2015 would also have to be given the same meaning or keeping in view the provisions of law under which the said two notifications were issued, the expression agricultural produce would have to be given a different meaning.

20. In DS Bist (Supra), the issue before the Supreme Court was whether the expression agricultural produce appearing in the proviso to Section 2(i) of the UP Sales Tax Act, 1948 includes tea or not for the purpose of it being exempted from the imposition and levy of sales tax. Section 2(i) of the UP Sales Tax Act, 1948 defines turnover to mean the aggregate amount for which goods are supplied or distributed by way of sale or the aggregate amount for which goods are bought, whichever is higher, with a proviso that the sale by a person of agricultural produce grown by himself or grown on any land over which he has an interest, shall be excluded from his turnover. Accordingly if an item is included as an agricultural produce, then such item is excluded from the definition of turnover resulting in the consequence that no sales tax is required to be paid for the purpose.

21. The Supreme Court in paragraph-6 of DS Bist (Supra) while analyzing as to whether tea has to be included as an agricultural produce, had dealt into the aspect whether tea leaves had lost their character of being an agricultural produce and became something different after it was subjected to the resultant process. In paragraph-7, a conclusion was arrived at that the tea leaves are not marketable in the market fresh from the tea gardens and nobody eats tea leaves and therefore, the tea leaves become fit for market only when they are subjected to a minimal process for being made fit for human consumption. It was concluded that such process by itself will not substantially change the character of the tea leaves and therefore the tea so processed are also agricultural produce.

22. In Principles of Statutory Interpretation by Justice G.P. Singh, 14th edition in Page-124, it has been provided as follows:-

“On the same principle when words acquire a technical meaning because of

their consistent use by the Legislature in a particular sense or because of their authoritative construction by superior courts, they are understood in that sense when used in a similar context in subsequent legislation.â??

23. In view of such proposition of law, the meaning given to the expression â?? agricultural produceâ?? by the Supreme Court in DS Bist (supra), by

which, tea is also included as agricultural produce, the same meaning would also have to be given to the expression agricultural produce appearing in

Entry-21(a) of the Notification No.3/2013-ST dated 01.03.2013 and 6/2015-ST dated 01.03.2015 and the submission of Mr. Mazumdar, learned senior

counsel for the petitioners would have to be accepted. Accordingly, the meaning given by the superior Court to the expression agricultural produce

would also have to be understood to have the same meaning when the said expression or word is used in a subsequent legislation. But, it is also taken

note of that the aforesaid meaning to the expression agricultural produce was given while interpreting the proviso to Section 2(i) of the UP Sales Tax

Act, 1948, where no such definite meaning was sought to be given by the said Act to the expression agricultural produce.

24. In the instant case, it is taken note of that the expression agricultural produce appearing in entry 21(a) of the Notifications No. 3/2013-ST dated

01.03.2013 and 6/2015-ST dated 01.03.2015 are issued under the provisions of the Finance Act of 1994, where Section 65B(5) of the Finance Act of

1994 defines agricultural produce as such:-

â??agricultural produce means any produce of agriculture on which either no furtherer processing is done or such processing is done as is usually

done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.â??

25. As the expression agricultural produce has been defined in the Finance Act of 1994 and the concerned notifications, wherein the said expression

appears are also issued under the provisions of the said Act of 1994, it has to be understood that the expression agricultural produce used in the two

notifications are not used in a similar context as prevailed in the matter before the Supreme Court in DS Bist (Supra), wherein the said expression was

explained and a meaning given to it. From the said point of view, as the expression agricultural produce was used under two different contexts, the

meaning given to it in DS Bist (Supra) in its own context may not be applicable

in the present case, where the expression is not only used in a different context, but is also defined for the purpose.

26. To the above extent, reference is made to the provisions laid down by the Supreme Court in Commissioner of Central Excise and Finance,

Mumbai â?vs- Fiat India Private Limited and another, reported in (2012) 9 SCC 332, wherein in paragraph-39, it had been held as follows:-

â?It is well settled that whenever the legislature uses certain terms or expressions of well-known legal significance or connotations, the courts must interpret them as used or understood in the popular sense if they are not defined under the Act or the Rules framed thereunder.â?

27. In Fiat India Private Limited (Supra) it had been clearly provided that whenever the legislature uses certain terms or expression of well known

legal significance or connotation, the court must interpret them as used or understand in the popular sense and from the said point of view, the meaning

given to the expression agricultural produce in DS Bist (Supra) otherwise would have to be accepted in the manner it was provided. But the Supreme

Court in Fiat India Private Limited (supra) also provides that the meaning as understood in popular sense would be applicable only if such expressions

are not specifically defined under the Act or the Rules framed therein, under which the expression is used.

28. In other words, on a conjoint reading of the provisions in paragraph 124 of Principles of Statutory Interpretation by Justice GP Singh and the

provisions in paragraph-39 of Fiat India Private Limited (Supra), the technical or the popular sense meaning given by the superior Court in respect of a

given expression would prevail while interpreting the same expression appearing in a subsequent legislation, but if the subsequent legislation defines the

same expression and gives a meaning different to the technical or popular sense meaning, the expression as defined by the subsequent legislation

would have to be accepted and would prevail over the technical or popular sense meaning given by the superior Court earlier.

29. From the aforesaid aspect, it is to be taken note of that the agricultural produce has been defined for the purpose of the Finance Act of 1994 u/s

65B(5) of the Finance Act of 1994. Accordingly, whatever meaning transpires from the definition of the expression agricultural produce given u/s

65B(5) of the Finance Act of 1994 would prevail while interpreting the said

expression as it appears under Entry-21(a) of the Notifications No.3/2013-

ST dated 01.03.2013 and No.6/2015-ST dated 01.03.2015, which are admittedly issued u/s 93 of the Finance Act of 1994.

30. When the definition of agricultural produce as it appears u/s 65B(5) of the Finance Act of 1994, is examined, it is discernible that agricultural

produce means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator

or producer, which does not alter its essential characteristic, but makes it marketable for primary market. The elements as appears in the definition of

agricultural produce u/s 65B(5) are that there must either be no further processing done on the produce of agriculture or the processing is done by a

cultivator or producer, which does not alter its essential characteristic, but makes it marketable for the primary market.

31. On a reading of the provisions of Section 65B(5) of the Finance Act of 1994, it is to be understood that the expression primary market mentioned

therein apparently refers to the market where the agricultural produce as such are being sold and the process that the cultivator or the producer may

undertake is to the extent to make it transportable and presentable in such a market. When the aforesaid situation is compared with that of the

manufactured and finished tea, which apparently is being transported by the petitioners, the Court cannot take a different view but to conclude that

such transported tea is not for the purpose of being marketed in a primary market where the agricultural produces are being marketed, but on the

other hand the transported tea is being marketed as a finished product in the consumer market for its consumption. In view of the above, as to

whether the expression agricultural produce appearing in Entry 21(a) of the Notifications No. 3/2013-ST dated 01.03.2013 and 6/2015-ST dated

01.03.2015 includes tea or not would have to be understood from the perspective of the definition of the expression agricultural produce as appearing

in Section 65B(5) of the Finance Act of 1994 and not from the perspective of the expression agricultural produce as defined and explained in D.S Bist

(Supra).

32. Further, it is also to be taken note of that in the Notification No.3/2013-ST dated 01.03.2013, tea had been included as a food stuff under Entry-

21(d), wherein Entry 21(a) pertains to agricultural produce. By including tea as a

food stuff under Entry-21(d), it is to be understood that the intention of the legislature was not to include tea within the meaning of the expression agricultural produce as appearing in Entry-21(a). The interpretation sought to be given by Mr. Mazumder that tea was included both under Entry-21(a) and 21(d) would also not be acceptable inasmuch as, by including the same item both under Entry 21(a) and 21(d), at least one such entry between the two entries would become surplus and redundant. The principle of interpretation of statutes clearly provides that any interpretation which renders a provision to be irrelevant and redundant is to be avoided.

33. By following the such principles of interpretation, the contention sought to be raised by the petitioners that tea is included under Entry 21(a) as well

as under Entry 21(d) of the Notification No.3/2013-ST dated 01.03.2013 would be unacceptable inasmuch as, if the said contention is accepted either

Entry 21(a) providing for agricultural produce to be inclusive of tea or the Entry 21(d) also providing for tea as a food stuff, for the purpose of

exemption from the purview of service tax, would become irrelevant and redundant. In order to save the situation, the only possible interpretation that

can be given to Entry 21(a) and Entry 21(d) of the said notification of 01.03.2013 would be that Entry 21(a) providing for agricultural produce does not

include tea and the authorities by including tea under Entry-21(d) had deliberately left out tea from being included under Entry-21(a). Such an

interpretation would also be in conformity with the meaning of the expression agricultural produce as defined u/s 65B(5) of the Finance Act of 1994.

34. Under such circumstance, when the deletion of Entry-21(d) in the Notification No.3/2013-ST dated 01.03.2013 and the substitution thereof by the

later Entry-21(d) appearing in the Notification No.6/2015-ST dated 01.03.2015 is taken into consideration, the only conclusion that can be arrived is

that the exemption from service tax granted for transportation of tea stood withdrawn and it cannot be interpreted and accepted that upon deletion of

Entry 21-(D) as it appeared in Notification No.3/2013-ST dated 01.03.2013, tea now on its own stands included as an agricultural produce under

Entry-21(a) of the Notification No.6/2015-ST dated 01.03.2015. It is also taken note of that the provision of Entry-21(a) of the Notification No.3/2013-

ST dated 01.03.2013 had been retained in the same manner as it was provided even after the amendment that was brought by the Notification

No.6/2015-ST dated 01.03.2015.

35. In the circumstance, where a conclusion is already arrived that Entry-21(a) of the Notification No.3/2013-ST dated 01.03.2013 did not include tea

and the said Entry-21(a) having been retained as it was even after the Notification No.6/2015-ST dated 01.03.2015 was issued, it cannot be stated that tea now stands included within the meaning of the expression agricultural produce as appeared in Entry-21(a).

36. As a conclusion had already been arrived that Entry-21(a) of the Notification No.3/2013-ST dated 01.03.2013 does not include tea even after the

amendment brought in by the Notification No.6/2015-ST dated 01.03.2015, the other contention of the petitioners that where two views are possible,

the view in favour of the assessee is to be accepted, is inapplicable in the present case.

37. In view of the aforesaid conclusion, the contention of the petitioner that tea was included within the meaning of the expression agricultural produce

as appearing under Entry-21(a) of the Notification No.3/2013-ST dated 01.03.2013, and it continues to remain included even after the amendment

incorporated by the Notification No.6/2015-ST dated 01.03.2015, the contention of the writ petitioners that they are entitled for an exemption from

service tax in respect of its transportation by a goods carriage agency in a goods carrier is found to be unacceptable.

38. Although the claim of the petitioners for interfering with the demand-cum-show cause notices had been refused, but it clarified that the

respondents, if desire may proceed ahead with the said demand-cum-show cause notices and the same be done strictly in accordance with law but

from the point of view that the demand-cum-show cause notices came into effect from the date of this judgment.

39. Accordingly, the writ petitions are found to be devoid of any merit and the same are dismissed. However, no order as to costs.