

(1977) 01 BOM CK 0014

In the Bombay High Court

Case No : Sales Tax Reference No. 8 of 1973

Commissioner of Sales Tax

APPELLANT

Vs

Sultan Shev Co.

RESPONDENT

Date of Decision : 18-01-1977

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 52(1), 61(1)
Central Sales Tax Act, 1956 — Section 14, 15

Citation : (1977) 40 STC 583

Hon'ble Judges : M.H. Kania, J;D.P. Madon, J

Bench : Division Bench

Advocate : K.S. Cooper and M.M. Dadhich, Jamsedji, for Rustomji and Devidas and Jani and Merchant, for the Appellant; B.C. Joshi and P.C. Joshi, for the Respondent

Judgement

Madon, J.—This reference u/s 61(1) of the Bombay Sales Tax Act, 1959, arises out of determination proceedings u/s 52(1)(e) of the said Act.

2. The respondents, who are registered dealers under the said Act, sold five kilograms of Shevaya (that is, vermicelli) on 8th August, 1967, at the rate of Re. 1.25 per kilogram. By their application dated 13th September, 1967, made under the said section 52(1)(e), the respondents stated that vermicelli so sold by them was prepared from maida purchased by them from Shetkari Sahakari Sangh Ltd. and the said commodity was exempted from tax under Schedule A to the said Act. After a personal hearing, the respondents also set out their case in writing by their letter dated 14th November, 1967, in which they clarified that the exemption they sought was under entry 10 of Schedule A to the said Act and that, in the alternative, they claimed exemption under entry 5 of the said Schedule A. The said entry 10 of Schedule A, as in force at the relevant time, was as follows :

----- "Serial No. Description of goods Condition and exemptions subject to

which exemption is granted -----
----- 10. Cereals and pulses in all Except
when sold in sealed atta, maida, besan, suji forms and flour including and bran
prepared therefrom, but excluding maize flour. containers." -----

3. The Commissioner of Sales Tax by his order dated 16th April, 1968, held that :

"It could be said that maida flour would be a form of cereal for the purpose of entry 10 of Schedule A to the Act. It would, however, not be correct to hold that each and every preparation made out of maida flour would continue to be covered by the scope of the said entry The process which the applicants (that is, the respondents) conduct on maida flour results into a commercially different article and such article cannot be classified as cereals in a particular form only because Shevaya are prepared from maida flour."

4. Before the Commissioner of Sales Tax no attempt was made by the respondents to support their alternative case that if Shevaya sold by the respondents did not fall under the said entry 10, it would fall under the said entry 5, which exempts bread in loaf or rolls or in slices, toasted or otherwise, from all taxes under the said Act. Accordingly, the Commissioner of Sales Tax held that there being no entry under which Shevaya sold by the respondents would fall, it would, for the purpose of taxation, fall under the residuary entry 22 of Schedule E to the said Act.

5. The respondents preferred as appeal to the Sales Tax Tribunal against this order of the Commissioner of Sales Tax. By its judgment dated 8th October, 1969, the Tribunal allowed the said appeal. It agreed with the view taken by the Commissioner of Sales Tax that maida flour was a form of cereal. It, however, further held that the Commissioner of Sales Tax was in error in holding that Shevaya, which was prepared out of maida flour, did not come within the meaning of "cereals and pulses in all forms" in the said entry 10.

6. Arising out of the judgment of the Tribunal, the following two questions have been referred to us at the instance of the Commissioner of Sales Tax :

"(1) Whether, on the true and proper interpretation of entry 10 of Schedule A to the Bombay Sales Tax Act, 1959, the Tribunal was correct in law in holding that maida is a form of cereal within the meaning of the said entry ?

(2) Whether, on the true and proper interpretation of entry 10 of Schedule A to the Bombay Sales Tax Act, 1959, the Tribunal was correct in law in holding that Shevaya (that is, vermicelli) is covered within the ambit of the expression "cereals and pulses in all forms" occurring in the said entry ?"

7. The mode of preparation of Shevaya by the respondents is admitted, and this is how the Tribunal has described it :

"It is common ground that Shevaya are prepared by mixing maida flour with

water and turning maida flour through sleeve into small filaments which are then dried up."

8. Mr. Cooper, the learned counsel for the applicant, has submitted before us that though flour might be prepared from cereals or pulses, the legislature has deliberately excluded it from the category of all forms of cereals and pulses. In support of this submission, Mr. Cooper relied upon the legislative history of the said entry 10. Mr. Cooper further submitted that the expression "cereals and pulses in all forms" did not bear the interpretation attributed to that expression by the Tribunal but really referred to the actual form of cereals and pulses as such, namely, as to whether they were sold with husks or without husks or, in the case of pulses, separated or unseparated or in whole grains or broken grains, and to different kinds or varieties of cereals and pulses.

9. In support of his first argument based upon the legislative history of the said entry 10, Mr. Cooper drew our attention to the said entry 10 and to entry 21 of Schedule A to the said Act, both as originally enacted. When the Act was first passed, the said entry 10 provided as follows :

"10. Cereals and pulses in all Except when sold in Sealed forms. containers."

10. The said entry 21 provided as follows :

"21. Flour including atta, maida, Except when sold in sealed besan, suji and bran. containers."

11. Relying upon these two entries, Mr. Cooper submitted that the legislature, when it enacted the said Act, deliberately excluded flour from the category of "cereals and pulses in all forms" even if we were to give that expression the interpretation placed upon it by the Tribunal. It may be mentioned that by Maharashtra Act No. 21 of 1962 entry 21 was deleted and the words "and flour including atta, maida, besan, suji and bran prepared therefrom but excluding maize flour" were inserted in the said entry 10 after the words "in all forms". Relying upon this amendment, Mr. Cooper further submitted that even when entries 10 and 21 were made one by the Amending Act of 1962, the legislature preserved the distinction, which it had originally made between "cereals and pulses in all forms" and "flour" by using the words "and flour", etc., instead of the words "including flour" etc., thus making it clear that flour was not a form of cereals or pulses.

12. We are unable to accept the above submissions of Mr. Cooper. Mr. Cooper has not traced the legislative history of entries 10 and 21 either sufficiently back or in sufficient detail. The first General Sales Tax Act for the Province of Bombay and after the Constitution came into force for the erstwhile State of Bombay was the Bombay Sales Tax Act, 1946 (Bom. 5 of 1946). Schedule II to the said Act contained the list of goods on the sales or purchases of which no tax was payable. Entries 1 and 2 in that schedule provided as follows :

"1. All cereals and pulses including Except when sold in sealed all forms of rice.

containers. 2. Flour including atta, maida, Except when sold in sealed suji and bran. containers."

13. It may be mentioned that in both these entries the words "except when sold in sealed containers" were inserted by Bombay Act No. 24 of 1948. It is pertinent to note that the exemption provided by the first Sales Tax Act in respect of cereals and pulses was only in respect of cereals and pulses and not in respect of cereals and pulses in all forms and because the legislature desired to include in this exemption "all forms of rice" and not merely rice as such, it included the words "all forms of rice" in the said entry 1. As the legislature also intended to exempt flour, including atta, maida, suji and bran, from the levy of tax under the said 1946 Act and as flour with its varieties mentioned in the said entry 2 would not be cereals or pulses as such but would be something prepared from cereals or pulses, a separate entry was enacted, namely, entry 2, exempting flour including atta, maida, suji and bran from the levy of tax. Yet another pertinent point to note about the said entry 2 is that it exempted all flour and not merely flour made from cereals and pulses. Flour can be made from cereals and pulses as also otherwise than from cereals or pulses. For instance, it can be made from tapioca. In the Bombay Sales Tax Act, 1953, which replaced the 1946 Act, the list of tax-free goods was contained in Schedule A. The entries in that schedule, which are relevant for our purposes, are entries 7 and 20. The said entries were as follows :

"7. Cereals and pulses in all Except when sold in sealed forms. containers. 20. Flour including atta, maida, Except when sold in sealed suji and bran. containers."

14. Thus, while the said entry 20 remained the same as the said entry 2 of Schedule II to the 1946 Act, the said entry 7 underwent a radical and significant change from what was exempted by the said entry 1 of Schedule II to the 1946 Act. While what was exempted under the 1946 Act were all cereals and pulses including all forms of rice, what was exempted under the said entry 7 were cereals and pulses in all forms. Since the exemption given in the 1953 Act was much wider than the one given in the 1946 Act, and as rice being a cereal, all forms of rice would be included in the expression "cereals in all forms", the words "including all forms of rice" were omitted. When the 1953 Act was replaced by the present Act, namely, the Bombay Sales Tax Act, 1959, the position under the 1953 Act was continued by entries 10 and 21 of Schedule A to the 1959 Act, as originally enacted. The question is why these two entries were made into one. Mr. Cooper was unable to give any satisfactory explanation with respect thereto. To our mind, the reason is simple. As mentioned earlier, entry 2 of Schedule II to the 1946 Act, inserted by Bombay Act No. 24 of 1948, was replaced by entry 20 of Schedule A to the 1953 Act, which, in its turn, was replaced by entry 21 of Schedule A to the said Act, and it exempted flour made from cereals, pulses as also otherwise than from cereals and pulses. Thus, it exempted flour meant for consumption not only by human beings, cattle or poultry but also flour which could be used for industrial purposes such as tapioca flour. This was also the view

taken by the department in an application u/s 52(1)(e) of the 1959 Act made by Messrs. Ranchhoddas Morarji and Bros. In that case, the Commissioner of Sales Tax by an order dated 11th October, 1960, held that tapioca flour was exempted under the said entry 21 of Schedule A. Again, by his order dated 1st February, 1961, in an application under the said section 52(1)(e) made by Messrs. Ranchhoddas Morarji and Bros., the Commissioner of Sales Tax held that tapioca bharda, which was unsmashed tapioca flour, was exempted under the said entry 21. When the Maharashtra Sales Tax Act 21 of 1962 came to be enacted, the legislature felt that sale of flour made otherwise than from cereals and pulses should not be exempted from tax. It also felt that the sales of maize flour and tapioca flour, which can also be used for industrial purposes, should be made taxable. Accordingly, the words "and flour including atta, maida, besan, suji and bran prepared therefrom, but excluding maize flour" were inserted in the said entry 10 of Schedule A to the 1959 Act, thus restricting the exemption from taxation in the case of flour to flour prepared from cereals and pulses. Entry 11 of Schedule C to the said Act, which levied tax on starches, was amended by adding therein the words "and maize flour and tapioca flour" so as to read "starches and maize flour and tapioca flour", and the rate of tax on the sales of these commodities was increased.

15. Turning now to Mr. Cooper's submission that since flour would be a cereal or pulse in a particular form, had the legislature intended to treat it as such it would have said that "cereals and pulses in all forms including flour" and not "cereals and pulses in all form and flour", we find that there is not much substance in this submission. It is true that the legislature could have used the word "including" instead of the word "and", but the legislature has, in our opinion, designedly used the words "and flour". The reason for this, according to us, is that immediately after the word "flour", the word which occurs is "including", and if the word "including" were used instead of the word "and", the entry would have read "cereals and pulses in all forms including flour including atta, etc." Though taxing statutes are not expected to be models of style or syntax, this would have been too much of a solecism even for a taxing statute. By using the word "and" instead of the word "including", the legislature did not intend to provide that flour was not a cereal or pulse in a particular form. In our opinion, the legislature used the word "and" and not the word "including" because the two entries were being conjoined with the exclusion of flour made otherwise than from cereals or pulses and because the different preparations of flour were being specified by the addition of the words "including atta, maida, besan, suji and bran prepared therefrom".

16. We are also unable to accept Mr. Cooper's submission that the expression "in all forms" only means cereals and pulses with husks or without husks, separated or unseparated, broken or unbroken and different kinds or varieties of cereals and pulses. If the legislature had intended to use the phrase "in all forms" in the narrow sense canvassed before us by Mr. Cooper, it would have used the expression "in all varieties or of all kinds". The expression "in all forms" also

occurs in the sales tax legislation of other States, and different High Courts which had to construe that expression have rejected similar arguments advanced before them. In *Kapildeoram Baijnath Prosad v. J. J. Das* [1954] 5 S.T.C. 365, the Assam High Court had to construe entry 1 of Schedule 3 to the Assam Sales Tax Act, 1947, which exempted from taxation "all cereals and pulses including all forms of rice". The question before the Assam High Court was whether chira, which is beaten rice, and muri, which is parched rice, could be classified as rice in all forms. The stand taken by the revenue was that a product of an article could not be said to be the same as the article itself, and what was exempted being a form of rice, chira and muri were not exempted. The Assam High Court rejected this contention. It held that the word "forms" could not be confined to mere varieties of rice, as that would be putting a construction upon the language of the entry which unwarrantably narrowed its meaning. It further held that the idea behind the said entry was to exclude all cereals from taxation and that chira and muri, to all intents and purposes, were cereals and had not lost their character of cereals by any process of transformation so as to be called by any other name. In *Ghasi Ram Hari Ram v. Commissioner of Sales Tax, Delhi* [1972] 30 S.T.C. 88, the Delhi High Court had to construe entry 1 of Schedule II to the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, which exempted from taxes "all cereals and pulses including all forms of rice (except when sold in sealed containers)". The Delhi High Court repelled the contention of the revenue that cereals, pulses and rice in raw forms alone were covered by the exemption. It held :

"The word "raw" is completely missing from this entry and the exemption is given, on the other hand, to "all cereals and pulses" and which is said to include "all forms of rice"."

17. Dealing with the expression "all forms of rice", the Delhi High Court observed as follows :

"The learned counsel for the revenue contended that "all forms of rice" would cover all varieties of rice, superior, inferior and others and broken rice and other short varieties of rice. But then the language used would have been "all varieties and sizes of rice". "Form" of rice is different from its varieties or sizes. Dictionary meaning of the word "form" includes shape or mode of being of an object. The expression "all forms of rice" would thus embrace within its fold, rice in all its forms, as distinguished from its mere varieties of sizes. It would include rice in various shapes and conditions as for example rice in its raw form, fried form, or parched form. Different varieties of rice and different sizes of rice may be covered by the word "rice" itself. But here the exemption is given to "all forms of rice". So rice in all its forms, even in the form of "murmura", would be included in the exemption."

18. A similar phrase came up for consideration before the Supreme Court in *State of Gujarat v. Sakarwala Brothers* [1967] 19 S.T.C. 24 (S.C.). The question before the Supreme Court was whether patasa, harda and alchidana were sugar

within the meaning of that word in entry 47 of Schedule A to the Bombay Sales Tax Act, 1959, as originally enacted. The said entry 47, as originally enacted, was as follows :

"Sugar as defined in item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944."

19. Item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944, defined "sugar" as follows :

"Sugar means any form of sugar containing more than 90 per cent of sucrose."

20. It will be useful to look at the method of preparation of the three commodities which were before the Supreme Court. As appears from the judgment of the Supreme Court, a small portion of hydrogen sulphide was passed through the sugar solution for bleaching purposes after which patasas were prepared by splashing the solution on a piece of wood, which converted the sugar into amorphous sugar, the hardas were prepared by pouring the solution into moulds which was then allowed to cool, and the alchidanas were prepared by rapidly passing the solution of appropriate thickness through a sieve so as to convert it into granulated lumps or sugar. It was not disputed that the patasa, hardas and alchidanas in question contained more than 90 per cent of sucrose. The Supreme Court rejected the contention advanced on behalf of the State of Gujarat that these were products of sugar and not forms of sugar and were, therefore, not exempt under the said entry 47. The Supreme Court held that the chemical process of patasa, harda and alchidana was the same as that of sugar. The Supreme Court also rejected the argument that patasa, harda and alchidana were sweets used on festive occasions on the ground that this could have no relevance on the question of classification for the purposes of the Sales Tax Acts. The Supreme Court also rejected the argument that by the use of the words "any form of sugar" what the legislature had intended was "any variety of sugar". The Supreme Court pointed out that the legislature had used the words "any form of sugar" and not "any variety of sugar" and referred to other entries in Schedule I to the said Central Excises and Salt act, 1944, in which the legislature has used the words "all varieties". In this connection, it may be mentioned that even under the Bombay Sales Tax Act, 1959, wherever the legislature intended that what should be taxed or exempted from tax would be all kinds or all varieties of a particular article or product, it has used these very words and not the words "all forms". For instance, entry 39(b) of Schedule C speaks of "all kinds of paints". It also speaks of "all kinds of vehicles, diluents and thinners". The first part of entry 24 of Schedule C levies tax on certain kinds of paper specified in that entry, such as art paper, lustrate cote art paper, etc., and the second part of that entry levies a tax on "paper of all other kinds". Entry 7A of Schedule E speaks of all kinds of stoves, pressure lamps, incandescent lanterns and lamps and cookers. Entry 15 of Schedule E, inter alia, speaks of fluorescent tubes of all varieties. Entry 16 of the same schedule speaks of handloom fabrics of all varieties. It may also be pointed out that by making Shevaya or vermicelli out of

maida, the chemical composition does not in any manner change. We have set out above the mode of preparation of Shevaya or vermicelli. It is merely maida which is mixed with water and then passed through a sieve so that it comes to slender threads which are then dried up. Thus, while maida is a form of powder, Shevaya or vermicelli is maida in the form of slender threads.

21. Mr. Cooper, the learned counsel for the applicant, in support of his submissions, relied upon another decision of the Supreme Court, namely, *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, in which it was held that although rice was produced out of paddy, it would not be correct to say that paddy continued to be paddy even after dehusking, because rice and paddy were two different things in ordinary parlance. We are afraid that this decision has no relevance to the point before us. The facts in that case were that the appellants carried on the business of buying paddy and after getting it husked sold the rice to the Government and other registered dealers. On the purchase of paddy they paid purchase tax as provided in the Punjab General Sales Tax Act, 1948, and the question was whether, when they sold the rice produced out of the paddy purchased, they were entitled to exclude the turnover relating to the paddy purchased. Under the said Act, in order to obtain this exclusion, the goods purchased had to be sold in the same form, and the Supreme Court held that the goods were not sold in the same form and that, therefore, the appellants were liable to pay sales tax on their sales of rice made from paddy purchased by them. This position is also borne out by a later decision of the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*. The question before the Supreme Court in that case was whether certain iron and steel goods were liable to tax or whether they were "declared goods" u/s 14 of the Central Sales Tax Act, 1956, and, therefore, the levy of tax on them under the Tamil Nadu General Sales Tax Act, 1959, was not permissible by reason of the restrictions imposed by section 15 of the Central Sales Tax Act. Section 14 of the Central Sales Tax Act declares certain goods enumerated therein to be "of special importance in inter-State trade or commerce". The list of goods given there at No. (iv), as it stood prior to the Amending Act 61 of 1972, was "(iv) iron and steel, that is to say, -", and then several items were set out such as pig iron and iron scrap, iron plates sold in the same form in which they were directly produced by the rolling mill, etc. By the Central Sales Tax (Amendment) Act 61 of 1972, clause (iv) was redrafted so as to add to the items enumerated after the phrase "that is to say". It was contended by the assessee-respondent that when the said clause of section 14 uses the words "iron and steel", what was intended to be included were all goods made of iron and steel. The Supreme Court held that in the context of single point sales tax, subject to special conditions when imposed on separate categories of specified goods, the expression "that is to say" was apparently meant to exhaustively enumerate the kinds of goods in a given list and that each such kind or kinds would constitute a separate class for a series of sales, the expression "that is to say" being employed to make clear and fix the meaning of what was to be explained or defined and not used, as a rule, to

amplify a meaning while removing a possible doubt for which purpose the word "includes" was generally used. Before the Supreme Court, reliance was placed on behalf of the respondent upon an earlier decision of the Supreme Court in *The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji*, . In that case, the respondent purchased scrap iron locally and imported iron plates from outside, and after converting them into bars, flats and plates in his mills sold them in the market. The exemption notification inter alia provided that : "No tax shall be payable on the sale of the following goods :-Iron and steel." The taxing notification provided for a levy of tax on "good prepared from any metal other than gold and silver" when sold by an importer or producer. The Supreme Court held that under the exempting notification raw materials or iron and steel were exempted from tax, while under the taxing notification the goods prepared from iron and steel were taxed and that, therefore, iron and steel used as raw materials for manufacturing other goods were exempted from taxation and that so long as iron and steel continued to be raw materials, they enjoyed the exemption. The Supreme Court further held that the scrap iron purchased by the respondent was merely re-rolled into bars, flats and plates and were processed for convenience of sale only, in order to give them attractive and acceptable forms, and they did to in the process lose their character as iron and steel. With reference to this decision, the Supreme Court pointed out in the said case of *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, , as follows :

"The law to be interpreted in *The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji*, was entirely different. In interpreting it, this court did observe that a mere change of the form of a substance exempted from sales tax did not matter. The language of the notification involved there made it clear that the exemption was for the metal used. In the cases before us now, the object of single point taxation is the commercial commodities and not the substance out of which it is made. Each commercial commodity here becomes a separate object of taxation in a series of sales of that commercial commodity so long as it retains its identity as that commodity."

22. Mr. Cooper, the learned counsel for the applicant, also referred us to the definition of the word "cereal" given in the Webster's Third New International Dictionary, at page 365. That definition is as follows :

"1 : a plant (as a grass) yielding farinaceous seeds suitable for food (as wheat, maize, rice); also : the seeds or grain so produced either in their original state or commercially prepared."

23. Mr. Cooper submitted that the meaning to be attributed to the word "cereal" in the said entry 10 of Schedule A would be the first part of the definition given in the Webster's Dictionary, which we have reproduced above and not the second part. Mr. Cooper was unable to throw any light why this should be done, except to say that this word, namely, "cereal" occurred in a Sales Tax Act. The dictionary meaning clearly shows that so far as the ordinary use of the word

"cereal" is concerned, it applies not only to the plant yielding farinaceous seeds suitable for food but also to the seeds or grain so produced either in their original state or commercially prepared. The further meaning of the word "cereal" as given in that dictionary is "a prepared foodstuff of grain (as oatmeal or corn flakes) used esp. as a breakfast food". We see no reason why the popular sense in which a word is commonly used should be restricted for the purposes of the Sales Tax Acts, particularly when the expression used in the said entry 10 would show that what was intended to be exempted was not merely all cereals and pulses but cereals and pulses in all forms. In this connection, we would like to refer to the decision of a Division Bench of this High Court, which throws light on how an entry such as the one we have before us is to be construed. In *Collector of Sales Tax, Bombay State v. Gaurimal Mahajan and Sons* [1959] 10 S.T.C. 452, a Division Bench of this High Court had to consider whether sale of "dressed poultry" could be regarded as sale of "meat" within the meaning of entry 4 of Schedule II to the Bombay Sales Tax Act, 1946, so as to be exempt from taxation. The Division Bench observed as follows "

"The argument of the sales tax department is that meat, which is understood as such in common parlance, would undoubtedly be excluded from the operation of the taxing provisions of the Act (that is, the Bombay Sales Tax Act, 1946), but dressed poultry will not be deemed to be so excluded because it is not meat in ordinary parlance. The expression "meat" has not been defined in the Sales Tax Act. The Webster's New International Dictionary gives the equivalent of meat as "flesh of animals used as food, as distinguished from fish or fowl". Undoubtedly in common parlance and even commercially meat means flesh of cattle, swine, sheep, goats, etc., and may not include dressed poultry, but the expression "meat" in its wider connotation does include dressed poultry. When the legislature has sought to exclude from liability to pay sales tax practically all materials which are normally used as food-stuffs or condiments for seasoning foodstuffs, we must require very strong indication to the contrary to fortify us in holding that poultry, which is a recognised food, is not included in the expression "meat". Fish is exempt from payment of sales tax; similarly fresh eggs are exempt from payment of tax; and if the expression "meat" in its wider connotation includes dressed poultry, we see no reason, looking to the context in which the word is used, for holding that it is not used in its wider connotation in entry No. 4 of the Second Schedule to the Bombay Sales Tax Act, 1946."

24. In *Aloke Chand Mitra v. State of West Bengal* [1973] 31 S.T.C. 474, the Calcutta High Court which had to interpret the expression "meat" in item 4 of Schedule I read with section 6 of the Bengal Finance (Sales Tax) Act, 1941, followed the above decision of the Bombay High Court.

25. It was next submitted by Mr. Cooper, the learned counsel for the applicant, that vermicelli or Shevaya was made from maida and that no shopkeeper would give you vermicelli or Shevaya when you went to purchase maida. We are equally unable to accept this submission. Factually it is undoubtedly true that if

you go to a shopkeeper and ask him to sell you a particular quantity of maida, he would not give you Shevaya, but that, in our opinion, is not relevant for the purposes of the interpretation to be placed upon the words used in the said entry 10. It is not the name by which a particular form of cereal or pulse is known which is relevant. Here the question is not whether Shevaya is a commercially different commodity. Here the question is of the exemption of the particular materials or produce from taxation. As an analogy we may point out that if a person were to go to a shop and ask for sugar, nobody would give him patasa, harda and alchidana, nor if he goes to purchase rice, would the shopkeeper give him chira or muri nor if he goes and asks for meat, would the shopkeeper supply him with dressed poultry. The question is not what a particular form of cereal or pulse is called. The question is whether it is a form of cereal or pulse. That maida is a form of cereal has been held by the Commissioner of Sales Tax himself in his said order dated 16th April, 1968. The Tribunal has agreed with the Commissioner of Sales Tax on this point. Merely because maida is separately specified, we are unable to see why a form of maida, namely, in dried up slender threads, should not be a form of cereal.

26. For the reasons set out above, we answer both the questions submitted to us in the affirmative.

27. The applicant will pay to the respondents the costs of this reference fixed at Rs. 300.

28. Reference answered in the affirmative.