
(2010) 04 BOM CK 0060

In the Bombay High Court

Case No : Sales Tax Reference No. 5 of 2001 in Reference Applications No's. 42, 43, and 44 of 1998, Sales Tax Reference No. 12 of 2003 in Reference Application No. 12 of 1994 and Sales Tax Reference No. 59 of 2008 in Reference Application No. 83 of 2005

Gopalanand Rasayan

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 36(3), 41, 57, 61(1)

Citation : (2010) 112 BOMLR 1744 : (2011) 263 ELT 381 : (2010) 30 VST 304

Hon'ble Judges : V.C. Daga, J;K.K. Tated, J

Bench : Division Bench

Advocate : P.C. Joshi, for the Appellant; V.A. Sonpal, "A" Panel Counsel, for the Respondent

Judgement

K.K. Tated, J.—Heard the learned Counsel for the rival parties.

2. These three references, at the instance of the Applicants, are made by the Maharashtra Sales Tax Tribunal, Mumbai (the Tribunal for short) u/s 61(1) of the Bombay Sales Tax Act, 1959 (the BST Act, 1959 for short) for the opinion of this Court on the following substantial questions of law:

(i) Whether on the facts and evidence on record the Tribunal was justified in law in rejecting the contention of the Applicants that the steam was a chemical and hence, sales thereof were exigible to sales tax @ 4% only?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in throwing the burden on the Applicants to prove that the steam was a chemical as understood in common parlance and thereby, confirming the levy of sales tax on its sales @ 10%?

3. All these references give rise to the common issues between common parties based on identical set of facts including the period of assessment, as such they

were heard together, so a single judgment will dispose of these references.

The facts

4. The material facts briefly are stated as follows: The Applicant is a manufacturer of Sulphuric Acid and other chemicals and products. During the process of such manufacturing activity, the steam is generated which is being sold by the Applicant as a by product on which the Applicant collected the tax @ 4% on the footing that the steam was a chemical.

5. The Applicant states that, the steam is chemical under the BST Act, 1959, thus, taxable @ 4% under the Notification Entry No. 233 issued u/s 41 of the BST Act, 1959 during the material time; whereas the Assessing Authority held that the steam was covered by Entry No. 102 of Schedule-C Part-II, as such, not classifiable as chemical. The contentions of the Applicant were not accepted by the Assessing Authority while assessing the Applicant for the period 01.01.1988 to 31.03.1989, 01.04.1989 to 31.03.1990 and 01.04.1990 to 31.03.1991 under the BST Act, 1959 and held that the steam was covered by Schedule Entry C-II-102, exigible to tax @ 10%.

6. Against the aforesaid assessment orders, the Applicants preferred the appeals u/s 57 of the BST Act, 1959 before the Deputy Commissioner of Sales Tax. However, those appeals were dismissed.

7. Being aggrieved by the dismissal of appeals, the Applicant preferred the Second Appeals before the Maharashtra Sales Tax Tribunal, Mumbai. Those appeals were partly allowed by the Tribunal holding that the steam is not chemical for the purpose of Notification Entry No. 233 and levy of tax under the Schedule Entry No. C-II-102 at the rate 10% is proper. However, the Tribunal was pleased to grant some relief to the Applicant by reducing the interest u/s 36(3)(b) of the BST Act, 1959.

8. Being aggrieved by the aforesaid orders of the Tribunal, the Applicant Assessee preferred the Reference Applications u/s 61(1) of the BST Act, 1959. The Tribunal referred the above mentioned questions of law for the opinion of this Court.

The issue

9. In the present case the core issue is about classification of the steam. Whether the steam can be said to be covered by Notification Entry No. 233 issued u/s 41 of the BST Act, 1959 during the material time or under the Schedule Entry No. C-II-102. If the steam is considered under Notification Entry No. 233, then the sales tax leviable is @ 4%, whereas if it is considered falling under the Schedule Entry No. C-II-102, then the same is taxable @ 10%. Both the entries are reproduced herein below for immediate reference:

Notification Entry No. 233:

1

2

3

4

5

6

233

Sales or purchases of dyes and chemicals other than those specified in the Schedules appended to the Act.

To the extent to which the amount of sales tax or as the case may be, purchase tax exceeds four paise in the rupee.

Nil

GNFD No. STA/108 6/103/RES-8 dated the 30th June, 1956

1.7.86to 30.4.92

233

Sales or purchases effected, upto and in clusive of the 31st May, 1992, of dyes and chemicals other than those specified in the Schedules appended to the Act, before the date of commencement of the Maharashtra Tax Laws (levy Amendment and Validation) Act, 1922.(Mah. XI of 1992).

To the extent to which the amount of sales tax, or as the case may be, purchase tax exceeds four paise in the rupee.

Nil

Government Notification, Finance Department, No. STA-1092/54B/Taxation-2/ dated the 1st June, 1992.

w.e.f. 1.5.1992to 31.5.1992

Schedule Entry No. C-II-102:

102

All Goods other than those specified from time to time in the other schedules and the preceding entries of this schedule.

10%

10%

1.12.1982to 31.08.1990

Submissions

10. Mr. Joshi, learned Counsel appearing for the Applicant/Assessee submitted that the steam is classifiable as chemical and therefore, the same is liable to be covered under Entry No. 233, as such the Applicant is liable to pay the sales tax @ 4% only.

11. In order to buttress his submission, Mr. Joshi pressed into service the meaning of the word "steam" given in "Twentieth Century Chambers Dictionary (1972 Edition)" as "a substance obtained by Chemical means or used in chemical operations". He further submitted that the steam is chemical as per the science of chemistry and chemical technology. It is, therefore, covered by Notification Entry No. 233 calling for levy of tax @ 4% only. He submitted that both the authorities below failed to consider the dictionary meaning of the term "chemical" and also various extracts produced by them from the books of chemistry.

12. Mr. Joshi submitted that the Applicant had also produced before the authority a note given by Mr. Sunil C. Bhagwat of Chemical Engineering Division, Department of Chemical Technology, University of Bombay dated 10.02.1992. He further submitted that though the Tribunal held that scientifically the steam is a chemical as much as water, however, failed to classify the same under Notification Entry No. 233. He submitted that ice is water in solid form; whereas the steam is gaseous form of water. It is also known as vapour. The difference between vapour and steam perhaps lies in the energy contents. According to him, these facts were not even disputed by the Assessing Authority and did not object to refer the steam as chemical in its scientific sense.

13. In support of the above contention that the steam is chemical, Mr. Joshi placed reliance on the following judgments and submitted that in all these cases the Apex Court and various High Courts held that at the time of classifying the particular product it is necessary to consider its scientific meaning:

1. State of Orissa and Ors. v. Titaghur Paper Mills Co. Ltd. and Anr. 60 STC 213 (SC)
2. Atul Glass Industries (P) Ltd. v. Collector Central Excise. 63 STC 322 (SC)
3. Mineral & Metals Trading Corpn. of India Ltd. v. Board of Revenue, Kerala. (HC) 69 STC 38 (Ker)
4. Nat Steel Equipment Pvt. Ltd. v. Collector Central Excise. 69 STC 58 (SC)
5. State of Haryana v. Prithvi Raj Aggarwal Oil Mills. 79 STC 361 (P&H)
6. State of Haryana v. Rattan Optical Works. (HC) 80 STC 422
7. Milk Food Limited and Anr. v. Commercial Tax Officer, Bhowanipur Charge and Ors. 81 STC 67 (WB)
8. State of Gujarat v. Bhagwati General Agency (Import). 83 STC 347 (Guj)
9. Vijay Foundry & Machinery Works v. State of Gujarat. 84 STC 152 (Guj).

10. Brooke Bond India Limited v. State of Kerala 84 STC 334 (Ker)
11. Televista Electronics (P) Ltd. v. Commissioner of Sales Tax. 87 STC 410 (Delhi)
12. Hardcastle, Waud & Co.Ltd. v. State of Tamil Nadu. 89 STC 352
13. Mysore Agro Service Centre Vs. State of Karnataka,
14. Mysore Ammonia (P) Ltd. Vs. State of Karnataka and another,
15. Haran D. Manufacturing Co. v. State of Gujarat. 91 STC 130
16. N. Sundareswaran v. State of Kerala. 91 STC 476 (HC)
17. Gupta Agencies v. State of Punjab 92 STC 543
18. Quality Chemicals v. State of Gujarat 94 STC 450
19. Union Carbide India Ltd. v. State of A.P. 98 STC 1 (SC)
20. Electro Enterprises v. Commissioner of Sales Tax 98 STC 116
21. Bombay Chemical Pvt.Ltd. v. Collector of Central Excise. 99 STC 339 (SC)
22. State of Tamil Nadu v. Lilaram Shewaram (India). 104 STC 300
23. Hindustan Ferodo Ltd. v. Collector of Central Excise, Mumbai. 106 STC 214 (SC)
24. West Coast Paper Mills Ltd. v. Commercial Tax Officer. 127 STC 53 (Mad)
25. Commissioner of Central Excise v. Sharma Chemical Works. 132 STC 251 (SC)
26. Marbles India Vs. State of Kerala,
27. Mauri Yeast India Pvt. Ltd. Vs. State of U.P. and Another,

14. Mr. Joshi, learned Counsel for the Applicant further submitted that the Tribunal having accepted that technically and scientifically the steam is a chemical, it ought not to have rejected the contention only on the ground that there was no common parlance evidence. In his submission such a view of the Tribunal is erroneous inasmuch as a controversy of the nature relating to classification of a term, technically used, as such it cannot be resolved solely on the basis of common parlance. According to him, it is by now well established that there are several other tests which in absence of common parlance evidence have been considered and applied by the various High Courts and the Apex Court. According to him the recognized tests are (i) Source definition test, (ii) Functional test, (iii) Character & composition test, (iv) Dictionary meanings, (v) Technical or scientific meaning and (vi) User test. He submitted that the Tribunal ought to have considered that the term "chemical" is a generic term like many others used in the BST Act, 1959 and there can be no common parlance evidence for the term "chemical". In other words, common parlance can be

resorted to only for a specific time and that too only in regard to the words of day to day use by a common man.

15. Mr. Joshi further submitted that the Tribunal overlooked the position that the steam dealt with by the Applicant was not used by the common man and therefore, the insistence of the common parlance evidence by the Tribunal was not justified. He, therefore, submitted that in commercial transaction/use, the steam is to be understood as chemical and thus, the authorities below erred in coming to the conclusion that for the purpose of sale tax the meaning of common parlance is to be taken into consideration.

16. Lastly, Mr. Joshi submitted that the Tribunal in Second Appeal No. 101/1992 vide its judgment dated 31.01.1994 held that the steam is chemical and therefore, the Applicant is entitled for the same benefit in the present case also. He further submitted that the Government of Maharashtra issued Notification dated 07.10.1995 and enlisted certain goods on the basis of excise tariff to be chemicals. This list of chemicals contains an item 28.11.90 which pertains to steam sold by the Applicant and that steam was considered as a chemical by the State Government. On these submissions, Mr. Joshi urged that the questions of law referred to this Court may be answered in favour of the Applicant and against the Revenue.

Per contra

17. Mr. Sonpal, the learned "A" Panel Counsel appearing for the Respondents/ Revenue submitted that the judgment in Second Appeal No. 101/1992 was considered by the Tribunal in the latter judgment wherein the Tribunal observed that the scientifically speaking the steam is chemical as much as water. Ice is water in the solid form whereas the steam is gaseous form of water also called as vapour. According to Mr. Sonpal, the Tribunal held that the test of common parlance is applicable when the application of sales tax laws are concerned. The sales tax laws are not much concerned with the chemistry and the use of scientific definitions and technical manner of an item are hardly of common use while applying the sale tax laws. He, therefore, submitted that in short, the Tribunal never said that the steam is not a chemical but for the purpose of sales tax laws, the test of common parlance is inevitable. Thus, the alleged steam is nothing but a steam commonly understood and not a chemical.

18. Mr. Sonpal further submitted that for the purpose of sales tax laws it is not necessary to consider the chemistry and/or scientific definitions and/or technical meanings of a particular item. The terms and names used in the sales tax laws have to be understood and construed in their popular sense or in commercial parlance. In the present case so far as the classification of the steam is concerned, the steam is not classified in any item under the Sales Tax Laws during the relevant period, therefore, the steam is to be read in Schedule Entry No. C-II-102 i.e. residuary one and therefore, the Applicant is liable to pay sales tax @ 10%.

19. Mr. Sonpal further submitted that the Tribunal has correctly held by applying the common parlance test and ruled that the steam is nothing but a common steam and not a chemical. He submitted that in the case of *New Prasanthi Automobiles Co. v. State of Kerala* 91 STC 565 (Ker), it has been held that the Sales Tax enactment is one which touches the common man and his everyday life and therefore, must be understood in the way in which a common man will understand it. In other words, the test is as to what a common man viewing or dealing with, the article will understand it to be.

20. Mr. Sonpal further submitted that in the case of *Haran D. Manufacturing Co. v. State of Gujarat* 91 STC 130, it is held that the term "soap" is understood by the consumers as well as by the traders from its functional aspect. The soap is defined in the encyclopedia as a chemical compound or mixture of chemical compounds resulting from interaction of fatty oils and fats with alkali i.e. salts of fatty acids, functionally, it is understood as a substance possessing the characteristic of soap like properties. Therefore, the Court held that the detergents are nothing but soap. Mr. Sonpal, therefore, submitted that applying this test where a word has a scientific or technical meaning and also an ordinary meaning then the ordinary meaning must be given consideration while deciding the classification under the Sales Tax Laws.

21. Mr. Sonpal further submitted that the Applicant has laid much stress on scientific definitions of the words and the expert opinion. According to him, under the Sales Tax laws the common man's view has to be preferred but there is no bar to refer to technical or scientific character and in large number of cases the dictionary meaning or technical literature were considered by the Courts while interpreting the schedule entries. But in all those cases before applying this test the Court held that while construing the word which was of technical or scientific character, its scientific or technical meaning required to be assigned. The steam is not a word of scientific or technical character, but commonly understood as a steam. He further submitted that in the Sales Tax Laws, the words which are not of technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance. The particular terms used by the legislature in the determination of articles are to be understood according to the common commercial understanding of those terms used and not in their scientific and technical sense. For this purpose, Mr. Sonpal relied on the judgment in case of *Mukesh Kumar Aggarwal & Company v. State of Madhya Pradesh and Ors.* 1988 (68) STC 324.

22. Mr. Sonpal further submitted that while deciding whether a particular commodity is a chemical, it must be determined not by the use for which a particular purchaser purchases it but with reference to the general property which makes it saleable to the entire range of a prospective buyers. In similar way the Apex Court in the matter of *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, held that "betel leaves" are not vegetables and would

not be exempted from the sales tax. Similarly, in the case of *Rallis India Ltd. v. State of Tamil Nadu* 112 STC 203(SC), it is held that gelatine is not chemical. Mr. Sonpal further relied on the judgment in the matter of *T.V.L. Nilsin Industries etc. Vs. State of Tamil Nadu*, wherein the Apex Court held that Ultra Marine Blue (Nil) is not Dyes or chemical but a pigment. On the basis of these rulings, Mr. Sonpal submitted that all these rulings suggest that in case of a word which is not scientific or technical in character but of day to day use then the most appropriate test would be the common parlance test. Considering this test the steam cannot be considered as a chemical. If it has to be considered as a chemical then under the statute number of goods will be classified as chemicals. For example water having its chemical formula H_2O , common salt called sodium chloride, sugar as sucrose and these items will also have to be treated as chemicals. Mr. Sonpal, therefore, submitted that for proving the steam as chemical in the common parlance, the Applicant failed to produce the cogent evidence on record. Except extract from dictionary and opinion of experts, the Applicant failed to produce any other document or evidence to show that in common parlance the steam is treated as chemical.

23. Mr. Sonpal further submitted that the second line of argument advanced by the Applicant that w.e.f. 07.10.1995 the Government has issued a list of chemicals for the purpose of BST Act, 1959 and in that list the description of the goods at 28.11.90 pertains to the steam. Therefore, according to the Applicant the steam is considered as a chemical by the Government even prior to the date of the said notification. In this regard, the Tribunal observed that this notification is not having retrospective effect and the Applicant cannot take help of subsequent amendment to interpret the prior entry, so the subsequent amendment cannot be read into the earlier entries. In support of this submission, Mr. Sonpal relied on the judgment in the case of *National Engineering Company Pvt. Ltd. v. State of Tamil Nadu* 84 STC 457. He further submitted that in any case the subsequent amendment cannot be used to decide the assessment of the prior years because the subsequent amendment has not been given retrospective effect. On these submissions, Mr. Sonpal submitted that both the questions referred herein above are required to be answered in favour of the Revenue and against the Applicant.

Consideration

24. We have heard both the sides at length. The main dispute in the present case is whether for the purpose of levying tax under the BST Act, 1959, the steam falls under the Notification Entry No. 233 or Schedule Entry No. C-II-102. If the steam falls under the Notification Entry No. 233 then it is taxable @ 4% and if under the Schedule Entry No. C-II-102 then @ 10%.

25. It is to be noted that the Sales Tax enactment is one which touches the common man and his everyday life. Therefore, the terms in the said enactment must be understood in the manner in which a common man will understand them. In other words, the test is as to what a common man viewing or dealing

with the article will understand it to be. In doing so, the particular use to which a particular customer may put it should be eschewed from consideration. Generally, the steam includes all liquid and frozen surface water, groundwater held in soil and rock and atmospheric water vapour. In common speech, the steam most often refers to the visible white mist that condenses above boiling water as the hot vapour mixes with the cooler air. This mist consists of tiny droplets of liquid water. Pure steam emerges at the base of the spout of a steaming kettle where there is no visible vapour. In other words, as the temperature increases and the water reaches its boiling condition, some molecules attain enough kinetic energy to reach velocities that allow them to momentarily escape from the liquid into the space above the surface before falling back into the liquid, called steam. In common sense, the steam is treated as by product of water and for preparation of the steam the process is just to boil water. Therefore, the common man always treat the steam as part and parcel of water. It is a fact that in taxing statute the words which are not of technical expressions or words of art but are words of every day use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance.

26. In the matter of New Prasanthi Automobiles Company v. State of Kerala reported in 1993 (91) STC 565, the Kerala High Court observed in paragraphs Nos. 7, 9 and 13 as under:

7. A sales tax enactment is one which touches the common man and his everyday life and therefore must be understood in the way in which a common man will understand it. In other words, the test is as to what a common man viewing or dealing with, the article will understand it to be. In doing so, the particular use to which a particular customer may put it should be eschewed from consideration.

8. ...

9. It is the way in which a common man dealing with the article will understand it, that is determinative of the character of the goods. There cannot be any dispute that nobody will understand these bolts and nuts as spare parts of automobiles/tractors, but only as iron and steel articles dealt with in an hardware shop. We therefore hold that the bolts and nuts dealt with by the Assessee cannot be treated as spare parts of automobiles or of tractors; on the other hand, they have to be classified only as nuts and bolts which squarely fall as iron and steel articles not otherwise provided under entry No. 45 or 99 of the First Schedule during the respective periods.

10. ...

11. ...

12. ...

13. A person seeing an automobile jack is not likely to understand it as a mere

iron and steel article. He is likely to understand it only as an adjunct to the automobile necessary for its proper and effective use. He will view it as something which is sold by an automobile dealer and as something which every user of an automobile should necessarily possess. Being so, we find it difficult to accept the contention of the assessee that the jack is a mere iron and steel article and not an accessory to a motor vehicle. The statutory authorities were right in holding that the jack was an accessory falling under entries 138 and 125 respectively of the First Schedule before and after July 1, 1987 liable to tax at 15 per cent.

27. The Gujarat High Court in the matter of Haran D. Manufacturing Company v. State of Gujarat reported in 1993 (91) STC 130 held that if any term or expression has been defined in the enactment then it must be understood in the sense in which it was defined. But in the absence of any definition being given in the enactment the meaning of term in common parlance or commercial parlance has to be adopted. Paragraph No. 11 of the said judgment reads thus:

11. In the instant case, the term "soap" is not defined in the Act. The product sold by the applicantdealer was known as "soap" in the particular trade, and it was also used by the consumers as a soap for washing the clothes. The true meaning of this term in the popular parlance would be flowing from its predominant use. We, therefore, hold that in interpreting the term "soap" the real test would be functional test or the test of predominant user, and there is no reason to exclude "detergent soap" from the meaning of the term "soap".

28. Similarly, in the case of Mukesh Kumar Aggarwal & Company v. State of Madhya Pradesh and Ors. reported in 1988(68) STC 324, the Apex Court held that the nature of the goods cannot be determined by the test of use to which they are capable of being put. The user test is logical but inconclusive. The particular use to which an article can be applied in the hands of a special consumer is not determinative of the nature of the goods. The relevant portion of paragraph No. 4 of the said judgment reads thus:

4. In a taxing statute words which are not technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance i.e. "that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it". Such words must be understood in their "popular sense". The particular terms used by the legislature in the denomination of articles are to be understood according to the common commercial understanding of those terms and not in their scientific and technical sense "for the legislature does not suppose our merchants to be naturalists or geologists or botanists".

The expression "timber", it seems to us, has an accepted and well recognised legal connotation and is nomen juris. It has also a popular meaning as a word of everyday use. In this case, the two meanings of "timber", the legal and the

popular, coalesce and are broadly subsumed in each other.

29. The Apex Court, in the matter of Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola reported in 1961 (12) STC 286 held that the word must be construed not in any technical sense but as understood in common parlance. Head note of the judgment reads thus:

The word "vegetables" in item 6 of Schedule II of the C.P. and Berar Sales Tax, 1947, must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of everyday use it must be construed in its popular sense meaning "that sense which people conversant with the subject matter with which the Statute is dealing would attribute to it." It is therefore to be understood as denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. Consequently "betel leaves" are not vegetables and would not be exempt from sales tax under item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947.

30. The Apex Court, in the matter of Trutuf Safety Glass Industries Vs. Commissioner of Sales Tax, U.P., held in paragraph No. 14 as under:

14. It is settled position in law that while interpreting the entry for the purpose of taxation recourse should not be made to the scientific meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. This is what is known as "COMMON PARLANCE TEST". The dictionary meaning of "glassware" means an article made of glass. The High Court proceeded on the basis that while interpreting the words "glass and glass wares" in the entry, it should be interpreted as it is understood by the persons dealing in them. It held that the articles manufactured by the assessee cannot be described as glass or glass wares. The view of the High Court would have been correct had the expression "in all forms" not succeeded the expression "glass and glass wares".

31. In similar way, the Apex Court in the matter of Bakelite Hylam Limited Vs. Collector of Central Excise Hyderabad, held that where the definition of a word has not been given, it must be construed in its popular sense. The Apex Court held thus:

Before the Tribunal it was urged on behalf of the appellant that "PrepegF" which is impregnated cotton fabric, cannot be regarded as cotton fabric falling under Item 19(iii) of the Tariff. It was also urged that Item 19(iii) refers to cotton fabrics impregnated, coated or laminated with preparations of cellulose derivations or of other plastic materials and that the materials with which "PrepegF" is impregnated are not plastic materials. The Tribunal has rejected the said contention and has held that it could not be proved that the proportion of the impregnated materials had reached such a level in the impregnated fabrics that the final product had ceased to contain the characteristics of a fabric so as to take it out of the purview of the cotton fabric as set out in Item 19(iii) of the

Tariff. The Tribunal was of the view that the term "cotton fabric" covers a wide range. As regards the submission that phenol formaldehyde resin with which the fabric is impregnated is not a plastic material, the Tribunal held that the expression "artificial plastic materials" in Item 19(iii) embraces within itself resin also since plastic is a generic term and as understood in popular sense it covers resin. The said finding recorded by the Tribunal has been assailed by Shri J. Vellapally, the learned senior counsel appearing for the appellant. Shri Vellapally has invoked the "COMMON PARLANCE TEST" and has submitted that in common parlance "PrepegF" cannot be regarded as cotton fabric. The learned Counsel has placed reliance on the decision of this Court in *Purewal Associates Ltd. v. Collector of Central Excise*. We do not find any substance in the said contention of Shri Vellapally. In *Purewal Associates Ltd. (supra)*, this Court has taken note of the earlier decision in *Plasmac Machine Mfg. Co. (P) Ltd. v. Collector of Central Excise*, wherein it was held that where definition of a word has not been given, it must be construed in its popular sense. So also in *Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh*, it has been held that "if any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted". In term 19 the expression "cotton fabrics" has been defined to include "fabrics impregnated coated or laminated with preparations of cellulose derivatives or of other artificial plastic material". In view of the inclusive clause in the definition of "cotton fabrics" contained in Item 19 it cannot be said that "Prepeg-G" which is impregnated cotton fabric cannot be regarded as cotton fabric for the purpose of Item 19(iii) of the Tariff.

32. It is clear from the above mentioned authorities that in the absence of meaning of any term given in the enactment, the meaning of that term in common parlance or commercial parlance must be adopted. In this case though the Assessee has produced the experts' opinion, some articles published in the magazine viz. *Outlines of Chemical Technology*, opinion of Dr. Sunil Bhagwat from the Chemical Engineering Department of the University of Bombay and extract from the *Chamber Dictionary*, in support of his contention that the steam is chemical, but there is nothing to indicate that the term steam in common parlance or commercial parlance is considered or treated as chemical. Therefore, for the purpose of taxing under the Sales Tax laws it is not possible to hold that the steam is chemical.

33. In the above mentioned facts and circumstances of the case, we are of the opinion that the Tribunal has rightly held that the steam cannot be classified under the Notification Entry No. 233 as the same is not chemical. Therefore, both the questions referred above are answered in favour of the Respondents/ Revenue and against the Applicant/Assessee. All three references are, accordingly, disposed of.