

(1980) 02 KAR CK 0003

In the Karnataka High Court

Case No : S.T.A. No's. 5 to 20 of 1977 connected with S.T.R.P. No's. 54, 58, 59 and 61 of 1978

Lakshmi Coconut Industries

APPELLANT

Vs

The State of Karnataka and Another

RESPONDENT

Date of Decision : 15-02-1980

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 2 (c), 8
Karnataka Sales Tax Act, 1957 — Section 22 A, 5 (1), 5 (4)

Citation : (1980) 2 KarLJ 76 : (1980) 46 STC 404

Hon'ble Judges : M.K. Srinivasa Iyengar, J;M. Rama Jois, J

Bench : Division Bench

Advocate : S.P. Bhat, E.R. Indra Kumar and A.R. Srinivasa Rao, for the Appellant; S. Rajendra Babu, High Court Government Pleader, for the Respondent

Judgement

Rama Jois, J.—The sixteen sales tax appeals are preferred by two dealers in desiccated coconut, aggrieved by the orders of the Commissioner of Commercial Taxes made in exercise of his suo motu power of revision u/s 22-A of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act"), setting aside the orders of the assessing authority for the relevant assessment years exempting their inter-State sales turnover of desiccated coconut from sales tax under the provisions of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"), and bringing the same to tax u/s 8 of the Central Act. Four revision petitions are preferred by the State aggrieved by the order of the Karnataka Appellate Tribunal upholding the claim of the respondent-firm therein, which is also a dealer in desiccated coconut, that inter-State sales of desiccated coconut are not exigible to tax under the Central Act. All these cases were heard together and are being disposed of by this common judgment as the same question of law arises for consideration in all these cases, which is as follows :

Whether the assessee, who had effected inter-State sales of desiccated coconut prepared by them out of the coconuts purchased by them within the State, were not liable to pay Central sales tax on the sales turnover of such desiccated

coconut, u/s 8 of the Central Act, on the ground that they had paid purchase tax on the coconuts as prescribed u/s 5(4) read with entry 5 of the Fourth Schedule to the Act and that desiccated coconut is the same as coconut, which is one of the "declared goods" u/s 14 of the Central Act ?

2. The relevant statutory provisions on the interpretation of which these cases have got to be decided and the facts of the case which have given rise to these appeals and revision petitions, are as follows :

(1) Section 14 of the Central Act specifies certain goods which are of special importance in inter-State trade and commerce defined as "declared goods" u/s 2(c) of the Central Act. Declared goods specified in section 14 of the Central Act includes coconut (i.e., copra excluding tender coconut). Section 15 of the Central Act provides that tax levied on sale or purchase of declared goods under the State law shall not exceed 4 per cent of the sale or purchase price and shall not be levied at more than one stage. Proviso to the said section provides that in cases where tax has been levied on declared goods under the State law and tax is paid on the same goods under the Central Act, the tax inter-State sales. u/s 8(1) of the Central Act every dealer who sells goods of the description referred to in sub-section (3) in the course of inter-State trade or commerce to the Government or to a registered dealer other than the Government, is liable to pay tax under the Central Act at 4 per cent of his turnover. u/s 8(2)(b) of the Central Act the tax payable by a dealer on his inter-State sales turnover of goods other than declared goods and not falling under sub-section (1) of section 8 is 10 per cent.

(2) Section 5(1) of the Act provides that every dealer shall pay for each year sales tax at the rate of 4 per cent on the sales turnover of goods taxable under the Act. Sub-section (4) of section 5 is a special provision in respect of tax payable on goods declared to be of special importance in inter-State trade and commerce u/s 14 of the Central Act. According to this sub-section, tax is payable in respect of sale or purchase of goods which are specified in the Fourth Schedule to the Act at the rate and only at the point specified in the corresponding entries of columns 3 and 4 of the said schedule. The rate specified for coconut is 3 per cent and the point of levy is the earliest purchase in the Stated.

(3) During the relevant assessment years, the Commercial Tax Officer, in the proceedings relating to final assessments under the Central Act in the case of the appellants, considered the question as to whether or not desiccated coconut powder can be regarded as coconut and, therefore, declared goods. The assessing authority took the view that coconut and desiccated coconut are one and the same commodity and, therefore, desiccated coconut powder is one of the declared goods. Consequently, in view of the undertaking given by the appellants that they would not claim reimbursement of local tax paid by them as provided under the proviso to sub-section (4) of section 5 of the Act read with section 15(b) of the Central Act, the assessing authority exempted their sales turnover of desiccated coconut from tax. In doing so, the assessing authority

took into consideration a Government notification dated 31st March, 1973, which gave the assessee in such cases the option of getting exemption on inter-State sales subject to the condition that they would not claim reimbursement of tax paid under the Act. The Commissioner considered that the view taken by the Commercial Tax Officer was erroneous and prejudicial to the revenue. He, therefore, issued notice u/s 22-A of the Act to the appellants proposing to revise the order of the assessing authority and to bring the sales turnover of desiccated coconut to tax. The appellants replied that the desiccated coconut was not a different commodity than coconut and, therefore, the view taken by the assessing authority was correct. The Commissioner, however, disagreed with the assessee's reply and held as follows :

"..... The desiccated coconut powder is being manufactured by scraping the kernel of coconut and desiccating, i.e., by removing the moisture and to some extent the oil contents from it. Coconuts thus undergo a significant change by the process of dehydration and a new product emerges as a result which is definitely a different and distinct commodity in commercial sense. It is difficult to accept the plea that the oil content is retained in full as during the process of grating and dehydration a portion of the oil content is bound to be lost by evaporation. Even otherwise, it will be difficult to consider that the desiccated powder could be used to extract oil. It is intended to and can be used only for cooking and similar purposes.

* * * Merely because a firm dealing in desiccated coconut powder describes its characteristics and properties as asking to fresh coconut, it is not necessary for me to believe that fresh coconut would remain as such even after being desiccated and dehydrated. As per this pamphlet itself, fresh coconut on being dehydrated and desiccated undergoes some transformation and a new product, viz., desiccated coconut powder, emerges. The pamphlet itself states that desiccated coconut powder is a new product known to the market and it cannot any more be regarded as coconut itself in common parlance even if it is granted that the powder can be used "for all domestic purposes where fresh coconuts are used".

* * * I am of the firm view that coconut and desiccated coconut powder are not one and the same commodity, for the reasons already explained by me above. The desiccated coconut powder is also therefore not declared goods."

Having come to the conclusion that desiccated coconut cannot be considered as coming within the meaning of the word "coconut" specified in section 14 of the Central Act and in entry 5 of Fourth Schedule to the Act, the Commissioner directed that tax should be levied at the rate of 10 per cent on the sales turnover of desiccated coconut u/s 8(2) of the Central Act as the assessee had not produced the prescribed C forms in order to be eligible for lesser rate at 4 per cent prescribed under sub-section (1) read with sub-section (3) of section 8 of the Central Act. Aggrieved by order of the Commissioner the appellants have preferred these sixteen appeals.

(4) In the cases of the assessee-firms, the respondents in the revision petitions filed by the State, the assessing authority rejected their claim that the desiccated coconut and coconut are one and the same commodity and consequently they are entitled to exemption from payment of tax under the Central Act as they had paid tax under the Act on the coconut out of which desiccated coconut was prepared. Further on the ground that the assessee had failed to produce C forms in respect of the said turnover to be eligible for lower rate u/s 8(1) of the Central Act he levied tax at the rate of 10 per cent u/s 8(2) of the Central Act.

(5) The respondent assesses preferred appeals before the Deputy Commissioner of Commercial Taxes, but without any success. Aggrieved by the order of the appellate authority the assessee appealed before the Karnataka Appellate Tribunal. The Tribunal reversed the view taken by the lower authorities. In doing so, the Tribunal mainly relied on the decision of the Supreme Court in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, The Tribunal also referred to the decision of the Kerala High Court in T.R.C. No. 67 of 1971 in which the said High Court affirmed the view that desiccated coconut falls within the term "coconut" which is one of the declared goods u/s 14 of the Central Act. Aggrieved by the order of the Appellate Tribunal, the State has presented the four revision petitions.

3. Before proceeding to consider the cases on merits it is necessary to refer to an ambiguity created by the amendment of the relevant part of entry 5 of the Fourth Schedule to the Act by Act No. 7 of 1973, which corresponds to sub-clause (viii) of clause (vi) of section 14 of the Central Act as amended by Act No. 61 of 1972 with effect from 1st April, 1973. The entry before amendment was :

"Coconut and copra."

The entry after amendment reads :

"Coconut (i.e., copra excluding tender coconuts)."

The relevant entry before the amendment was clear and specific. Both coconut and copra were declared goods and both of them were included at entry 5 in the Fourth Schedule to the Act and consequently tax under the Act was leviable only at the purchase point and at the rates specified in the Fourth Schedule in view of section 5(4) of the Act. According to the amended entry, the word "coconut" is qualified by the expression, i.e., "copra excluding tender coconuts", which means that only copra is the declared goods and not the coconut. Further, if copra alone was sought to be included, it would have been sufficient to mention only the word "copra" or to mention "coconut", i.e., copra" and it was unnecessary to use the words "excluding tender coconuts" after the word "copra" as the word "copra" itself excludes tender coconuts. The use of the words "excluding tender coconuts" would be necessary only to qualify the word "coconut" when only matured coconut is sought to be included and tender coconut is sought to be exempted. When the attention of the learned counsel was drawn by us to the effect of the amended entry, the learned counsel for the assessee submitted

that even after the amendment, the State has consistently taken the view that both coconut and copra are declared goods and that only tender coconut is excluded from the entry though they agreed that the entry should have been "copra excluding tender coconut and copra" or "copra and coconut excluding tender coconut". At this stage the case was adjourned in order to enable the State to clarify the matter and to take a specific stand on the interpretation of the entry. When the matter came up again for hearing, the learned counsel for the State submitted that according to the view taken by the State also both coconut (excluding tender coconut) and copra are declared goods. Therefore, we proceed on the basis that coconut and copra are declared goods u/s 14 of the Central Act and that both are included in entry 5 of the Fourth Schedule to the Act.

4. On the factual position, namely, as to what is "desiccated coconut", there is no dispute between the parties. It is common ground that "desiccated coconut" is only the grated white kernel or meat of coconut, desiccated or dehydrated for preservation. Such dehydrated kernel of coconut is put in the plastic or polythene covers and sealed. It is sold in the market as desiccated coconut.

5. Sriyuths Indra Kumar, S. P. Bhat and A. R. Srinivasa Rao, the learned counsel appearing for the assesseees, raised the following contentions :-

(i) Desiccated coconut is prepared by the assesseees out of the coconut purchased by them on which they have paid tax under the Act and it is nothing else than the coconut meat or kernel except that the same is grated and dried and thereby made ready for use in the preparation of articles of food and confectionery items and, therefore, desiccated coconut falls within the description of the word "coconut" which is declared goods and, therefore, the assesseees are not liable to pay tax under the Central Act.

(ii) The coconut being a declared goods and particularly being an article of food, it was not the intention of the legislature to tax coconut over and over again because some change was brought about in the mere form for the sake of convenience and not in substance.

6. In support of the above submission, they mainly relied on the two decisions of the Supreme Court in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, and *Alladi Venkateswarlu v. Government of Andhra Pradesh* [1978 41 S.T.C. (S.C.)].

(1) *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, arose under the provisions of the Madras General Sales Tax Act and the Rules framed thereunder. Under those provisions a registered manufacturer of groundnut oil was liable to pay sales tax on the purchase value of groundnut and the sales turnover of groundnut oil. However, as far as payment of tax on the sales turnover of groundnut oil was concerned, the dealer was entitled to a deduction in such sales turnover, an amount equal to the value of groundnut purchased by him and converted into oil, if he had paid tax on the purchase value of the

groundnut. During the relevant years, the assessing authority allowed deductions to the extent of the purchase price of groundnuts from the sale proceeds attributable to unrefined groundnut oil, but disallowed the deduction in respect of refined and hydrogenated groundnut oil. This view of the department was also accepted by the Andhra Pradesh High Court. In appeal by the assessee, the Supreme Court held that unrefined groundnut oil and refined or hydrogenated groundnut oil are one and the same notwithstanding the transformation of the former into latter brought about through the process of hydrogenation as a result of which it attains a semi-solid state, as it continues to be the same edible fat and its nutritional properties also continue to be the same. On the above view, the Supreme Court upheld the contention of the assessee that it was entitled to the deduction of the purchase value of groundnut from the sale value of refined or hydrogenated groundnut, since it had paid purchase tax on the value of groundnuts purchased out of which the refined or hydrogenated oil was manufactured.

(2) The case of Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, arose under the provisions of the Andhra Pradesh General Sales Tax Act. u/s 5 of the Andhra Pradesh Act read with entry 66 of the First Schedule to that Act, a tax at the rate of one paisa per rupee was payable at the point of first wholesale sale of rice if the rice produced from paddy was already subject to tax under that Act, but if the paddy from which the rice was produced, had not been subjected to tax, the rate of tax payable was six paise per rupee. The assessee in this case had produced atukulu (parched rice) and muramaralu (puffed rice) instead of rice from out of paddy which had already suffered tax under the Act. The controversy was whether the assessee was liable to pay tax on the sales turnover of parched rice and puffed rice at the rate of one paisa in a rupee on the ground that parched rice and puffed rice also fell within the word "rice" as used in entry 66 of the First Schedule to that Act, or was liable to pay tax as if they were separate kinds of goods falling under the general and unspecified category. The department took the view that parched rice and puffed rice being different items of goods produced out of rice, the concessional rate of one paisa per rupee fixed for rice produced out of paddy which had suffered tax under the Act was not applicable and consequently levied tax applicable to unspecified goods. The High Court confirmed that view. On appeal, the Supreme Court held as follows :-

(i) Though puffed rice and parched rice are looked upon as separate in commercial character, "muramaralu" (puffed rice) was rice though puffed and "atukulu" (parched rice) was rice though parched, and there was only conversion of unedible grain into an edible form by puffing or parching as the case may be through heating process.

(ii) The intention of Act was not to subject paddy to tax over and over again.

(iii) Even if two views are possible the one in favour of the assessee should be preferred.

In coming to the conclusion that puffed rice and parched rice were nothing else than rice, the Supreme Court applied the ratio in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*,

(3) The other decisions on which the assessees relied are :-

(i) *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, - In this case which arose under the provisions of the Madhya Pradesh General Sales Tax Act, the question which arose for consideration before the Supreme Court was whether the word "coal" included "charcoal". The Supreme Court held though "coal" and "charcoal" may be technically two different items in common parlance, both from the view of merchants and consumers, the word "coal" is not understood in geological sense, but in the sense that it includes "charcoal" also.

(ii) *The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji*, - In this case the Supreme Court held that iron bars, flats and plates produced from scrap iron purchased by the assessee fell within the meaning of the words "iron" and "steel" which are exempted from payment of tax and cannot be considered as separate items of goods because even after the conversion of scrap iron into bars, flats and plates, it continued to be "iron and steel".

(iii) *State of Gujarat Vs. Prakash Trading Co., Ahmedabad*, - In this case the Supreme Court held that shampoo though liquid in form and though its ingredients are different from the soap in the form of cake, such difference would not alter the basic character of shampoo which is soap and, therefore, fell within the description of the word "soap" and cannot be taxed separately as a toilet article.

(iv) *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, The Supreme Court in this case considered whether dryer felts made out of cotton or woollen yarn by process of weaving according to the warp and woof pattern and commonly used as absorbents of moisture in the paper manufacturing units fell within the meaning of the word "textiles" as used in item 30 of Schedule B to the Punjab General Sales Tax Act, 1948, and consequently exempt from tax. The Supreme Court held that though it may sound a little strange to regard "dryer felts" as "textiles" in reality it is "textiles" as they are prepared from yarn by the process of weaving and consequently exempted from the payment of tax.

(v) *Commissioner of Sales Tax, Lucknow Vs. D.S. Bist and Sons, Nainital*, - The question for consideration before the Supreme Court in this case was whether tea-leaves ceased to be agricultural produce after they were subjected to certain processes for the purpose of making tea-leaves fit for transporting and marketing. Notwithstanding the process of withering, crushing and roasting to which the raw tea-leaves plucked from the plants were subjected to, the Supreme Court held that in its basic nature it continued to be agricultural produce.

(vi) *State of Gujarat v. Sakarwala Brothers* [1967] 19 S.T.C. 24 (S.C.). - In this case, the Supreme Court held that various items like patasa, harda and alchidana, prepared out of sugar, fell within the word "sugar" notwithstanding the fact that they were separate commercial articles prepared out of sugar.

(vii) *Indodan Milk Products Ltd. v. Commissioner of Sales Tax, U.P.* [1974] 33 S.T.C. 381 (F.B.). - A Full Bench of the Allahabad High Court held in this case that condensed milk prepared out of milk comes within the expression of "milk" as used in section 4(a) of the U.P. Sales Tax Act, as it was milk though condensed and not a milk product.

(viii) *Oil & Flour Mills v. State of Mysore* [C.R.P. No. 1157 of 1961 (Karnataka High Court)]. - In this case this Court held that seegekai powder (soap nut powder) prepared out of seegekai (soap nut) was not a different commodity and, therefore, cannot be taxed as a separate item. This view was taken by applying the decision of the Supreme Court in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*,

Relying on the above decisions, the learned counsel for the petitioners submitted that the desiccated coconut prepared out of coconut kernel by the simple process of grating the coconut kernel and dehydrating or desiccating can by no means be considered as bringing into existence an entirely an entirely different article. Therefore, they submitted that the view taken by the Karnataka Appellate Tribunal was correct and the view taken to the contrary by the Commissioner is erroneous and his orders based on such view should be set aside.

7. The learned counsel for the State, however, strenuously urged that coconut and desiccated coconut are commercially two different articles and so only coconut and copra are declared goods, desiccated coconut cannot be considered as falling within the word "coconut" and the assesseees are liable to pay sales tax on their inter-State sales of desiccated coconut under the Central Act. In support of this submission, he mainly relied on the decisions of the Supreme Court in (i) *State of Travancore-Cochin v. Shanmugha Vilas Cashew-nut Factory* [1953] 4 S.T.C. 205 (S.C.) , (ii) *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, and (iii) *Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others*,

(1) In the *S.V.C. Factory's* case [1953] 4 S.T.C. 205 (S.C.), the Supreme Court held that the kernel produced or manufactured out of raw cashew-nut was commercially a different commodity. The High Court of Travancore-Cochin had recorded a finding of fact to the effect that raw cashew-nuts and kernels manufactured out of them by various processes, partly mechanical and partly manual, were not commercially the same commodity. This finding was also not seriously disputed before the Supreme Court and this was taken as an additional ground to reject the claim in respect of the purchase of raw cashew-nuts (vide page 217).

(2) The case of *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*,

arose under the provisions of the Punjab General Sales Tax Act. The question for decision was whether the assessee was entitled to deduction of the value of paddy purchased and converted into rice and sold as such from the total purchase turnover of paddy. The Supreme Court held that, in ordinary parlance, paddy and rice were two different goods and there was also change in the identity of the goods. On these grounds, *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, was distinguished.

(3) In the case of *Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others*, the said firm was carrying on the business of manufacture of bidis in the State of Madhya Pradesh. It had its branch in the State of Bombay. Tobacco was purchased by the firm in Bombay State which was delivered to its branch in that State. After purchase the stems of tobacco, leaves and dust collected on them were removed and thereafter it was dispatched to Madhya Pradesh. The said process was necessary before using tobacco in the manufacture of bidis and the cleaned tobacco went by the name of bidi patti. The firm was subjected to purchase tax on the purchase value of tobacco on the ground that tobacco was consumed in Bombay State by converting it into another commercial commodity, i.e., bidi patti. The firm questioned the constitutionality of the levy on the ground that the purchase could not be taxed as it was in the course of inter-State trade and commerce within the meaning of article 286(2) of the Constitution and also on the ground that the Bombay Sales Tax Act did not authorise such a levy. The decision in that case depended on the question as to whether the tobacco purchased was consumed in Bombay State to produce another commercial goods or not. The firm urged that all that was done to the tobacco was to have the stems and dust removed and by such removal of waste material there was no consumption of the tobacco purchased, resulting in the production of another commercial goods. The Supreme Court rejected the contention of the assessee and held that the raw tobacco (*akhobhuko bhuko*) after the aforesaid cleaning process was identified as a different article known as bidi patti used in the manufacture of bidis and, therefore, there was consumption of tobacco in Bombay State resulting in the production of bidi patti.

(4) The learned counsel for the State also relied on the decision of the Supreme Court in *Babu Ram Jagdish Kumar and Others Vs. State of Punjab and Others*, in which the decision in *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, in which paddy and rice were held to be different commodities was reiterated, as also a Division Bench decision of this Court in *Mysore Starch Manufacturing Co. v. State of Mysore* [S.T.R.P. No. 35 of 1969 decided on 27th May, 1971 (Karnataka High Court)] in which it was held that tamarind pappu (kernel) was considered to be a commodity different from tamarind seed.

8. The learned counsel for the State urged that just as cashew-nut and kernel separated from it, tobacco and bidi patti produced therefrom, paddy and rice produced out of it, and tamarind seed and pappu taken out of its husk, are considered as separate commodities, desiccated coconut prepared out of coconut

must also be held to be a different commodity and the view taken by the Commissioner should be upheld and that of the Appellate Tribunal reversed.

9. Having set out the rival contentions of the assesseees and the department, we shall now proceed to consider the question arising for decision in these cases.

10. As stated earlier, it is common ground that coconut and copra are declared goods and in view of section 5(4) of the Act read with entry 5 of the Fourth Schedule, tax is leviable at 3 per cent and that too only once at the first purchase point of these goods in the State. Therefore, it is clear that if coconut which has suffered tax under the Act and the desiccated coconut prepared out of it sold in the course of inter-State trade and commerce are treated as same commercial commodity or, in other words, if desiccated coconut is also considered as declared goods, the assesseees are not liable to pay tax under the Central Act or if they pay tax under the Central Act, they are entitled to the reimbursement of the tax so paid by virtue of the proviso to sub-section (4) of section 5 of the Act read with section 15(b) of the Central Act. Similarly, there is not dispute that if desiccated coconut is not regarded as "coconut" and is regarded as separately taxable goods, the assesseees are liable to pay tax at the rate of 10 per cent on the sales turnover or at lower rate prescribed u/s 8 of the Act if the assesseees produced the prescribed C forms, as prescribed under the Central Act.

11. The principles which should be applied in the interpretation of entries in the sales tax laws laid down by the Supreme Court in the various decisions referred to earlier may be summarised as follows :

(1) A sales tax statute, being one levying tax on goods, any particular term used to specify an item of goods on which tax is levied, must, not being term of science or art, be presumed to have been used in the ordinary sense and, therefore, it should be understood according to the meaning ascribed to it at common parlance. Therefore, while interpreting any item subjected to tax under the sales tax laws, resort should be had to their popular meaning or the meaning attached to them by those dealing in them, i.e., in the commercial sense and not to the scientific or technical meaning of such term.

(2) If the intention of the legislature was to levy a single point tax on a particular item, an interpretation which would in effect result in the levy of multi-point tax on the same commodity should not be given.

(3) If two interpretations are reasonably possible, the one in favour of the assessee should be accepted.

Therefore, the decision on the crucial question arising for consideration in these cases, viz., as to whether the desiccated coconut has to be considered as coconut and nothing more or it should be treated as a separate commercial commodity and, consequently, liable to tax under the Central Act also, should be arrived at by applying the aforesaid principles.

12. Coconut is the product of coconut palm or coconut tree (*cocos nucifera*). It is a drupe. It consists of an outer fibrous husk or cover (pericarp) and an inner bony cover or shell (endocarp) and a white thick edible meat or kernel attached to the inner part of the bony shell and in the cavity or the inner part of the drupe lies the sweet juice called coconut milk. Coconut, as an agricultural produce, enters the market after the removal of the outer cover of fibre and is commercially called "coconut" or "watery coconut". The kernel taken out of watery coconut is used profusely for culinary purposes. It is one of the important ingredients used in the preparation of articles of food. It is also used in the preparation of confectionery items such as several kinds of sweets, coconut burfi, coconut biscuits, etc. The sweet juice within watery coconut is a delicious drink though tender coconuts are generally and mainly used for this purpose. When coconut is fully matured and it is allowed to dry along with its outer fibre cover, the sweet juice within it gets dried up and thereafter the kernel also gets dried up and shrinks and gets detached from the bony inner cover. The whole kernel after it has reached this stage would be in the shape of hollow sphere and is called "copra". Copra is also used in the preparation of food articles. While both kernel of watery coconut and copra are used in the preparation of food articles, one is preferred to the other, in the preparation of some of the food articles. The main or predominant use of copra is the manufacture of coconut oil, which is profusely used for various domestic purpose, such as hair-oil, cooking medium, etc. Coconut oil is predominantly used for these purposes in west coast belt. It is also extensively used for industrial purposes. Generally coconut and copra are grated for the purpose of actual use in the preparation of articles of food and confectionery though of some items of preparations they are cut into small pieces. Desiccated coconut is only the kernel of matured coconut grated and dehydrated. In other words, it is "coconut kernel ready-made" for preparation of food articles and confectionery. As it is desiccated it could be preserved for longer periods without the risk of its becoming rancid. Therefore, it is also economical, because instead of the necessity of using the entire kernel of coconut after breaking the nut, as it cannot be preserved without becoming rancid for more than two or three days, desiccated coconut can be used economically in that, only to the extent necessary as and when it is required. Except these advantages, in substance, the coconut and desiccated coconut are one and the same. There is no loss of identity. At common parlance also both coconut and desiccated coconuts are considered as one and the same. As pointed out earlier copra is mainly used in the preparation of coconut oil. Similarly there is no dispute that oil can be extracted and is being extracted directly from matured watery coconuts also. Even with reference to this aspect, desiccated coconut cannot be distinguished. The Commissioner was wrong in saying that no oil can be extracted from desiccated coconut. Desiccated coconut is also rich oil content. The assesses have produced two certificates, one issued by Italab (Private) Ltd., Industrial Factory and Analytical Laboratories, Bombay, according to which the fat content in desiccated coconut is 69.13 per cent and another issued by Therapeutics Chemical Research Corporation, Bombay, according to

which also desiccated coconut contains oil to the extent of 69.35 per cent. In Encyclopaedia Britannica the meaning of the word "copra" is given as follows :

"Copra. - Dried sections of the oil-bearing kernel of the fruit (nut) of the coconut palm (*cocos nucifera*) are known in world commerce as copra. The less common drying of the intact whole nut kernel produces ball, edible or whole copra. Shredding of the fresh meat, followed by thorough drying, results in a food item, desiccated coconut, in which moisture content is somewhat lower and the oil content higher than that of copra. Copra, as known in trade, is seldom used directly as human food, but is processed to extract the coconut oil of commerce, leaving a coconut oil cake, also called copra cake, poonac and boengkil, mostly utilized for livestock feed."

There can be no doubt that coconut kernel does not lose its oil content by grating and dehydration. In view of dehydration the desiccated coconut contains less moisture and is suitable for extracting oil. The learned counsel for the assessee submitted that actually desiccated coconut is also being used for the manufacture of coconut oil. Thus it may be seen for all the purposes for which watery coconut is used, desiccated coconut could also be used and similarly for all purposes for which desiccated coconut is used, watery coconut could be used.

13. Having regard to the aforesaid facts and reasons, it appears to us that the view taken by the Supreme Court in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, to the effect that groundnut oil and hydrogenated groundnut oil prepared out of it are one and the same, and the view, that rice, parched rice and puffed rice are all one and the same as taken in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, apply with greater force to these cases than the decision in the *S.V.C. Factory's case* ([1953] 4 S.T.C. 205 (S.C.)) in which cashew-nut and kernel taken out of it were considered as separate articles and also the decision in *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, in which paddy and rice were held to be different commodities and also the decision in *Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others*, in which tobacco and bidi patti were held to be different commodities. In this behalf it is necessary to point out that *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, was decided long after the decision in the *S.V.C. Factory's case* ([1953] 4 S.T.C. 205 (S.C.)) . Further, while the decision in *Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others*, distinguishing tobacco from bidi patti was delivered on 20th September, 1960, the same Bench decided *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, shortly thereafter on 18th October, 1960, which view is apposite to the facts of these cases.

14. The learned counsel for the State, however, strongly relied on the decision of the Supreme Court in *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, in which rice taken out of paddy, i.e., by the removal of husk, was held to be a commodity different from paddy and submitted that similarly desiccated coconut which is coconut kernel taken out of coconut and grated and dehydrated,

should be treated as a separate commodity. But we see no force in the submission in view of the decision of the Supreme Court in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, . In this case, parched rice and puffed rice were considered as rice notwithstanding the fact that they are parched and puffed. Difference between the case of paddy and rice on the one hand and of rice and parched rice and puffed rice on the other was clearly pointed out by the Supreme Court. The relevant portion of the judgment reads :

"It is clear that there is a distinction between "paddy", as found in item 8 of the Second Schedule, and "rice", as mentioned under item 66 of the First Schedule. Apparently, the removal of the husk makes this difference. It is true that the First Schedule, which contains as many as 136 items, includes a number of separate fairly detailed entries. Entry 58 is for "bran or husk of rice" and entry 59 is for "deoiled bran of rice". It appears, therefore, that "rice in husk" is "paddy". When it is removed from husk, the husk and rice become separately taxable. But, there are no separate entries for rice and rice reduced into an edible form by heating or parching without any addition of ingredients or appreciable changes in chemical composition. The term "rice" is wide enough to include rice in its various forms whether edible or inedible. Rice in the form of grain is not edible. Parched rice and puffed rice are edible. But entry "rice" seems to us cover both forms of rice. At any rate, it is wide enough to cover them.

* * * In *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, , this court rejected the argument based on an analysis of chemical changes produced by the absorption of hydrogen atoms in the process of hardening and on the consequent intermolecular changes in the oil. It said :

"But neither mere absorption of other matter nor intermolecular changes necessarily affect the identity of a substance as ordinarily understood."

We think that, on a parity of reasoning, the term "rice" as ordinarily understood in English language would include both parched and puffed rice."

In coming to the conclusion that the term "rice" includes parched rice and puffed rice in the above case, the Supreme Court applied the reasoning adopted in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, . In our view, the same reasoning applies to the case of coconut and desiccated coconut. Therefore, just as the term "rice" was held to include its different forms, namely, parched rice and puffed rice, it should be held that the term "coconut" includes desiccated coconut. Another aspect pointed out in the above judgment is that when paddy and rice are separately taxable, it is impossible to treat the former as including the latter. Therefore, if only desiccated coconut could be brought under any other specified item, it could not be held to fall within entry 5 of the Fourth Schedule to the Act. There is no such entry. In the light of the above observation and the decision in that case, we see no force in the submission made for the State.

15. The learned counsel for the State nevertheless maintained that coconut and

desiccated coconut are two different commodities commercially. He submitted that the Commissioner was right in observing that they are different commercial commodities and that in the market no merchant will give desiccated coconut when a customer wants watery coconut and vice versa. We are unable to appreciate the submission and it runs counter to the ratio of the Supreme Court in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool, and Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, . In the market if a customer wants groundnut oil a merchant would not give him hydrogenated groundnut oil or vice versa. Similarly if a customer wants rice, no merchant would give him parched rice or puffed rice or vice versa. Certainly they are identified as separate items. Prices of these commodities also differ. But the test applied by the Supreme Court in holding that one was not different from the other was with reference to the substance and not mere form. Similarly coconut and desiccated coconut are in substance one and the same.

16. The learned counsel for the State submitted that the Supreme Court held that groundnut oil and hydrogenated groundnut oil are one and the same on the ground that one could be a substitute for the other in respect of all the uses. He referred to the following observations in the judgment :

"Both the Tribunal as well as the High Court have pointed out that except for its keeping quality without rancidity and ease of packing and transport without leakage, hydrogenated oil serves the same purpose as a cooking medium and has identical food value as refined groundnut oil. There is no use to which the groundnut oil can be put for which the hydrogenated oil could not be used, nor is there any use to which the hydrogenated oil could be put for which the raw oil could not be used."

and in particular on the underlined sentence. Relying on the above sentence, the learned counsel argued that there are certain purposes for which watery coconut alone could be used and not desiccated coconut and, therefore, the ratio in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, is not applicable to these cases. In support of this submission he relied on the decision of the Supreme Court in *Sri Siddhi Vinayaka Coconut and Co. and Others Vs. State of Andhra Pradesh and Others*, and pointed out that the Supreme Court itself has held that watery coconuts and copra are separate and distinct articles and that while the watery coconuts are used for cooking purposes and for social and religious functions, dried coconuts are used mainly for extracting oil. He submitted that desiccated coconut cannot be a substitute for watery coconuts at least in so far they relate to the use in social and religious functions and, therefore, cannot be equated with watery coconut. We do not think that this circumstances would make any difference. Though watery coconuts are generally used for offerings in temples and for presenting to relatives, guests and priests in religious and social functions, the ultimate use of all the coconuts so offered or given would be only for purposes of preparation of articles of food. Desiccated coconut can be used for all purposes for which ultimately the coconut kernel

taken from watery coconut could be used. Moreover, it appears that the aforesaid observations were only meant to point out generally that hydrogenated groundnut oil could be used for all purposes for which groundnut oil is used and vice versa and were not intended to indicate that there was no use at all to which one could be used instead of the other. For instance, one who intends to use groundnut oil in small quantities along with certain items of food directly for taste and flavour like ghee, as is generally done in this State except in the west coast belt where for the same purpose coconut oil is used, hydrogenated oil can be no substitute, and is not used as it is tasteless and, similarly, while generally for preparation of sweets hydrogenated groundnut oil is used as it is odourless and not raw groundnut oil, and for burning lamps in temples and pooja rooms raw groundnut oil is used and not hydrogenated oil, though theoretically the use of one for the other is possible. It should also be pointed out that the decision in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, . did not turn only upon the question of use of raw groundnut oil for all purposes for which hydrogenated groundnut oil is used and vice versa. The decision was based on the fact that in substance both were same. The relevant part of the decision reads :

"Nor is the learned Advocate-General well-founded in his submission that the processing of the oil in order to render it more acceptable to the customer by improving its quality would render the oil a commodity other than "groundnut oil" within the meaning of the rule. For instance, if the oil as extracted were kept still in a vessel for a period of time, the sediment normally present in the oil would settle at the bottom leaving a clear liquid to be drawn out. The learned Advocate-General cannot go so far as to say that if this physical process was gone through, the oil that was decanted from the sediment, which it contained when it issues out of the expressed, ceased to be "groundnut oil" for the purposes of the rule. If the removal of impurities by a process of sedimentation does not render groundnut oil any the less so, it follows that even the process of refining, by the application of chemical methods for removing impurities in the oil, would not detract from the resulting oil being "groundnut oil" for the purpose of the rule. It may be mentioned that processes have been discovered by which even on extraction from oil mill, the oil issues without any trace of free fatty acids. It could hardly be contended that if such processes were adopted what comes out of the expressed is not groundnut oil. The submission of the learned Advocate-General based on a contention that the Tribunal and the learned Judges of the High Court erred in holding that even refined groundnut oil was "groundnut oil" for the purpose of the rule, must be rejected.

* * * To be groundnut oil, two conditions have to be satisfied. The oil in question must be from groundnut and secondly the commodity must be "oil". That the hydrogenated oil sold by the appellants was out of groundnut not being in dispute, the only point is whether it continues to be oil even after by hydrogenation. Oil is a chemical compound of glycerin with fatty acids, or rather a glyceride of a mixture of fatty acids - principally oleic, linoleic, stearic and

politic - the proportion of the particular fat varying in the case of the oil from different oil-seeds and it remains a glyceride of fatty acids even after the hardening process, though the relative proportion of the different types of fatty acids undergoes a slight change. In its essential nature therefore no change has occurred and it remains an oil - a glyceride of fatty acids - that it was when it issued out of the press.

* * * Similarly we consider that hydrogenated oil still continues to be "groundnut oil" notwithstanding the processing which is merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desire to consume groundnut oil. In our opinion, the assessee company was entitled to the benefit of the deduction of the purchase price of the kernel or groundnut, under rule 18(2), which went into the manufacture of the hydrogenated groundnut oil from the sales turnover of such oil."

Therefore, we do not think that the learned counsel for the State is right in submitting that just because desiccated coconut is not used for religious and social functions, the ratio in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, is not applicable to these cases. The lack of force in the submission could also be pointed out by referring to the judgment of the Supreme Court in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, . It is common knowledge that though rice, parched rice and puffed rice are all articles of food, rice alone is used as staple food and, in any event, one is no substitute for the other. For instance, for meals, only cooked rice is preferred and therefore for this purpose one prefers rice only and does not prefer to eat parched rice or puffed rice, which are generally used only for tiffin, unless it becomes inevitable, as a result of non-availability of the rice. This does not mean that, in substance, the three articles are different. In *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, , the Supreme Court held that parched rice is rice though parched and puffed rice is still rice though puffed.

17. The learned counsel for the State next tried to make out a point by referring to section 14 of the Central Act. He submitted that the goods declared under the relevant clause goes under the heading "oil-seeds" and therefore desiccated coconut cannot be treated as falling within the entry as it can by no stretch of imagination be considered as seed. We do not see any force in the submission either. The entry "oil-seeds" used in section 14 is only to indicate commodities produced out of seeds out of which oil can be extracted and not in the sense that the particular commodity mentioned is seed in its technical sense out of which oil could be extracted. According to its botanical meaning a seed is one which is capable of producing a plant which produced it. A coconut plant can germinate only from a coconut in its original form, i.e., with its inner bony cortex and outer fibre cover or husk intact. If this test is applied even coconut as sold in the market (watery coconut) and copra cannot be considered as oil-seeds as neither watery coconut nor copra is capable of germination producing a coconut plant out of which it was produced. Nevertheless watery coconut and copra are held to

be oil-seeds on the bound that they are products of coconut with its fibrous husk, which is undoubtedly an oil-seed (see *Kasturi Seshagiri Pai and Co. v. Deputy Commissioner, South Kanara* [1961] 12 S.T.C. 629. Therefore, it follows that the items of goods declared under this entry include products of oil-seeds from which oil can be extracted. There is no dispute that coconut oil can be extracted from watery coconut, copra and desiccated coconut as well. Therefore the distinction sought to be made on the basis of the words "oil-seeds" is also groundless.

18. There is an additional reason to hold that the desiccated coconut cannot be subjected to tax again when the coconut out of which it is produced has already suffered tax under the Act. Coconut is an article of food and is also declared to be of national importance. It is an article of everyday use by the consumer. No intention to tax such a commodity again and again could be attributed to the legislature. In this behalf, it is necessary to refer to the following observation of the Supreme Court in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*,

"... We do not think that it is fair to so interpret a taxing statute as to impute an intention to the legislature to go on taxing what is virtually the same product in different forms over and over again. Such a result would be contrary to basic axioms of taxation. Unless the language of the taxing statute was absolutely clear, it should not be given an obviously unfair interpretation against the assessee."

If the legislature intended to tax desiccated coconut also even after the coconut out of which it was produced was subjected to tax, desiccated coconut would have been included as a separate taxable item. In the circumstances, applying the above test also it has to be held that there was no intention on the part of the legislature to subject desiccated coconut to tax.

19. Lastly, as laid down by the Supreme Court in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, in the interpretation of taxing statutes, if two views are possible, the one in favour of the assessee should be preferred. The relevant portion of the judgment at page 398 of the Reports reads :

"... And, in any case, if two interpretations of a provision are possible, we think that we ought to, in such a case, apply the principle that the interpretation which favours the assessee should be preferred."

Applying the above test also the contention urged for the assessee should be preferred. The construction suggested for the assessee on the interpretation of the word "coconut" used in entry 5 of the Fourth Schedule to the Act and section 14 of the Central Act to the effect that it includes desiccated coconut is plausible on the analogy of, groundnut oil and hydrogenated groundnut oil in the cases of *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, , rice, parched rice and puffed rice in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, coal and charcoal as in *Commissioner of Sales Tax,*

Madhya Pradesh Vs. Jaswant Singh Charan Singh, iron and steel and bars, flats and plates as in The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji, , State of Gujarat Vs. Prakash Trading Co., Ahmedabad, , dryer felts and textiles in Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, , sugar and patasa, harda and alchidana in Sakarwala Brothers [1967] 19 S.T.C. 24 (S.C.), milk and condensed milk in Indodan Milk Products [1974] 33 S.T.C. 381 (F.B.), seegekai and seegekai powder in Oil & Flour Mills [C.R.P. No. 1157 of 1961 (Karnataka High Court)] and is also more appropriate ad should be preferred to the analogy of cashew-nut and its kernel as in S.V.C. Factory [1953] 4 S.T.C. 205 (S.C.)) or of Ganesh Trading Co., Karnal Vs. State of Haryana and Another, or of Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others, , or of tamarind seed and tamarind pappu in Mysore Starch Manufacturing Co. [S.T.R.P. No. 35 of 1969 decided on 27th May, 1971 (Karnataka High Court)].

20. For the reasons aforesaid, our answer to the question arising for consideration in these cases is as follows :

(1) "Desiccated coconut" falls within the entry "coconut", which is one of the "declared goods" u/s 14 of the Central Sales Tax Act, 1956, and also included at entry 5 of the Fourth Schedule to the Karnataka Sales Tax Act, 1957.

(2) The assessees, who had effected inter-State sales of desiccated coconut prepared out of the coconuts purchased by them within the State, were not liable to pay Central sales tax on the sales turnover of such desiccated coconut, u/s 8 of the Central Sales Tax Act, 1956, as they had paid purchase tax on the coconut as prescribed u/s 5(4) read with entry 5 of the Fourth Schedule to the Karnataka Sales Tax Act, 1957.

21. Before concluding, it is necessary to deal with an alternative contention urged for the assessees, who are the appellants. They contended that the Commissioner, after having come to the conclusion that desiccated coconut does not fall within the meaning of the word "coconut" before proceeding to levy tax at the rate of 10 per cent u/s 8(2)(b) of the Central Act on the ground that the appellants had not produced the prescribed C forms, in all fairness, should have given an opportunity to the appellants to produce C forms. They submitted that the assessing authority had taken the view that desiccated coconut is also declared goods and that the Commissioner himself earlier had issued an endorsement to some of the dealers to the effect that desiccated coconut and coconut are one and the same and, therefore, he should have given an opportunity to the appellants to produce C forms, as was done by the Deputy Commissioner in his appellate order in the case of the respondent in the revision petition filed by the State. The learned counsel for the State, however, submitted that as desiccated coconut was not one of the declared goods, it was for the appellants to have produced C forms and to claim that the levy of tax should be at the lower rate of 4 per cent u/s 8(1) and (3) of the Central Act.

22. In our view, the alternative contention urged for the appellants is also well-founded. In their cases, the assessing authority had taken the view that desiccated coconut and coconut were one and the same and, therefore, the appellants were not liable to pay tax under the Central Act as they had paid tax under Act at the purchase point on the coconut out of which desiccated coconut was produced. It is also clear from the order of the Deputy Commissioner made in the appeal in the case of the respondent in the revision petition filed by the State that the Commissioner himself had earlier issued an endorsement to the effect that desiccated coconut and coconut are one and the same. Therefore, the appellants could not be expected to have secured the C forms in respect of the inter-State sale of desiccated coconut. In the circumstances, the Commissioner, having taken a contrary view, should have given an opportunity to the appellants to produce the prescribed C forms and could not have straightway proceeded to levy tax at the rate of 10 per cent u/s 8(2)(b) of the Central Act on the ground that the appellants had not produced the C forms. Therefore, the orders of the Commissioner are also liable to be set aside on this ground. However, as we have upheld the contention of the appellants that "desiccated coconut" is the same as "coconut" which is one of the declared goods, the question of direction the Commissioner to give the appellants an opportunity to produce C forms does not arise.

23. In the result we make the following order :

(i) The appeals filed by the assesseees are allowed and the orders of the Commissioner of Commercial Taxes are set aside and the corresponding orders of the assessing authority are restored.

(ii) The revision petitions filed by the State are dismissed.

(iii) No costs.

24. Ordered accordingly.