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**(1983) 03 MP CK 0024**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 259 of 1983**

Shri Kishan Satyanarain

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision : 11-03-1983**

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 14  
Constitution of India, 1950 — Article 226

**Citation :** (1983) ILR (MP) 630 : (1983) JLJ 373 : (1983) 28 MPLJ 537 : (1983) 54 STC 25

**Hon'ble Judges :** G.P. Singh, C.J.; Faizanuddin, J

**Bench :** Division Bench

**Advocate :** N.C. Jain, for the Appellant; M.V. Tamaskar, Government Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

G.P. Singh, C.J.

This order shall also dispose of Misc. Petition No. 1695 of 1982. These petitions under Article 226 of the Constitution involve the construction of entry No. 1(i) in Part V of Schedule II to the M.P. General Sales Tax Act, 1958. The petitioners contend that puffed rice and beaten rice, which are also known as murmura, lal and poha, are taxable under the aforesaid entry at the rate of 3 per cent and not under the residuary entry in Part VI at the rate of 10 per cent as contended by the department.

The period involved in both the petitions is from 1st November, 1978, to 21st October, 1979. In Misc. Petition No. 259 of 1983, the Assistant Commissioner of Sales Tax, Durg, by order dated 30th November, 1982, assessed the petitioner on sales of murmura and poha at the rate of 10 per cent. He also assessed sales of paddy husk called konda at the rate of 4 per cent. In the other petition (Misc. Petition No. 1695 of 1982), the Additional Sales Tax Officer, Durg, by order dated 21st June, 1982, assessed sales tax on murmura, lal and poha at the rate of 10

per cent. Some other persons in this context wrote to the Commissioner of Sales Tax, Indore, requesting that sales of puffed rice and beaten rice should be taxed at 3 per cent and not at 10 per cent but the Commissioner in April, 1981 and January, 1982, vide annexures A and B in Misc. Petition No. 259 of 1983, ordered otherwise and these orders were circulated to the assessing officers of the department.

The question involved is a pure question of law and being of general importance we do not insist upon the alternative remedy of appeal or revision open to the petitioners. It would be convenient not only to the petitioners and other similar dealers but also to the department that the matter be disposed of by this Court finally. For this reason, we do not accept the objection in the return that the petitioners should have availed of the normal remedy available under the Act of going up in appeal or revision before coming to this Court under Article 226.

Under entry No. 2 of Part I of Schedule II, "paddy" is taxable at the rate of 2.5 per cent. Entry No. 4 in the same part of Schedule II makes "cooked food" taxable at the rate of 4 per cent. Entry No. 1 of Part V of Schedule II, which provides for a tax of 3 per cent reads as follows :

1(i) Cereals as specified in Clause (i) of Section 14 of the Central Sales Tax Act, 1956 (No. 74 of 1956), excluding paddy ;

(ii) Foodgrains and cereals other than paddy and those mentioned in serial number (i) of this entry and goods exempt under entry 3 of Schedule I.

The residuary entry is entry No. 1 of Part VI of Schedule II and the rate of tax applicable to sales falling under it is 10 per cent.

A perusal of entry No. 1(i) of Part V of Schedule II will show that it refers to "cereals as specified in Clause (i) of section 14 of the Central Sales Tax Act". We must, therefore, read Section 14(i) of the Central Act which is as follows :

14. Certain goods to be of special importance in inter-State trade or commerce.-

It is hereby declared that the following goods are of special importance in inter-State trade or commerce :-

(i) Cereals, that is to say,-

(i) paddy (*Oryza sativa* L.);

(ii) rice (*Oryza sativa* L.);

(iii) wheat (*Triticum vulgare*, *T. compactum*, *T. sphaerococcum*, *T. durum*, *T. aestivum* L., *T. dicoccum*);

(iv) jowar or milo (*Sorghum vulgare* Pers);

(v) bajra (*Pennisetum typhoideum* L.);

(vi) maize (*Zea mays* L.);

- (vii) ragi (Eleusine coracana Gaertn.);
- (viii) kodon (Paspalum scrobiculatum L.);
- (ix) kutki (Panicum miliare L.);
- (x) barley (Hordeum vulgare L.).

The question before us is whether the entry "rice" in Section 14(i) of the Central Act which is incorporated by reference in entry No. 1(i) of Part V of Schedule II to the State Act includes puffed rice and beaten rice. The argument of the learned Government Advocate is that the words "that is to say" which occur in Section 14(i) after the word "cereals" clearly imply that nothing can be included in cereals which have not been enumerated in items (i) to (x) of Section 14(i) of the Central Act. We have no hesitation in accepting this argument which only means that if something is not included within the word "rice" as normally understood that thing cannot be included within that entry and we cannot widen the term "cereals" as defined in Section 14(i). This brings us to the question whether beaten rice and puffed rice are normally understood to be included in the word "rice". This question is covered by the decision of the Supreme Court in *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, . In construing entry 66 in the First Schedule to the Andhra Pradesh General Sales Tax Act, the Supreme Court observed that the term "rice" is wide enough to include rice of various forms whether edible or inedible and that the term "rice" as ordinarily understood in English language would include both parched and puffed rice. This decision, in our opinion, fully applies here for construing the term "rice" as used in Section 14(i) of the Central Act. The term "cereals" according to dictionary meaning also includes food made from grain specially breakfast food as oatmeal or corn flakes (Webster's New World Dictionary, page 232). The dictionary meaning of the term "cereals" supports the conclusion that the word "rice" as used in Section 14(i) should be understood to include puffed and beaten rice. The learned Government Advocate referred to us the recommendations of the Taxation Enquiry Commission as quoted in page 725-726 of Chaturvedi's Central Sales Tax Laws, Volume 1 and submitted that the idea was to include only raw material and therefore, rice in its original form should alone be taken to be included in Section 14(i). First of all the recommendations of the Commission cannot be used as a guide for interpretation when there is no ambiguity in Section 14(i). Secondly, the Commission's recommendations show that they not only recommended the inclusion of raw materials but also goods largely in the nature of raw material as finished goods based on such material. Further the construction advanced by the learned Government Advocate, if accepted, will create a serious anomaly. We have already indicated that paddy is taxable under entry 2 of Part I of Schedule II at the rate of 2.5 per cent and cooked food at the rate of 4 per cent. Cooked food would include cooked rice. So if we accept the argument of the learned Government Advocate, the position would be that paddy would be taxable at 2.5 per cent, rice in its original form at 3 per cent and cooked rice at 4 per cent but

puffed rice and beaten rice at the rate of 10 per cent. This anomaly is avoided by giving the term "rice" in Section 14(i) of the Central Act and entry 1 in Part V of Schedule II of the State Act the normal meaning as laid down by the Supreme Court to include puffed rice and beaten rice. We, therefore, hold that sales of beaten rice and puffed rice would be taxable at the rate of 3 per cent and not at the rate of 10 per cent as is contended by the department.

In Misc. Petition No. 259 of 1983, the Assistant Commissioner of Sales Tax has also taxed sales of paddy husk. Sales of paddy husk known as are completely exempt from tax by notification dated 7th April, 1967, issued u/s 12 of the Act. The Assistant Commissioner was, therefore, in error in taxing sales of paddy husk.

The petitions are allowed. The assessment orders in both the petitions are quashed. The assessing authorities will have liberty to pass fresh assessment orders in accordance with law. There will be no order as to costs of these petitions.

The learned Government Advocate prays for a certificate for appeal to the Supreme Court which is refused.