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**(1970) 11 GUJ CK 0008**  
**In the Gujarat High Court**  
**Case No : Sales Tax Reference No. 4 of 1969**

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| State of Gujarat   | Vs | APPELLANT  |
| Sarabhai Chemicals |    | RESPONDENT |

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**Date of Decision :** 03-11-1970

**Acts Referred:**

Bombay Sales Tax Act, 1959 — Section 52

**Citation :** (1971) 27 STC 170

**Hon'ble Judges :** T.U. Mehta, J;P.D. Desai, J

**Bench :** Division Bench

**Advocate :** B.R. Shah, Assistant Government Pleader, with M.G. Doshit and H.V. Chhatrapati, Additional Government Pleader, for the Appellant; S.L. Modi, for the Respondent

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## Judgement

Mehta, J.—The only question which is involved in this reference is whether the product known as "Limical" is an article of foodstuff or food

provision falling under entry No. 6 of Schedule E to the Bombay Sales Tax Act, 1959 (which is hereinafter referred to as "the Act").

2. The short facts of the case are that the opponents, M/s. Sarabhai Chemicals, are manufacturing fine chemicals and medicines including the

disputed article which is known in the market as "Limical". By their application dated 3/4th March, 1966, addressed to the Deputy Commissioner

of Sales Tax, Ahmedabad, the opponents sought clarification u/s 52 of the Act as to what was the rate of sales tax on their product called

Limical". Along with the application the opponents produced one invoice dated 16th February, 1966.

3. The said Deputy Commissioner, Sales Tax, held, by reference to the composition of the product as given in the pamphlet filed by the opponents,

that it contains certain vitamins, proteins, fat, etc. and that, therefore, it was a food provision with low calories. Since this article is sold in sealed

container of weight not exceeding 5 kilograms, according to the Assistant Commissioner of Sales Tax, it was covered by entry No. 6 of Schedule

E to the Act.

4. Being aggrieved by this order of the Deputy Commissioner, Sales Tax, the opponents preferred appeal to the Sales Tax Tribunal. The Tribunal

was of the opinion that the article concerned was not an article of food and was, therefore, not covered by entry No. 6 of Schedule E. According

to the Tribunal, the article would be covered by the residuary entry No. 22 of Schedule E attached to the Act. The Tribunal, therefore, set aside

the order of the Deputy Commissioner, Sales Tax, and being aggrieved by that order of the Tribunal, the department has preferred this reference.

5. The question which is referred to us by the Tribunal is in the following terms :-

Whether on the facts and in the circumstances of the case, ""Limical"" sold under bill No. BA. 9535 : d/955 dated 16th February, 1966, is an

article of foodstuff or food provision falling under entry 6 of Schedule E to the Bombay Sales Tax Act, 1959.

6. It is an admitted position that the disputed product, which is known as ""Limical"", is manufactured by the opponents in the form of powder as

well as in the form of biscuits with different flavours. There is nothing in the record of the case to show that the ingredients or the contents of the

powder as well as the biscuits are in any manner different. Parties have proceeded on the footing that the same ingredients are sold either in the

form of powder or in the form of biscuits. As described in the trade pamphlet, issued by the opponents, this product is meant for persons who are

suffering from obesity and who intend to reduce their weight. It is, therefore, an admitted position that this product is manufactured for a particular

end in view, namely, the reduction of weight, without losing necessary nutrition for the sustenance of health. The product is of limited calories. It is

not in dispute that it has 900 calories for a 225 gms. tin, which is one day's supply. This contains 70 gms. of high value proteins, 20 gms. of fat and

110 gms. of carbohydrate plus minerals and vitamins to meet the recommended daily allowance, for the sustenance of proper health. It is also an

admitted fact that persons who want to reduce their weight should sustain

themselves only on the intake of this product for a limited period, and during the period for which this product is consumed no other food or substituted food provision should be consumed. In other words, for the purpose of reduction in weight so long as a person prefers to sustain himself through the nourishment provided by this product, he is not expected to take any other food. The obvious reason is that if the consumption of this product is supplemented by any other foodstuff, the required balance of carbohydrates and calories would be disturbed. The pamphlet which is produced by the opponents shows that the product contains vitamins A, B, C, D and E together with other proteins and minerals such as calcium, phosphate, sodium, iron etc.

7. For the purpose of appreciating the respective contentions of the parties, it would be necessary to quote specifically entry 6 of Schedule E, under which the department wants us to take this article. This entry 6 is in the following terms :

Foodstuffs and food provisions of all kinds (including dried fruits and dried vegetables; raw semi-cooked, semi-processed or ready-to-serve foods; pickles, sauces, jams, marmalades, jellies; preserved fruits and honey) when sold in sealed containers of weight not exceeding five kilograms in each container, but excepting whole, separated or reconstituted milk, milk-products, as specified in entry 6 in Schedule D, vitaminised infant milk food sold in sealed containers as specified in entry 13 in Schedule C, edible oil, chilly powers and salt.

8. The question is whether the article in dispute can fall within the above quoted entry, which relates to foodstuffs and food provisions. In order to

convince us that the disputed product is a food provision or a food-stuff, Shri Shah, who appeared on behalf of the department, relied heavily on

the dictionary meaning given to these expressions. He drew our attention to the meaning of the word ""food"" and foodstuff"" given in Webster's

Dictionary, as found at page 731. Therein the word ""food"" is declared as under :

Food : (1) any substance taken into and assimilated by a plant or animal to keep it alive and enable it to grow; nourishment; nutriment.

(2) solid substances of this sort : distinguished from drink.

(3) a specified kind of food.

(4) anything that sustains, nourishes, and augments; whatever helps something

to keep active, grow, etc., as, food for thought.

Word "foodstuff" is described as under :

Foodstuff : any material made into or used as food.

According to Shri Shah, the word "food" is described in the above definition as anything that sustains, nourishes and augments. He further

contended that since "Limical" is a product which sustains and nourishes a person consuming it, even in the complete absence of other articles of

food, it must be held that it is, what is known as "food" and, therefore, is covered by entry 6 of Scheduled E which is quoted above. We find that

though it is undoubtedly true that in its etymological sense, the word "food" is carrying various shades of meaning and can be described as "anything

that sustains and nourishes", this definition cannot be considered as final for the purpose of determining whether a particular article falls within a

particular entry chargeable with a particular rate of tax. Sales tax is concerned with transactions of sales which are entered into in the market.

Therefore, along with the dictionary or the etymological sense which attaches to a particular article, we cannot lose sight of the fact that the article

concerned is a marketable article and that being so, the manner in which that article is known by those associated with it in the market, is also an

important element which should be taken into consideration. In fact, the Supreme Court has provided the ratio which would govern such cases in

two of its decisions. The first decision is given in *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer, Akola, and Another* ([1961] 12

S.T.C. 286 (S.C.)). The question which was involved in that case was whether betel leaves would be covered by the word "vegetable" as it was

found in item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947. During the course of the arguments before the Supreme Court, reliance

was placed on the dictionary meaning of the word "vegetable" as given in Shorter Oxford Dictionary where that word was defined as "of or

pertaining to, comprised or consisting of, or derived, or obtained from plants or their parts". It is obvious that this dictionary meaning clearly carries

betel leaves within the definition of the word "vegetable". But the Supreme Court refused to be guided solely by the dictionary meaning and held

that the word should be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It is

further observed in that case that if the word has not been defined in the Act and being a word of everyday use it must be constructed in its popular

sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." Another decision

of the Supreme Court on these lines is found in Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh ([1967] 19 S.T.C.

496 (S.C.)). In that case their Lordships of the Supreme Court construed the word "coal" found in entry 1 of Part III of Schedule II to the Madhya

Pradesh General Sales Tax Act, 1958. The test which was devised while construing this word was, what was the meaning which persons dealing

with coal and consumers purchasing it as fuel would give to that word. It was further held in that case that the sales tax statute, being one levying a

tax on goods, must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as "coal" according

to the meaning ascribed to it in common parlance.

9. In our opinion, both these decisions of the Supreme Court supply sufficient guidance for coming to the conclusion whether the dispute article

which is known as "Limical" can fall within the category of "foodstuff" or "food provision" of any kind.

10. It is obvious from the ratio of the above two decision of the Supreme Court that it is primarily the way in which an article is understood in

common parlance, which would decide the question whether that particular article is covered by a particular entry of a schedule. Therefore, the

first question is whether, in common parlance, this disputed article called "Limical" is understood as "foodstuff" or "food provision". From the

material supplied by the pamphlet produced by the opponents it is quite evident that this product is a combination of various vitamins, proteins and

minerals which are necessary for sustenance of health but which at the same time, would not increase the caloric value. This obviously serves a

limited purpose of reducing obesity. Again, it cannot be used by a normal man as "food" though it may be used by one who wants to reduce his

weight. Even the person who wants to reduce his weight cannot sustain himself on this product for ever. Even the manufacturers do not

recommend its use for more than a limited period. It, therefore, follows that "Limical" is a product which is not normally used by a normal man as

an article of food, and that even when it is used by one who wants to solve his problem of obesity, it is not used for an indefinite period. Under the circumstances, so far as understanding in the common parlance is concerned, it is not possible to hold that this article can be utilised either as a foodstuff" or as "food provision" by a normal man. It is altogether a different matter if this article is taken in exceptional circumstances by a person who wants to solve a particular problem for a limited period of time. But that would not render it as "foodstuff" or "food provision" as understood is common parlance.

11. We find that this aspect of the case is more elaborately discussed by the Supreme Court in the case of The State of Bombay Vs. Virkumar

Gulabchand Shah, . In that case the commodity which was considered was turmeric and the question was whether this commodity fell within the

meaning of the term "foodstuff" as found in clause 3 of the Spices (Forward Contracts Prohibition) Order, 1944, read with section 2(a) of the

Essential Supplies (Temporary Powers) Act, 1946, Bose, J., while discussing this point has made the following pertinent remarks :

Much learned judicial thought has been expended upon this problem - what is and what is not food and what is and what is not a foodstuff; and

the only conclusion I can draw from a careful consideration of all the available material is that the term "foodstuff" is ambiguous. In one sense it has a

narrow meaning and is limited to articles which are eaten as food or purposes of nutrition and nourishment and so would exclude condiments and

spices such as yeast, salt, pepper, baking powder and turmeric. In a wider sense, it includes everything that goes into the preparation of food

proper (as understood in the narrow sense) to make it more palatable and digestible.

These observations show that in the narrow sense the expression "foodstuff" is limited to those articles which are eaten as "food". In the wider

sense, the expression includes everything that goes into the preparation of food (as understood in the narrow sense). Therefore, the emphasis is

obviously on the narrow sense within the meaning of which the article would be one which is "eaten as food". Therefore, one important criterion

which is supplied by these observations of Bose, J., is that an article which is eaten as food for the purpose of nutrition would be "foodstuff". We

find that observations similar to those, which are quoted above, are also made by Fazl Ali, J., in his concurring judgment. These observations are

as under :

The question whether turmeric is "foodstuff" is not entirely free from difficulty. In one sense, everything which enters into the composition of food

so as to make it palatable may be described as "foodstuff", but that word is commonly used with reference only to those articles which are eaten

for their nutritive value and which form the principal ingredients of cooked or uncooked meal, such as wheat, rice meat, fish, milk, bread, butter,

etc.

Even these observations put emphasis on the fact that only those article which are ""eaten"" at the table would be covered by the expression

foodstuff"".

12. Now if we apply these tests to the article in dispute, the question that would arise to be considered is whether ""Limical"" is an article which can

be normally ""eaten"" at the table. If the answer is in the affirmative, then there would be no difficulty in holding that it is a ""foodstuff"", or a ""food

provision"". But if the answer is in the negative, then, it is difficult to hold that it would be covered by entry 6 of Schedule E. If the common parlance

test is to be applied, the obvious question which may be asked is whether it can be offered as ""food"" to a normal person, who is found hungry or to

a guest who is required to be entertained. In this connection, we cannot avoid the temptation of quoting the following observations of Bose, J., in

the above referred case of The State of Bombay Vs. Virkumar Gulabchand Shah, :

So far as "food" is concerned, it can be used in a wide as well as a narrow sense and, in my opinion, much must depend upon the context and

background. Even in a popular sense, when one asks another, "Have you had your food ?", one means the composite preparations which normally

go to constitute a meal - curry and rice, sweetmeats, pudding, cooked vegetables and so forth. One does not usually think separately of the

different preparations which enter into their making, of the various condiments and spices and vitamins, any more than one would think of

separating in his mind the purely nutritive elements of what is eaten from their non-nutritive adjuncts.

Applying the ration of these observations to the facts of the present case, we can

say that when one demands foodstuff or food provision, what he really demands is the satisfaction which one gets from eating a particular food article. A person demanding food does not generally demand a particular quantity of vitamins, proteins, fat and carbohydrates. He is mostly unmindful of its caloric value. The only consideration in his mind at the time of demanding food is the satisfaction an ordinary article of food is likely to give to a normal human being. The satisfaction is physical as well as mental and it has little relation, if any, to the vitamin, or protein value of the article he consumes. In our opinion, therefore, while complying with the test of common parlance, as applied by the Supreme Court in the above referred two decisions, the mental satisfaction which an article of food gives to a normal human being, cannot altogether be overlooked. If this is the proper approach, then we think that the mere fact that an article of food supplies nourishment in the form of vitamins, proteins and carbohydrates, would not convert all those articles which supply this nourishment into articles of food. If the sole criterion for determining whether a particular article is food or foodstuff, is its value for sustenance, then most of the articles, which contain various proportions of vitamins, proteins and carbohydrates and minerals, would be covered by the definition of the word "food". In our opinion, therefore, the mere fact that a particular article provides nourishment and sustenance would not always carry that article within the definition of "foodstuff" or "food provision".

13. In this view of the matter, we find that the Tribunal was right in coming to the conclusion that the disputed article called "Limical" whether in the form of biscuits or in the form of powder, is not covered by entry 6 of Schedule E attached to the Act. Therefore, our answer to the question which is referred to us is in the negative. This reference is disposed of accordingly. The matter is sent back to the Tribunal for dealing with it according to law. The Commissioner of Sales Tax shall bear the costs of the opponents in this reference.

Reference answered in the negative.