HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Sales Tax Revision / Reference No. 58/2013

M/s Devyani International Limited, 109, Ganpati Plaza, M.i. Road, Jaipur

----Petitioner

Versus

The Additional Commissioner It Commercial Taxes, Rajasthan, Kar Bhawan, Jaipur

----Respondent

Connected With

S.B. Sales Tax Revision / Reference No. 91/2016

M/s A One Enterprises

----Petitioner

Versus

A C T O Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 92/2016

M/s A One Enterprises

----Petitioner

Versus

A C T O Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 93/2016

M/s A One Enterprises

----Petitioner

Versus

A C T O Jaipur

----Respondent

For Petitioner(s)	:	Mr. Alkesh Sharma with Mr. Ayush Sharma & Mr. Himanshu Morwal Mr. Vivek Singhal
For Respondent(s)	:	Mr. Punit Singhvi with Mr. Ayush Singh

HON'BLE MR. JUSTICE SAMEER JAIN

Judgment / Order

Reserved On: **05/04/2023**

Pronounced On: **05/05/2023**

1. The present bunch of Sales Tax Revisions / References (for short "STRs") were admitted on following question(s) of law:

In STR No. 58/2013:

> *"Whether 'Pizza' falls within the notification dated 09.03.2010 and is entitled for exemption of payment of VAT in excess of 5% thereupon"*

In STR Nos. 91/2016, 92/2016, and 93/2016:

> *"(i) Whether sandwich is a cooked food as per notification dated 09.03.2010?*
> *(ii) Whether in the facts and circumstances of the case and the proper interpretation of the term branded bakery product and the provisions of law, the Ld. Rajasthan tax Board is justified in holding that the sale of sandwich as a branded bakery product?*
> *(iii) Whether the subsequent legislature amending the notification and the rate schedule can be used for interpretation of the earlier provisions of law?"*

2. The *lis* in question pertains to classification of 'pizza' and 'sandwich' under the Rajasthan Value Added Tax Act, 2003 (for short "RVAT"). The common issue for consideration of this Court is whether 'pizza' and 'sandwich' fall within the ambit of "cooked food" to claim benefit of exemption notification dated 09.03.2010? Since the issue involved is identical, STR No. 58/2013 is taken as lead file.

3. Learned counsels for the petitioner-assessee, at the outset, has drawn attention of this Court to the Notification No. F.12(22)FD/Tax/10-87 dated 09.03.2010 issued by Finance Department (Tax Division), which reads as under:

> *"S.O.391- In exercise of the powers conferred by sub-section (3) of section 8 of the Rajasthan Value Added*

Tax Act, 2003 (Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby exempts from tax payable by a dealer, to the extent the rate of tax exceeds 5 percent, on the sale of food cooked by him and served in the restaurants and hotels below three star category."

4. Learned counsels for the petitioner-assessee submits that the learned Tax Board has erred in law and in fact by holding that 'pizza' and 'sandwich' are 'baked branded products' and not 'food'. Learned counsels for the petitioner-assessee submits that there is no dispute with regard to the fact that the restaurants run by the petitioner-assessee are below 3 star category and that 'pizza' is prepared by the process of baking, which is one of the various process of cooking. It is submitted that 'pizza' is a compete food which provides valuable nutrients required by the human body viz. carbohydrates, fats, vitamin, proteins, minerals, etc. Similarly, sandwich is also prepared by cutting the bread loaf, which is also prepared in the restaurant, into half and then by adding either vegetable patty or non-vegetarian item like meat and chicken (the fillings), which are prepared by frying and heating. The sandwich also contains various fresh vegetables and sauces and is in itself a complete meal having high nutritional value and nourishment, which is cooked by the petitioner-assessee and sold to various customers.

5. Learned counsels for the petitioner-assessee have challenged the orders of the Tax Board, primarily, on the following grounds:

a) The first contention of the petitioner-assessee is that the revenue has not discharged its onus to prove that 'pizza' and 'sandwich' are not cooked foods. It is submitted that neither any

expert / technical opinion was sought nor any evidence was brought on record to prove their point. Rather, the revenue has relied upon definitions provided on 'Wikipedia' and even then have misconstrued the definition therein. It is submitted that as per settled position of law, onus or burden to show that a product falls within a particular tariff item is always on the revenue and since the revenue has failed to discharge its onus, the reference ought to be allowed in the favour of the petitioner-assessee. Reliance in this regard is placed on Apex Court judgments of **Voltas Ltd. vs. State of Gujarat** reported in **[(2015) 80 VST 12 (SC)]**, **Commissioner of Central Excise vs. Hindustan Lever Ltd.** reported in **(2015) 10 SCC 742**, **Commissioner of Central Excise, Calcutta vs. Sharma Chemical Works** reported in **[(2003) 132 STC 251 (SC)]** and judgment of Division Bench of this Court in the case of **State of Rajasthan and Ors. vs. Deys Medical Stores Ltd. and Ors.** (DBCWP No. 2139/1999 decided on 27.07.2007).

b) The second contention of the petitioner-assessee is that notification dated 09.03.2010 has used the term "food cooked by him" and the 'pizza'/'sandwich' sold by the petitioner-assessee is covered within the four corners of the said notification. It is an established cannon of classification that a specific entry would override a general entry. Reliance in this regard is placed on Apex Court judgments of **State of Maharashtra vs. Bradma of India Ltd.** reported in **[(2005) 140 STC 17 (SC)]**, **Hindustan Poles Corporation vs. Commissioner of Central Excise, Calcutta** reported in **[(2006) 145 STC 625 (SC)]**, and **Krishi Utpadan Mandi Samiti and Ors. vs. Ved Ram** reported in **[2012 (277)**

ELT 299 (SC)]. It is stated that a special entry must prevail over the general entry and that the residuary clause can be invoked only if the department can establish that the goods in question can, by no conceivable process of reasoning, be brought under any of the tariff items. Since the goods in question, namely 'pizza' and 'sandwich', are covered by notification dated 09.03.2010 being 'cooked food', therefore the petitioner-assessee has rightly collected and paid tax @ 5%.

c.) The third contention of petitioner-assessee is that both the lower authorities have relied upon judgments delivered by different Courts prior to the introduction of 'pizza' and 'sandwich' in the Indian food market. It is stated that both the authorities have relied upon the traditional/conservative meaning of the term 'food' when in-fact the concept of food is not static and has changed continuously over the course of time having regard to newly developing techniques of preparation of food. Further, the judgment of Madhya Pradesh High Court in the case of Commissioner of **Sales Tax vs. Shri Ballabhdas Ishwardas** reported in **[(1968) 21 STC 309 (MP)**], relied upon by learned Tax Board, has been distinguished by Division Bench of this Court in the case of **Assistant Commercial Taxes Officer vs. Azad Bakery and Ors.** reported in **1976 WLN (UC) 539**. The Division Bench of this Court has held that even biscuits and bread fall within the definition of 'cooked food' in view of the fact that they are cooked by the process of baking. It is submitted that where biscuits and bread have been held to fall within the meaning of 'cooked food' by Division Bench of this Court, there is conceivably no reason as to why 'pizza' and 'sandwich' also fundamentally

prepared by the same process should not be so construed. Therefore, it is contended that the reliance placed upon the judgments by the learned Tax Board is entirely misplaced and misconceived.

d.) The next contention of the petitioner-assessee is that the State Government has included 'pizza' and 'sandwich' in the broad category of 'cooked food' in subsequent notifications dated 14.07.2014 and 09.03.2015 and therefore it is contended that intention of the State Government was to treat 'pizza' and 'sandwich' as 'cooked food' all through. It is submitted that it is a settled position of law that subsequent legislation can be looked at in order to see what is the proper interpretation to be put upon the earlier legislation when the earlier legislation is found to be obscure or ambiguous or capable of more than one interpretation. Reliance in this regard is placed on Apex Court judgments of **Pappu Sweets and Biscuits vs. Commissioner of Trade Tax U.P Lucknow** reported in **[(1998) 111 STC 425 (SC)]**, and **V.M. Salgaocar and Bros. Pvt. Ltd. vs. Commissioner of Income Tax** reported in **(2000) 5 SCC 373**.

e.) In support of their contention that 'pizza' and 'sandwich' are cooked food, learned counsels for the petitioner-assessee have relied upon the judgments of **S. Samuel and Ors. vs. Union of India (UOI) and Ors.** reported in **(2004) 1 SCC 256**, **Sat Pal Gupta and Ors. vs. State of Haryana and Ors.** reported in **(1982) 1 SCC 610**, **Nanjundeshwara Mart vs. State of Karnataka** reported in **[(1992) 84 STC 534 (Karnataka)]**, **Santosh Kumar Ghosh vs. The Commercial Tax Officer and Ors** reported in **[(1965) 16 STC 931**

(Calcutta)], **Commissioner of Sales Tax, M.P. vs. Regal Dairy** reported in **[(1981) 47 STC 374 (M.P.)]**, **Commissioner of Sales Tax, M.P. vs. Indore Coffee House** reported in **[(1981) 47 STC 375 (M.P.)]**, **Commissioner of Sales Tax, U.P. vs. Sunhari Lal Jain** reported in **[(1975) 33 STC 425 (All)]**, **Commissioner of Sales Tax, M.P. vs. Indian Coffee Workers Co-Op Society Ltd.** reported in **[(1970) 25 STC 43(M.P)]**, **S. Giridhar Shenoy vs. State of Kerela** reported in **[(1997) 104 STC 562 (Ker)]**, **T.T.K. Pharma Ltd. vs. Commissioner of Commercial Tax** reported in **[(2001) 121 STC 595 (M.P.)]**, and **C.T.O., A.E., Pali vs. M/s Maharaja Shree Ummaid Ltd.** reported in **[(2012) 34 TUD 287 (RTB)]**.

6. *Per contra*, supporting the concurrent findings of the authorities below, learned counsels for the revenue submits that no question of law worth consideration arises in the present STRs. Learned counsels for the revenue contends that the goods sold by the petitioner-assessee does not fall within the ambit of ‘cooked foods’ and are rather in the nature of ‘branded baked products’ and therefore the petitioner-assessee cannot get the benefit of exemption notification. As per common parlance, in India and more particularly in the State of Rajasthan, ‘pizza’ and ‘sandwich’ are not understood as ‘cooked food’ and revenue has proved the said contention sufficiently before all the authorities below and has thus discharged the onus on their part. Further, as per settled position of law, words used in a law imposing tax should be construed in the same way in which they are understood in ordinary parlance in the area in which the law is in force and also during which it was in force. It is further submitted that the

notification dated 09.03.2010 is an exemption notification and in case of ambiguity in exemption notification, the benefit of ambiguity must be strictly interpreted in favour of the revenue. In this regard, learned counsels for the revenue has relied upon judgments of **Annapurna Biscuit Manufacturing Co. vs. CST** reported in **(1981) 3 SCC 542**, and **Commissioner of Customs vs. Dalip Kumar & Co.** reported in **(2018) 9 SCC 1**.

7. Heard the arguments advanced by both the sides, scanned the record and considered the judgments cited at Bar.

8. The issue pertains to classification of 'pizza' and 'sandwich'. The learned Additional Commissioner, vide order dated 11.05.2011, has dealt with the classification in the following manner:

> "11. As per Assessing Authority सामान्यतः Cooked food का अर्थ होता है कि कच्ची एवं ताजा सब्जिया, दाल, चपाती, आटा, अण्डा, मॉस को क्रय किया जाने के पश्चात इन्हे धोने के पश्चात काटकर एवं निहित प्रक्रिया के तहत तेल/घी में मसालों को प्रयुक्त कर पकाया जाता है। इस प्रक्रिया मुें सामान्यतया अधिक समय लगता है। खाने को पकाने की विधि क्षेत्रवार भिन्न प्रकार की हो सकती है। Cooked food मे Preservatives का इस्तेमाल नही होता है एवं ताजा ingredients का ही प्रयोग किया जाता है, जबकि व्यवहारी द्वारा pizza की तैयारी में बहुत ही कम समय लगता है। तथा प्रयुक्त toppings में preservatives का इस्तेमाल किया जाता है। व्यवहारी द्वारा आवेदन पत्र में अंकित सामान Fast Food है न कि Cooked food क्यो कि इनको कम समय में कम तैयारी के साथ बनया जा सकता है उसकी Topping & Bread base preheated and precooked होती है। Cooked food की तैयारी Fast Food की तुलना में अधिक समय लगता है।
>
> 12. इसके अतिरिक्त व्यवहारी द्वारा आवेदन पत्र में अंकित सामान को serve करने में Traditional Cutlery की आवश्यकता नही होती है जबकि Cooked food हमेशा Traditional Cutlery में serve किया जाता है जैसा कि

http://en.wikipedia.org/wiki/fast मे बताया गया है "Nearly from its inception, fast food has been designed to be eaten "on the go", often does not require traditional cutlery, and is eaten as a finger food. Common menu item as food outlet include fish and chips, sandwiches, pitas, hamburgers, fried chicken, French fries, chicken nuggets, tacos, pizza, hot dogs and ice cream." उपरोक्त व्यवहारी द्वारा विक्रय किये जाने वाला pizza अधिसूचना के अनुसार रेस्टोरेण्ट में पकाये जाने वाले भोजन की श्रेणी में नही आता है।

….

17. So far pizza is concerned, it has a crust which is commonly known as pizza base which is prepared in an oven. The products which are made for human consumption after baking it in oven are commonly known as bakery products. The entry for bakery products has already been made at S. No.154 of Schedule IV appended to the Act, wherein, unbranded bakery products are taxable at 5%.

18. To add taste on the pizza base, spreading of different items is made on the base of pizza according to the taste of the consumer. The topping of pizza does not alter the basic character of pizza base which is bakery product. In India, Pizza is not treated as wholesome food, however, it is generally used as fast food likes snacks.

19. I have gone through the record, arguments advanced by the learned Authorized Representatives of the dealer and facts submitted by the Assessing Authority in his comments as well as opinion given by the State Level Departmental Committee.

20. As pizza is a bakery product and Domino's is brand name, hence, being a branded bakery product, it is taxable at the rate of 14%.

21. Therefore, the pizza sold by the applicant is not covered under the said notification."

From the aforesaid, it appears that the Additional Commissioner arrived at the conclusion that 'pizza' is not 'cooked food' based on the following observations:

(i) Cooked food is prepared by using oil/ghee and spices with application of heat by mainly through *chulha* or gas burner.

(ii) Cooked food only contains fresh ingredients and no preservatives, whereas the toppings used in the preparation of 'pizza' contains preservatives;

(iii) Preparation of cooked food takes time whereas 'pizza' can be prepared in considerably less time;

(iv) Since topping and bread base are preheated and precooked, 'pizza' would fall under the category of 'fast food' and not 'cooked food';

(v) Cooked food is necessarily served with traditional cutlery, whereas the same is not required with 'pizza' and 'sandwich';

(vi) Pizza is not distinguishable from pizza base, which is a baked product covered under Serial No. 154 of Schedule IV appended to the RVAT Act;

(vii) In India, pizza is not treated as 'wholesome food' but is treated as 'snacks'.

After considering the above, and relying on definition from Wikipedia, the Additional Commissioner determined that the product sold by the petitioner company was a 'branded bakery product' and hence liable to be taxed at 14%.

9. Similarly, the learned Tax Board also held that 'pizza' would not fall under the category of 'cooked food'. The relevant part of the Tax Board order dated 08.04.2013 is reproduced as under:

> *"17. अतः माननीय न्यायालयों द्वारा प्रतिपादित सिद्धांत के अनुसार हम पाते है कि "Food" अर्थात भोजन क्षेत्र, संस्कृति व देश एवम् राज्य के लोगो की सामान्य आदत के अनुसार विभिन्न प्रकार का हो सकता है, परन्तु सामान्य बोलचाल की भाषा में भोजन किसे कहते है ? यह स्पष्ट है जो वस्तुयें नियमित समय में भोजन के रूप में संतुष्टि के लिये खाई जाती है जैसे सब्जी, रोटी, चावल व अन्य सहायक सामग्री आदि।*

राजस्थान राज्य में किसी भी होटल एवं रेस्टोरेन्ट में भोजन चाहने पर किसी को भी ''पिज्जा'', ''बर्गर'' या बिस्कुट आदि नही परोसा जाता है। हस्तगत प्रकरण में भी माननीय सर्वोच्च न्यायालय के उक्त कॉमन पारलेंस टेस्ट को अमल में लाने पर स्पष्ट हो जाता है कि ''पिज्जा'', भोजन नही है बल्कि एक विशिष्ट खाद्य वस्तु है एवं इसी कारण विधायिका द्वारा ''पिज्जा'' ''ब्रेड'' को सामान्य ''ब्रेड'' से अलग करते हुये कर योग्य घोषित किया है जो कि अधिनियम के तहत् जारी अनुसूची –IV की प्रविष्टि संख्या –100 से आच्छादित है।

19. चूंकि अपीलार्थी व्यवहारी द्वारा बिक्रीत ''पिज्जा'' व्यवसायिक प्रयोजनार्थ बनाया एवम् विक्रय किया जाता है जो सामान्यतया भोजन नही कहा जा सकता। अतः पिज्जा अधिनियम की अनुसूची – प्रथम के इन्द्राज संख्या –127 की श्रेणी में कर मुक्त अवधारित नही किया जा सकता।

20. ''फूड'' के कर दर के बिन्दु पर यदि अधिनियम के तहत् जारी अनुसूचियों का अध्ययन करें तो हम यह पाते है। कि ''फूड'' को अनुसूची –1 से IV के तहत् किसी भी कर दर से कर योग्य होना घोषित नही किया गया है।

अतः यह पीठ यह अवधारित करती है कि ''पिज्जा'' एक विशिष्ट वस्तु है जो ''भोजन'' की श्रेणी में नही आता है, भले ही High Calorie युक्त है एवम् उक्त अधिनियम की अनुसूची–V के तहत् 14 प्रतिशत की दर से कर योग्य है।

23. अतः उक्त तथ्य को ध्यान में रखते हुये हम अपीलार्थी व्यवहारी द्वारा बिक्रीत ''पिज्जा'' सामान्य बोलचाल की भाषा (Common Parlance) में भोजन नहीं है। इसलिये चाहे इसे होटल या रेस्टोरेन्ट में पकाया जाये या विक्रय किया जाये तो भी अधिसूचना दिनांक 09.03.2010 से आच्छादित नही होता है।

24. अपीलार्थी व्यवहारी के विद्वान अभिभाषक द्वारा यह तर्क कि ''पिज्जा ब्रेड'' वैट अनुसूची –IV की प्रविष्टि संख्या –100 के अनुसार 5 प्रतिशत से कर योग्य है तथा ''पिज्जा'' तैयार करने में बेस पर चीज, पनीर, सॉस एवम् सब्जियां आदि का प्रयोग कर माईक्रोवेव ओवन में बेक किया जाने से ''पिज्जा ब्रेड'' की प्रकृति नही बदलती है बल्कि ''पिज्जा ब्रेड'' ही रहती है। इसलिये भी ''पिज्जा'' 5 प्रतिशत की दर से कर योग्य है, विद्वान अभिभाषक का तर्क बलहीन होने के कारण अमान्य किया जाता है। सामान्यतया ''पिज्जा'' जो ग्राहको द्वारा चाहा

जाता है वह कच्चा पिज्जा ब्रेड व अन्य सामग्री के साथ पकाये जाने के उपरांत ही खाद्य सामग्री बनता है। ''पिज्जा ब्रेड'' से भिन्न वाणिज्यिक वस्तु है इसलिये अनुसूची –IV की प्रविष्टि संख्या –100 में शामिल नही होने के कारण 5 प्रतिशत की दर से कर योग्य नही हो सकती।

25. यदि हम उक्त वर्णित अधिसूचना एवम् प्रक्रिया का मिश्रित रूप से अध्ययन करें तो हम यह पाते हैं कि अपीलार्थी व्यवहारी द्वारा पिज्जा बेस को उसके द्वारा रेस्टोरेन्ट में माईक्रोवेव ओवन में पकाया जाकर, ग्राहकों को विक्रय/परोसा जाता है लेकिन कॉमन पारलेंस टेस्ट के अनुसार ''पिज्जा'' भोजन नही है इसलिये अधिसूचना दिनांक 09.03.2010 से आच्छादित नहीं है। उक्त अनुसार यह पीठ यह अवधारित करती है कि ''पिज्जा'' एक विशिष्ट खाद्य पदार्थ है जो कि जनसामान्य के भोजन के रूप में काम नहीं आता है। इसलिये माननीय सर्वोच्च न्यायालय के उपर वर्णित न्यायिक दृष्टांत में प्रतिपादित विधि के आलोक में, ''पिज्जा'' भोजन से भिन्न वस्तुत होने के कारण वैट अधिनियम की अनुसूची V के तहत् 12.5/14 प्रतिशत की दर से कर योग्य है। अधिसूचना दिनांक 09.03.2010 अनुसार ''पिज्जा'' भले ही रेस्टोरेन्ट में पकाया जाकर विक्रय किया जाता हो ''भोजन'' की श्रेणी में नहीं आने के कारण इससे आच्छादित नही है।"

From the aforesaid, it appears that the Tax Board has not even determined 'pizza' to be 'food' in the common parlance, even though it is cooked and served in restaurants or hotels. The Tax Board has restricted the definition of food to those meals that are consumed at regular hours/intervals for satisfaction of hunger and for sustenance, like vegetables, chapatti/roti, rice, etc.

10. In the opinion of this Court, both the authorities below have relied on extraneous, unsound, specious, and ill-founded factors and have therefore reached a perverse conclusion for the following reasons:

10.1) The burden to prove that a specific product falls within a particular tariff is always on the revenue, more so when the

revenue is trying to classify products in the residual entry as against the specific entry. In the instant case, the revenue has utterly failed to adduce any evidence, technical or otherwise, to substantiate its claim that 'pizza' and 'sandwich' are not 'cooked food'. The revenue has not brought on record any expert opinion, any scientific study or survey to prove that 'pizza' and 'sandwich' are in-fact not 'cooked food'. The reliance placed on Wikipedia definitions was also erroneous, as per dictum of Apex Court in the case of **Ponds India Ltd. (Merged with H.L. Ltd) Vs. Commissioner of Trade Tax Lucknow** reported in **[(2008) 15 VST 256(SC)]**. Further, this Court fails to understand as to how any of the factors considered in the order dated 11.05.2011 would lead to the conclusion that 'pizza' or 'sandwich' is not 'cooked food'. The factors, as stated in para 8 above, are entirely irrelevant for determination of the products involved herein. What is shocking is that the Additional Commissioner has placed such strong reliance on factors that were themselves never proved or substantiated. Merely by stating that cooked food is necessarily prepared on gas burner, with aid of oil/ghee and spices, using exclusively fresh ingredients and then served with traditional cutlery, the Additional Commissioner arrived at the conclusion 'pizza' or 'sandwich' are not 'cooked food'. If the revenue wanted to rely on these factors, it was the duty of the revenue to prove/establish that these factors are themselves true and that these factors are essential for determination of what construes as 'cooked food'. Since the same was not done by the revenue, the Assistant Commissioner has wrongly relied upon the factors and wrongly accepted them on their face value.

10.2) The Tax Board has also arrived at the conclusion that 'pizza' or 'sandwich' would not be covered under the category of 'cooked food' because these products are not 'food' as per the common parlance theory because the general public do not see these items as a substitution to regular meals which include vegetables, *chapatti*/*roti*, rice etc. However, this conclusion of the Tax Board is also erroneous for the reasons that the same was reached without appreciation of any evidence whatsoever. The Tax Board merely relied upon judgments that neither deal with the issue involved nor are they in consonance with the present time, culture, eating habits, and technology. The judgment of **Ballabhdas Ishwardas (supra)** specifically, relied upon by Tax Board, which held 'biscuits' not be 'cooked food' has already been distinguished by Division Bench of this Court in the case of **M/s Azad Bakery (supra)**. Even otherwise, the reasoning behind **Ballabhdas Ishwardas (supra)** was that no one who goes to a hotel or restaurant for a meal and asks for cooked food would accept biscuit; that the term 'cooked food' was confined to those cooked things which one generally takes at regular meal hours. However, with the advent of time and change in societal eating norms, the reasoning of Tax Board that 'pizza' or 'sandwich' cannot be considered 'meals' does not entirely hold true. In any case, since the finding of the Tax Board is not based on cogent evidence, the same cannot be sustained.

11. What is also significant is that the State Government, vide Notification No. F12(59)FD/Tax/2014-14 dated 14.07.2014 amended Schedule V of the RVAT Act and inserted Entry Nos. 1-78

providing for rate of tax @ 14% on the goods notified therein. Entry No. 16(v) reads as under:

> *"16(i) Cooked food except as provided in entry No. 202 of Schedule-IV.*
>
> *...*
>
> *(v) Pizza, burgers, hamburgers, sandwich, hot dog, nuggets."*

The aforesaid entry no. 16(v) was further amended by Notification No. S.O. 263 dated 09.03.2015 issued by Finance Department (Tax Division), the relevant part of which reads as under:

> *"(v) Cooked food like pizza, burger, fried chicken, French fries, sandwich, hot dog, noodles, potato chips, bakery items and any other cooked food item served or sold including home delivery thereof, under a brand name by any branded chain outlet of cooked food."*

A bare perusal of the above subsequent notification would reveal that the State Government had itself considered items like 'pizza' and 'sandwich' to be 'cooked food'. As rightly submitted by learned counsels for the petitioner-assessee, it is a settled position of law that subsequent legislation can be looked at in order to see what is the proper interpretation to be put upon the earlier legislation when the earlier legislation is found to be obscure or ambiguous. Since the State Government has included 'pizza' and 'sandwich' in the broad category of 'cooked food' in subsequent notifications dated 14.07.2014 and 09.03.2015, therefore the sale of 'pizza' and 'sandwich' would qualify as sale of 'cooked food' under the notification dated 09.03.2010 as well.

12. In view of the above, this Court holds that the question(s) of law framed above are answered in the favour of the petitioner-assessee and against the respondent-revenue. As a

result, ‘pizza’ and ‘sandwiches’ are held to be ‘cooked foods’. The consequential relief be awarded to the petitioner-assessee within a period of 90 days.

13. All these STRs are allowed. Pending application(s), if any, stands disposed of.

(SAMEER JAIN),J