2026 INSC 195

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 2557-2578 OF 2026
[Arising out of SLP (C) Nos. 6074 – 6095 of 2019]

M/S HAMDARD (WAKF) LABORATORIES …APPELLANT(S)

VERSUS

COMMISSIONER, COMMERCIAL TAX,
U.P. COMMERCIAL …RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2579 OF 2026
[Arising out of SLP (C) No. 16125 of 2022]

M/S HAMDARD (WAKF) LABORATORIES … APPELLANT(S)

VERSUS

COMMISSIONER, COMMERCIAL TAX,
U.P. COMMERCIAL … RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

Leave granted.

2. The present batch of appeals arises out of the common judgment and order dated 02.07.2018 passed by the High Court of Judicature at Allahabad[1] in Sales / Trade Tax Revision Nos. 617 of 2012, 527 of 2015, 383 of 2017, 410 of

[1] Hereinafter referred to as "the High Court"

2017, 47 of 2018, 528 of 2015, 529 of 2015, 7 of 2018, 8 of 2018, 9 of 2018, 457 of 2012, 458 of 2012, 459 of 2012, 460 of 2012, 461 of 2012, 462 of 2012, 464 of 2012, 465 of 2012, 466 of 2012, 467 of 2012, 468 of 2012 and 469 of 2012, whereby the High Court dismissed the revisions preferred by the appellant and affirmed the order of the Commercial Tax Tribunal, Ghaziabad[2] holding that the appellant's product "Sharbat Rooh Afza" was liable to Sales Tax / Value Added Tax at the rate of 12.5% under the residuary entry contained in Schedule V of the Uttar Pradesh Value Added Tax Act, 2008[3].

2.1. The connected appeal has been filed against the judgment and order dated 03.08.2022 passed by the High Court in Sales / Trade Tax Revision Defective No. 38 of 2022, wherein the High Court, following its earlier judgment dated 02.07.2018 in the aforesaid revisions, dismissed the revision and held that the appellant's product "Sharbat Rooh Afza" does not qualify as a fruit drink and is exigible to Value Added Tax at the rate of 12.5% under the residuary entry.

3. The dispute pertains to the period from 01.01.2008 to 31.03.2012. Since the issue involved in all these appeals is identical and the parties are the same, they were heard analogously and are being disposed of by this common judgment.

4. The appellant is the manufacturer of the product "Sharbat Rooh Afza" which is a non-alcoholic sweetened beverage prepared from invert sugar and

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[2] For short, "Tribunal"

[3] For short, "UPVAT Act"

blended with fruit juices, vegetable extracts and added flavours. According to the appellant, the fruit juice content in "Rooh Afza" is 10%. During the assessment years in question, the appellant manufactured and sold the said product and paid VAT at the rate of 4% on the sales thereof along with its monthly returns, treating the product as "Fruit Drink" or "Processed Fruit" covered under Entry 103 of Part A of schedule II of the UPVAT Act.

4.1. The Joint Commissioner (Corporate Circle), Commercial Tax, Ghaziabad[4], however, made provisional assessments holding that "Sharbat Rooh Afza" was an unclassified item taxable at 12.5% under the residuary entry in Schedule V. Aggrieved thereby, the appellant preferred first appeals which were dismissed by the Additional Commercial (Appeals), Commercial Taxes Range, Ghaziabad[5]. The second appeals before the Tribunal also came to be dismissed. Challenging the orders of the Tribunal, the appellant preferred revisions before the High Court. By the impugned judgments, the High Court dismissed the revisions and affirmed the concurrent findings of the authorities below. Hence, the appellant has preferred the present appeals before this court.

CONTENTIONS OF THE PARTIES

5. The learned senior counsel for the appellant submitted that the product "Sharbat Rooh Afza" is a non-alcoholic summer drink which has been consumed by the general public in India for several decades. It is manufactured

[4] For short, "the Assessing Authority"
[5] For short, "the Appellate Authority"

primarily from pineapple and orange juice blended in a specific formulation along with fruit extracts and herbs such as tarbooz, lemon, keora, gajar, munaqqa, dhania, khurfa, rose, palak, pudina, hara ghia, kasni, sandal sufed, khas hindi, chharila, gul nilofar, and berg gaozaban. The product contains not less than 10% fruit juice.

5.1. It was submitted that pursuant to the mandate of this Court in ***Hamdard Dawakhana (Wakf), Delhi and another v. Union of India***[6], the appellant has since 1965 classified the product under the Fruit Products Order, 1955 as a fruit product / sharbat containing the prescribed minimum fruit juice content.

5.2. The learned senior counsel submitted that since the inception of the UPVAT, the appellant, maintaining uniformity in classification, sought to bring the product within Entry 103, namely, "processed or preserved vegetables and fruits including fruit jams, jelly, pickle, fruit squash, paste, fruit drink and fruit juice (whether in sealed containers or otherwise).

5.3. It was urged that Entry 103 is an inclusive and umbrella entry intended to cover all products having a substantial nexus with fruits and fruit-based beverages.

5.4. It was further submitted that the High Court by the impugned judgments, erroneously accepted the contention of the Revenue by applying the common parlance test and holding the product to be a miscellaneous preparation exigible to tax under the residuary entry, also observing that in the absence of the word

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[6] AIR 1965 SC 1167

"sharbat" in Entry 103, the product must necessarily fall outside the said entry. According to the learned senior counsel, the High Court failed to consider that the product was clearly recognised and defined under the relevant statutory instruments governing taxation and food regulation as "fruit drink".

5.5. In this regard, the learned senior counsel submitted that Supplementary Note 3 to Chapter 21 of the Central Excise Tariff Act, 1985 defines "Sharbat" as a non-alcoholic sweetened beverage or syrup containing not less than 10% fruit juice or flavoured with non-fruit flavours, such as rose, khus or kevara, excluding aerated preparations. This definition is materially in consonance with Rule 2(j) of the Fruit Products Order, 1955. Thus, both the taxing statute and the food regulation framework recognise "Sharbat" as a fruit-based beverage or fruit drink, leaving no scope for treating the product as a miscellaneous or residuary item.

5.6. It was submitted that the High Court failed to correctly apply the common parlance test inasmuch as the Revenue did not discharge the burden cast upon it to establish that the product falls within the residuary entry. It was contended that the material evidence placed on record by the appellant has not been duly considered.

5.7. The learned senior counsel further submitted that the High Court erred in not applying the "essential character test", which mandates that classification must be determined on the basis of the constituent that imparts the product its essential character. According to the learned senior counsel, it is not mere

percentage or predominance of an ingredient; in the present case, sugar syrup or fruit content that is determinative, but the ingredient that lends the product its distinctive and essential character. It was argued that although sugar syrup constitutes approximately 80% of the composition, it merely functions as a preservative medium for the fruit content. The fruit component, though stated to be about 10% in absolute terms, is the ingredient that imparts to the product its identity and essential character. It was further submitted that if the sugar base is excluded for analytical purposes, the fruit content would constitute nearly 50% of the remaining composition.

5.8. Reliance was placed on the decision of this Court in ***Mauri Yeast India Private Limited v. State of Uttar Pradesh and another***[7], to contend that where a specific entry is capable of encompassing the product, recourse to the residuary entry is impermissible. It was submitted that the said principle has been reiterated consistently.

5.9. Reference was also made to the Constitution Bench judgment in ***Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and Others***[8], wherein it was held that taxing statutes must be interpreted strictly and literally, and the other tools of interpretation namely contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. It was urged that the

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[7] (2008) 5 SCC 680
[8] (2018) 9 SCC 1

High Court departed from these settled principles by resorting to assumptions and the common parlance test rather than applying the plain language of Entry 103.

5.10. Reliance was placed on the order dated 11.04.2022 passed by the Delhi VAT Appellate Tribunal in Appeal Nos. 1109-1110 of 2013 [Hamdard Dawakhana (Wakf) v. Commissioner of Trade & Taxes, Delhi] wherein it was held that "Rooh Afza" merits classification as a "fruit drink". It was submitted that the said order has attained finality.

5.11. The learned senior counsel submitted that "Rooh Afza" is classified as a fruit drink taxable at the lower rate in all other States across the country, except Uttar Pradesh and Haryana.

5.12. In view of the above, it was contended that the impugned judgments are legally unsustainable and liable to be set aside by holding that "Sharbat Rooh Afza" is classifiable under Entry 103 as a fruit drink and not under the residuary entry.

6. *Per contra,* the learned counsel for the respondent submitted that though the appellant claims the product as "Sharbat" containing at least 10% fruit content, Entry 103 does not expressly include either "Sharbat" or "Fruit Product" within its ambit. Upon consideration, the Assessing Authority rejected the claim of the appellant and held that the product falls under the residuary entry i.e., Entry No. 1 of Schedule V of the UPVAT Act and accordingly levied

tax at 12.5%. The said orders were successively affirmed by the Appellate Authority, the Tribunal and the High Court.

6.1. It was submitted that the licence issued to the appellant under the Food Products Order, 1955[9] authorises it to manufacture "Non-Fruit Syrup / Sharbat". Clause 11 of the FPO prescribes mandatory conditions regarding the manner in which fruit and non-fruit products are to be described and labelled. Clause 11 (1) stipulates that any beverage not containing at least 25% fruit juice shall not be described as fruit syrup, fruit juice, squash, cordial or crush and must be described as "Non-Fruit Syrup". Clause 11(2) mandates that such non-fruit beverages and sharbats shall be clearly marked as "Non-Fruit" in a conspicuous manner and prohibits the use of any representation suggesting that the product is a fruit product. It was therefore contended that the appellant holds a licence to manufacture a "Non-Fruit Syrup / Sharbat"; that under the governing statutory regime any beverage containing less than 25% fruit juice must mandatorily be described as "non-fruit"; and that the appellant is statutorily prohibited from marketing the product as a fruit product. In such circumstances, a product which is required by law to be described, labelled and sold as "Non-Fruit" cannot be treated as a "Fruit Drink" for taxation purposes.

6.2. It was submitted that mere presence of 10% fruit content, which has admittedly been further reduced now, does not qualify the product as a fruit

[9] For short, "FPO"

drink, particularly when Clause 11(1) of the FPO prescribes a minimum threshold of 25% fruit juice content for a drink to qualify as a "fruit drink".

6.3. It was urged that the use of the word "shall" in Clause 11 renders the provision mandatory, leaving no discretion to the manufacturer or the authorities, and any deviation from the same would defeat the object of the Fruit Products Order, which is to protect consumers from being misled.

6.4. It is a well-settled principle that in interpreting entries in Excise or Sales Tax statutes, the meaning as understood in common or commercial parlance must prevail, unless the statute provides a specific definition. Reliance in this regard was placed on ***CST v. Jaswant Singh Charan Singh*** [10] **,** ***Indo International Industries v. CST***[11]**,** ***and Deputy Commissioner v G.S. Pai***[12].

6.5. The learned counsel contended that applying the common parlance test, a beverage such as "Sharbat Rooh Afza", containing only 10% fruit juice and being marketed and labelled as a non-fruit syrup, cannot be regarded by consumers or traders as a "Fruit Drink".

6.6. It was submitted that merely because the product contains some quantity of fruit extract, it does not automatically qualify as a fruit drink within the meaning of Entry 103, especially when statutory restrictions prohibit the appellant from marketing it as such.

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[10] 1967 SCC OnLine SC 154
[11] (1981) 2 SCC 528
[12] (1980) 1 SCC 142

6.7. According to the learned counsel, all the authorities below have consistently applied the common parlance test and have concurrently held that the product does not fall within Entry 103 but is an unclassified item taxable under the residuary entry.

6.8. It was further submitted that the High Court, while dismissing the revision petitions, recorded concurrent findings of fact and relied upon the Full Bench decision of the Tribunal in ***Ashutosh Trading Company*** and earlier judgments concerning M/s.Hamdard (Wakf) Laboratories, Ghaziabad, holding the product to be a sugar-based concentrate or non-fruit syrup falling outside Schedules I to IV and thus correctly classified under Schedule V.

6.9. It was also submitted that under the earlier UP Trade Tax Act, 1948, the product was taxable at 16% and upon enactment of the UPVAT Act, it has been taxed at 12.5% as an unclassified item; hence, there is no sudden or excessive increase in the tax burden as alleged by the appellant.

6.10. Without prejudice to the aforesaid submissions, it was submitted that the appellant has already deposited the entire tax demand at 12.5% under protest; the assessments have attained finality as no further appeals were pursued until the introduction of GST; the collected tax amount has already been passed on to customers; and hence, restitution at this stage would be impracticable.

6.11. For all the aforesaid reasons, it was urged that the appeals lack merit and deserve to be dismissed.

7. We have heard the learned counsel appearing on either side and perused the materials available on record.

8. The core controversy in the present appeals concerns the proper classification of "Sharbat Rooh Afza" under the UPVAT Act, and whether the said product is exigible to tax at the rate of 4% under Entry 103 of Part A of Schedule II or at the higher rate of 12.5% as an unclassified commodity under the residuary entry contained in Schedule V.

9. The dispute pertains to the period from 01.01.2008 to 31.03.2012 and the appellant has paid a sum of Rs. 2,65,94,892/- to the Department, under protest.

10. According to the appellant, the product is a fruit drink consisting mainly of pineapple and orange juice along with fruit extracts and herbs and is therefore classifiable under Entry 103, attracting VAT at 4%. The respondent on the other hand, contends that Entry 103 does not expressly include "Sharbat" or "Fruit Product" within its ambit and hence, the commodity falls under the residuary entry of Schedule V, taxable at 12.5% as an unclassified item.

11. At the outset, it would be appropriate to briefly trace the evolution of the statutory regime governing levy of sales tax / VAT on the commodity in question.

Pre-VAT Regime: UP Trade Tax Act, 1948

Prior to the introduction of VAT, the levy of tax on sale and purchase of goods in Uttar Pradesh was governed by the Uttar Pradesh Trade Tax Act, 1948. The said Act provided for levy of tax either at the first stage of sale/purchase or at the last stage of sale on specified goods.

Under Notification No. ST-11-7421/X·10(1)/80-U.P. Act XV /48-Order-81, dt. 26.10.1981, the product "Sharbat Rooh Afza" fell under the following entry:

S. No.	Description	Rate of Rax
63	*Soda water, lemonade and other soft beverages and syrups, squashes, jams and jellies.*	12%

This position finds support in the decision in *M/s. Hamdard (Wakf) Laboratories, Ghaziabad v. Commissioner of Sales Tax, U.P., Lucknow,* 2005 NTN (Vol. 27)-35[13], wherein the product was treated as a "syrup" as per the abovementioned notification upon the finding that it was essentially a sugar-based concentrate.

[13] Convenience Compilation-II, Pg. 38-42.

Subsequently, by Notification No. KA. Nl-2586/Xl-9(7)/97-U.P. Act-15-48-Order-(39)-2005 dated 31.8.2005 (w.e.f. 01.09.2005), the relevant entry stood as follows[14]:

S. No.	Description	Rate of Rax
24	*(i) Fruit juices and soft beverages other than aerated soft beverages and syrups, squashes, jams and jellies* *(ii) Soda water, lemonade and other aerated soft beverages*	16%

VAT Regime: UP Value Added Tax Act, 2008

With effect from 01.01.2008, the Uttar Pradesh Value Added Tax Act, 2008 came into force, repealing the Uttar Pradesh Trade Tax Act, 1948. The VAT regime introduced a multi-stage levy on value addition with provision for input tax credit.

Under the UPVAT Act, Entry 103 of Schedule II Part A (as notified on 27.02.2008 and remaining unamended) reads as follows:

Schedule/ Part	Entry	Description	VAT
Schedule II, Part A	103	*Processed or preserved vegetable & fruits including fruit jams, jelly, pickle, fruit squash, paste, fruit drink & fruit juice (whether in sealed containers or otherwise)*	4%

[14] Annex. P-17, Pg. 348.

The appellant seeks to bring "Sharbat Rooh Afza" within the expression "fruit drink" in the above entry.

On the other hand, the respondent classified the appellant's product under residuary entry / miscellaneous entry of Schedule V, which reads as under:

Schedule/ Part	Entry	Description	VAT
Schedule V	1	*All goods except goods mentioned or described in Schedule -I Schedule -II, Schedule-III and Schedule -IV of this Act*	12.5%

Post-VAT Regime: GST

Following the Constitution (101st Amendment) Act and the introduction of GST, the VAT regime was subsumed by the Uttar Pradesh Goods and Services Tax Act, 2017.

Under GST, fruit-based drinks are classifiable under Tariff Heading 2202. The relevant entry reads:

Schedule	S. No.	Chapter /Heading /Sub-Heading /Tariff Item	Description	CGST
I	150	2202 99 20	*Fruit pulp or fruit juice based drinks [other than carbonated beverages of fruit drink or carbonated beverages with fruit juice]*	2.5%

11.1. This legislative progression demonstrates that the classification of the product has varied across different statutory regimes, and the controversy in the present appeals is confined to its classification under Entry 103 of Part A of Schedule II vis-à-vis the residuary entry in Schedule V of the UPVAT Act.

12. Notably, the appellant was granted Licence No. 2782/1 in the year 1972, which has been periodically renewed. The authorisation permitted manufacture of, *inter alia,* fruits syrups and squashes from purchased fruit juice/ pulp, and non-fruit syrups / sharbat under the regulatory regime then in force, including the FPO and the framework of the Prevention of Food Adulteration Act, 1954.

13. The product "Sharbat Rooh Afza" admittedly contains 10% fruit juice (8% pineapple juice and 2% orange juice) along with invert sugar syrup and certain herbal distillates. The label of the product discloses the following composition:

Ingredient	**Volume (in 100 ml)**	**Percentage**
Invert Sugar Syrup	80 ml	80%
Pineapple Juice	8 ml	8%
Orange Juice	2 ml	2%
Distillate of Keora	3.5 ml	3.5%
Distillate of Citrus Medica	0.8 ml	0.08%
Distillate of Rose Damascena	0.6 ml	0.06%
Permissible Food Colours	0.6 ml	0.06%

Distilled Extract (Dhania, Gajar, Khurfa, Tarbooj, Palak, Pudina, Hara Ghia, Kasni, Munnaqua, Sandal Sufeed, Khas Hindi, Charrila, Gul Nilofar, Bagre Gaozabani)	4.5 ml	4.5%

13.1. By communication dated 31.07.2009 issued by the Food Safety and Standards Authority of India, it was clarified that under Part-II of the Second Schedule of the FPO, a "fruit syrup" must contain a minimum of 25% fruit juice. The product "Sharbat Rooh Afza" containing only 10% fruit juice (volume by volume), was therefore stated to fall within the category of a "non-fruit syrup containing 10% fruit juice".

14. On the basis of the aforesaid clarification, the assessing authorities recorded a finding that the product is not a "fruit drink" but a "sharbat", namely, a sugar-based concentrate and consequently falls outside the ambit of Entry 103. It was therefore, treated as an unclassified commodity exigible to tax at 12.5% under the residuary entry in Schedule V. The High Court affirmed the said view by the impugned judgments.

15. The contention of the appellant that regulatory classification under food safety legislation cannot solely govern interpretation of an undefined fiscal entry under the UPVAT Act merits acceptance.

16. It is trite that a fiscal statute must be interpreted in its own language. Regulatory enactments such as the FPO or standards framed by the Food Safety and Standards Authority of India operate in a distinct domain namely quality control, safety, and licensing. They are neither determinative nor conclusive for purposes of fiscal classification unless a taxing statute expressly incorporates or adopts such definitions.

17. The expression "fruit drink" has not been defined under the UPVAT Act. In the absence of a statutory definition, the settled principle of interpretation mandates application of the common parlance test, namely, how the product is understood in commercial and popular sense by those who deal with it. This principle was firmly laid down in ***Ramavatar Budhaiprasad v. Assistant Sales Tax Officer***[15]**,** wherein while interpreting the expression "vegetable" occurring in the subject sales tax enactment, this Court held that the word must be understood in its common parlance sense. In that context, "betel leaves" were held not to fall within the expression "vegetable". The same view was reiterated in ***Indo International Industries v. Commissioner of Sales Tax***[16] where it was held that "clinical syringes" could not be considered as "glassware" merely because they are made of glass, as commercial understanding must prevail over technical or dictionary meaning. Similarly, in ***A. Nagaraju Bros v. State of***

[15] (1961) 12 S.T.C. 286
[16] (1981) 7 S.T.C. 359

Andhra Pradesh[17]**,** emphasising that commercial understanding outweighs technical meaning, this Court observed:

> *"5. ... there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently. It is for this reason probably that the common parlance test or commercial usage test, as it is called, is treated as the more appropriate test, though not the only one. There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight of value or on some other basis may have to be applied. It is indeed not possible, nor desirable, to lay down any hard-and-fast rules of universal application.".*

18. Further, as clarified in ***CCE v. Connaught Plaza Restaurant (P) Ltd***[18]**,** marketing nomenclature is not decisive; and consumer perception must be established by objective material. In that case, while considering whether "soft-serve" sold at "McDonalds" outlets was classifiable as "ice-cream", this Court held that technical differences in composition or branding strategies cannot alter the commercial understanding of the product in the mind of an average consumer. What is determinative is how a reasonable purchaser perceives the product and not the terminology employed for marketing purposes. The following passage is apposite:

> *"**36.** The assessee has averred that "soft-serve" cannot be regarded as "ice-cream" since the former is marketed and sold around the world as "soft-serve". We do not see any merit in this averment. The manner in which a product may be marketed by a manufacturer, does not necessarily play a decisive role in affecting the commercial understanding of such a product. What matters is the way in which the consumer perceives the product at the end of the day notwithstanding marketing strategies. Needless to say the common parlance test operates on the standard of an average reasonable person who is not expected to be aware of technical details relating to the goods. It is highly unlikely that*

[17] 1994 Supp (3) SCC 122
[18] (2012) 13 SCC 639

such a person who walks into a "McDonalds" outlet with the intention of enjoying an "ice-cream", "softy" or "soft-serve", if at all these are to be construed as distinct products, in the first place, will be aware of intricate details such as the percentage of milk fat content, milk non-solid fats, stabilisers, emulsifiers or the manufacturing process, much less its technical distinction from "ice-cream". On the contrary, such a person would enter the outlet with the intention of simply having an "ice-cream" or a "softy ice cream", oblivious of its technical composition. The true character of a product cannot be veiled behind a charade of terminology which is used to market a product.

37. *Besides, as noted above, the learned Senior Counsel, appearing for the assessee quoted some culinary authorities for the submission that ice-cream must necessarily contain more than 10% milk fat content and be served only in a frozen to hard stage for it to qualify as "ice-cream". It was argued that classifying "soft-serve", containing 5% milk fat content, as "ice-cream", would make their product stand foul of requirements of the PFA which demands that an "ice-cream" must have at least 10% milk fat content.*

38. *Such a hard-and-fast definition of a culinary product like "ice-cream" that has seen constant evolution and transformation, in our view, is untenable…*

..

41. *On the basis of the authorities cited on behalf of the assessee, it cannot be said that "ice-cream" ought to contain more than 10% milk fat content and must be served only frozen and hard. Besides, even if we were to assume for the sake of argument that there is one standard scientific definition of "ice-cream" that distinguishes it from other products like "soft-serve", we do not see why such a definition must be resorted to in construing excise statutes. Fiscal statutes are framed at a point of time and meant to apply for significant periods of time thereafter; they cannot be expected to keep up with nuances and niceties of the gastronomical world. The terms of the statutes must be adapted to developments of contemporary times rather than being held entirely inapplicable. It is for precisely this reason that this Court has repeatedly applied the "common parlance test" every time parties have attempted to differentiate their products on the basis of subtle and finer characteristics; it has tried understanding a good in the way in which it is understood in common parlance.*

…

44. *...Heading 21.05 which refers to "ice-cream and other edible ice" is not defined in a technical or scientific manner, and hence, this does not occasion the need to construe the term "ice-cream" other than in its commercial or trade understanding. …"*

19. The learned senior counsel for the appellant further contended that the authorities as well as the High Court failed to properly apply the common parlance test. In ***CCE v. Wockhardt Life Sciences Ltd.***[19] this Court explained the factors to be considered while applying the common parlance test. The relevant paragraphs read as under:

> *"**33.** There is no fixed test for classification of a taxable commodity. This is probably the reason why the "common parlance test" or the "commercial usage test" are the most common (see A. Nagaraju Bros. v. State of A.P. [1994 Supp (3) SCC 122]). Whether a particular article will fall within a particular tariff heading or not has to be decided on the basis of the tangible material or evidence to determine how such an article is understood in "common parlance" or in "commercial world" or in "trade circle" or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted (see Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan [(1980) 4 SCC 71 : 1980 SCC (Tax) 348]).*
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> ***35.** However, there cannot be a static parameter for the correct classification of a commodity. This Court in Indian Aluminium Cables Ltd. v. Union of India [(1985) 3 SCC 284 : 1985 SCC (Tax) 383] has culled out this principle in the following words: (SCC p. 291, para 13)*
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> > *"13. To sum up the true position, the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff."*
>
> *...*
>
> ***38.** In CCE v. Carrier Aircon Ltd., (2006) 5 SCC 596, this Court held: (SCC p. 601, para 14)*
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> > *"14. ... There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purposes of classification, the relevant factors inter alia are statutory fiscal entry, the basic character, function and use of the goods. When a commodity falls within a tariff entry by virtue of the purpose for which it is put to (sic produced), the end use to which the product is put to, cannot determine the classification of that product."*

[19] (2012) 5 SCC 585

> ***39.*** *In our view, as we have already stated, the combined factors that require to be taken note of for the purpose of the classification of the goods are the composition, the product literature, the label, the character of the product and the user to which the product is put. However, the miniscule quantity of the prophylactic ingredient is not a relevant factor. In the instant case, it is not in dispute that this is used by the surgeons for the purpose of cleaning or degerming their hands and scrubbing the surface of the skin of the patient before that portion is operated upon. The purpose is to prevent the infection or disease. Therefore, the product in question can be safely classified as a "medicament" which would fall under Chapter Sub-Heading 3003 which is a specific entry and not under Chapter Sub-Heading 3402.90 which is a residuary entry."*

19.1. The above said decision makes it clear that classification must be determined on the basis of how the product is understood in common or commercial parlance, having regard to tangible material such as its composition, product literature, label, character, and user, and not merely on technical or regulatory descriptions. The Court further emphasised that where a commodity reasonably fits within a specific entry, it ought not to be consigned to a residuary entry.

20. On a perusal of the record in the present case, it appears that the documents produced by the appellant including dealer testimonials and other material documents evidencing market understanding were not adequately considered. Instead, primary reliance appears to have been placed on the manufacturing licence and the clarification issued by the regulatory authority under the food law regime. Such an approach, if it substitutes regulatory classification for evidence of commercial perception, would not be in

consonance with the requirements of the common parlance test as elucidated by this Court.

21. Equally well settled is the principle that where the Revenue seeks to classify a product under a residuary or entry different from that claimed by the assessee, the burden lies squarely upon it. Classification relates directly to chargeability; therefore, the onus of establishing applicability of a taxing entry rests upon the Department.

21.1. In ***Hindustan Ferodo Ltd v. Collector of Central Excise***[20]**,** this Court categorically held that the onus of establishing classification under a particular tariff item lies upon the Revenue, and in the absence of evidence, such burden cannot be said to be discharged. The following extract is relevant:

> *"**4.** It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed."*

21.2. Similarly, in ***HPL Chemicals Ltd v. Commissioner of Central Excise***[21]**,** it was reiterated that if the Department intends to classify goods under a heading different from that claimed by the assessee, it must adduce proper and cogent evidence and discharge its burden. Mere assertion is insufficient. The following passage is apposite:

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[20] (1997) 2 SCC 677
[21] (2006) 5 SCC 208

> *"**28.** This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is quite clear that the goods are classifiable as "denatured salt" falling under Chapter Heading 25.01. The Department has not shown that the subject product is not bought or sold or is not known or is dealt with in the market as denatured salt. The Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject-matter is to be treated as sodium chloride."*

21.3. The same principle was affirmed in ***Quinn India Ltd v. Commissioner of Central Excise***[22]**,** where this Court observed that when the assessee adduces evidence reflecting commercial understanding of a product, the Revenue must bring contrary material on record to justify reclassification, failing which, the burden remains undischarged. The relevant paragraph is extracted below:

> *"**8.** The assessee has adduced cogent and convincing evidence to show that the expression occurring in Sub-Heading 3402.90 of the Act should be understood in the sense in which the persons who deal in such goods understand it normally. The Revenue has failed to adduce contrary evidence in support of its claim that the classification of the penetrator manufactured by the assessee is not covered under Sub-Heading 3402.90. It is also settled law that the onus or burden to show that the product falls within a particular tariff item is always on the Revenue. (See CCE v. Sharma Chemical Works [(2003) 5 SCC 60] and CCE v. Vicco Laboratories [(2005) 4 SCC 17].)"*

21.4. The consistent thread running through the aforesaid decisions is that classification based on common parlance test cannot rest on mere conjecture or assumption. This must be founded upon cogent and objective material

[22] (2006) 9 SCC 559

demonstrating how the goods are understood in trade and in the commercial world. This principle assumes greater significance where the Revenue seeks to classify a product under the residuary entry. It is well settled that recourse to a residuary clause is permissible only when the goods cannot reasonably be brought within the ambit of any specific entry. Such inability must be established by the Revenue on the basis of relevant material; the residuary entry cannot be invoked merely because the specific entry is construed narrowly or because some ambiguity is perceived.

22. In the present case, the Revenue has produced no trade enquiry, consumer survey, market evidence or documentary material to demonstrate that the product is not understood in commercial circles as a fruit-based beverage preparation. Reliance has been placed primarily on licensing norms and the nomenclature "sharbat". Such material, without more, cannot substitute the evidentiary burden required to displace classification under a specific entry. Accordingly, it must be held that the Revenue has failed to discharge the burden cast upon it in law.

23. The appellant has also urged the applicability of the essential character test for determining the classification of the subject product as a "fruit drink". In our considered opinion, this submission merits serious consideration.

24. The test of essential character as embodied by Rule 3(b) of the HSN Explanatory Notes and applied by this Court in ***Kemrock Industries and Exports Ltd. v. Commissioner of Central Excise***[23] requires the identification of that component which imparts to the finished product its distinctive identity and functional utility. Quantitative predominance of a particular ingredient is not decisive if such ingredient merely performs a facilitating role in formulation, preservation or dilution. Rule 3(b) mandates that composite goods are to be classified according to the material or component which gives them their "essential character". The following paragraph from the said decision is pertinent:

> *"It is not in dispute that the item in question is a composite item. However, as found by the Department, in the above process, the glass fibre mat when impregnated with plastic gains certain amount of stiffness which helps manufactures of roofs and partitions. In the present case, since the article in question is a composite article, the test of essentiality shall apply. This test of essentiality refers to "essential character". The test states that, if the manufactured goods has the essential character, mainly of stiffness, required for the manufacture of roofs, partitions etc., then one has to treat the item in question as an article of plastic. In the present case, Rule 3(b) of the Rules for the Interpretation of Tariff Entries would apply. The said rule requires that composite goods, mixtures and goods put up in sets have to be classified on the classification of that material or component which gives to the product their essential character. In the present case, if we keep in mind the manufacture of roofs, partitions etc., if we keep in mind the manufacture of roofs, partitions etc., then the stiffness is the main attribute of such a product."*

25. Applying the aforesaid principle to the present case, though invert sugar syrup constitutes approximately 80% by volume, its function is essentially that

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[23] 2007 (210) E.L.T. 497 (S.C.)

of a carrier, sweetening medium and preservative base. It does not determine the commercial or beverage identity of the product. The flavour, aroma and beverage character are derived from the fruit juice component and allied distillates, which together impart to the product its distinctive character as a flavoured sharbat intended for dilution and consumption as a refreshing drink. Mechanical reliance upon the quantitative predominance of invert sugar syrup would therefore be misplaced. Classification must follow the component that confers upon the product its essential beverage character.

26. Significantly, Chapter Note 3 of Chapter 21 of Customs Excise Tariff Act, 1985 defines "sharbat" as any non-alcoholic sweetened beverage or syrup containing not less than 10% fruit juice or flavoured with non-fruit flavours such as rose, khas, kewra etc., but not including aerated preparation. The statutory definition thus recognises "sharbat" as a class of beverage preparation having a direct nexus either with fruit content or with recognised traditional flavouring bases. The legislative understanding, therefore, treats "sharbat" not as a generic sugar solution, but as a flavoured beverage concentrate intended for dilution and consumption.

27. Entry 103 of Schedule II, Part A of the UPVAT Act is couched in inclusive terms. It covers "processed or preserved vegetables and fruits including fruit jams, jelly, pickle, fruit squash, paste, fruit drink and fruit juice." The Entry does not prescribe any minimum threshold of fruit content. The use

of the expression "including" expands the scope of the entry and indicates the legislative intent to encompass a broad category of fruit-based preparations. In the absence of any quantitative stipulation, it would not be appropriate to read into the entry a rigid percentage requirement that the Legislature has consciously not provided.

28. In ***Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd.***[24] approving ***Dilworth v. Stamps Commissioners***, this Court elucidated the scope and function of 'inclusive definitions' in statutory interpretation. The relevant paragraph reads as follows:

> *"32. We do not think it necessary to launch into a discussion of either Dilworth case [Dilworth v. Stamps Commissioners, 1899 AC 99 : (1895-99) All ER Rep Ext 1576 (PC)] or any of the other cases cited. All that is necessary for us to say is this: legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (2) to include meanings about which there might be some dispute; or (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context, in the process of enlarging, the definition may even become exhaustive."*

The principle underlying the decision militates against a narrow or restrictive construction of an entry that is expressly couched in inclusive terms.

29. Applying the above principle, the expression "fruit drink" occurring in Entry 103 cannot be confined solely to ready-to-consume bottled beverages. In common trade understanding, fruit squashes, concentrates and sharbat preparations intended for dilution are all capable of being understood as fruit

[24] (1987) 1 SCC 424

drink preparations. The nomenclature "sharbat" does not strip the product of its essential character as a fruit-based beverage concentrate, particularly where its composition and intended use align with that understanding.

30. It is equally settled that where a commodity reasonably falls within a specific enumerated entry, recourse to the residuary entry is impermissible. In ***Dunlop India Ltd v. Union of India***[25] this Court cautioned against consigning goods to the "orphanage of the residuary clause" when they bear a reasonable claim to a specific entry. It was held thus:

> *"35. When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause."*

31. Similarly, in ***Alladi Venkateswarlu v. State of Andhra Pradesh***[26] while holding puffed rice and parched rice to fall within "rice", this Court reiterated that where two interpretations are reasonably possible, the one favouring the assessee should be preferred. The following paragraph is relevant:

> *"12. Even if parched rice and puffed rice could be looked upon as separate in commercial character from rice as grain offered for sale in a market, yet, keeping in view the other matters mentioned above, it could not be presumed that it was intended to exclude from Entry 66 "rice", which at any rate, had not so changed its identity as not to be describable as "rice" at all. "Muramaralu" was after all rice even though it was puffed. "Atukulu" even though parched was still called rice. We must also remember that the schedule which we have to interpret is in the English language where the term rice is still found in the rendering or description of "pelalu" as well as that of "muramaralu" in the English language. And, in any case, if two interpretations of a provision are*

[25] (1976) 2 SCC 241
[26] (1978) 2 SCC 552

possible, we think that we ought to, in such a case, apply the principle that the interpretation which favours the assessee should be preferred."

32. Thus, once it is demonstrated that the product is a fruit-based beverage preparation intended for dilution and consumption, it bears a reasonable and substantial claim to classification as a "fruit drink" within Entry 103. It cannot be relegated to the residuary entry merely because it is marketed as a "sharbat". The nomenclature adopted by the parties, or the description of the product as a "non-fruit syrup" under the licensing statute, is not determinative for the purposes of classification under a taxing statute. What is decisive is the nature, composition and commercial identity of the product. If, on a proper application of the common parlance and essential character tests, the product reasonably answers the description of a "fruit drink", the same cannot be denied merely on account of its label or regulatory categorization.

33. The existence of ambiguity in classification, and the plausibility of the appellant's contention that "Shabat Rooh Afza" is a fruit drink preparation, is further evidenced by the treatment accorded to the very same product under similarly worded VAT entries in other States. Under the VAT statutes of Delhi, Gujarat, West Bengal, Madhya Pradesh and Andhra Pradesh, entries covering processed or preserved fruits including "fruit drink" and "fruit juice" have been applied to the impugned product and tax has been levied at the concessional rate of 4%-5%.

State	Relevant Statute and Entry	Description of Item as per relevant Entry	Rate of VAT charged
New Delhi	Entry 77 of Schedule III of the Delhi VAT Act 2004 [fruit drink]	Processed meat, poultry, fish and processed or preserved vegetables and fruits including fruit jams, jelly, pickle, fruits squash, paste, fruit drink and fruit juice whether in sealed container or otherwise	5%
Gujarat	Entry 48(ii) of Schedule II of Gujarat VAT Act, 2003 [fruit juice]	[ii) Processed fruits, processed vegetables including fruit jams, jelly, pickle, fruit squash, paste, fruit drink and fruit juice]	4 paise in a rupee (4%)
West Bengal	Entry 58B of Schedule C of the West Bengal Value Added Tax Act, 2003 [fruit juice]	Processed and preserved vegetables [and fruits, other than dry fruits, but] including fruit jams, [jelly, sauce,] pickle, fruit squash, fruit paste, fruit drink and fruit juice, whether in a sealed container or not, and [wet dates, but excluding those not containing any fruit or vegetable extract.]	5%
Madhya Pradesh	Entry 108 of Part II of Schedule II of the Madhya Pradesh VAT Act, 2002 [sharbat and thandai]	Processed or preserved vegetables and fruits including fruit jams, jelly, pickle, fruit squash, paste, fruit drink and fruit juice, thandai and sharbat (whether in sealed containers or otherwise)	5%
Andhra Pradesh	Entry 107 of Schedule IV of the Andhra Pradesh	[107. (a) Preserved fruits, vegetables, meat, poultry, sea foods and fish sold in	5%

	VAT Act, 2005	sealed containers or in a frozen state. (b) Fruits jams, jelly, fruit squash, [Fruit pulp] fruit juices and fruit drinks but excluding aerated fruit drinks; (c) Cottage cheese (paneer), pickles, sauces, porridge, marmalade, honey;]	

34. The material placed on record, including tax invoices evidencing payment of VAT at 5% in several States namely Delhi, Gujarat, West Bengal, Madhya Pradesh, and Andhra Pradesh demonstrates that the trade and tax authorities in those jurisdictions have consistently treated the product as falling within fruit-based beverage entries.

35. It is no doubt true that VAT is a State subject under Entry 54 of List II of the Seventh Schedule to the Constitution and classifications adopted by one State are not binding upon another. However, they are not wholly irrelevant. Where similarly worded entries across multiple jurisdictions have been construed in a particular manner, such uniformity assumes evidentiary value in determining commercial understanding of the product, and whether the assessee's interpretation is at least a reasonably plausible view.

36. The consistent concessional classification adopted across several States therefore fortifies the appellant's case that its view is neither artificial nor untenable but a *bona fide* and commercially recognised interpretation.

37. At the very least, the existence of two plausible views stands demonstrated. In such a situation, the interpretation favourable to the assessee must prevail.

38. Viewed cumulatively:

i) The product contains declared fruit juice and derives its essential beverage identity from fruit-based constituents.

ii) Entry 103 of Schedule II, Part A of the UPVAT Act is illustrative and inclusive in character and does not prescribe any quantitative threshold of fruit content.

iii) Regulatory or licensing classification cannot control or curtail the interpretation of a fiscal entry;

iv) The Revenue has failed to discharge the burden of proving that the product falls outside Entry 103 and within the residuary entry; and

v) Resort to the residuary entry is impermissible where classification under a specific entry is reasonably and sustainably possible.

39. The concurrent findings recorded by the authorities and affirmed by the High Court cannot therefore be regarded as pure findings of fact so as to be

insulated from appellate interference. They are conclusions arrived at upon an erroneous application of settled principles governing fiscal classification and are vitiated by a clear misdirection in law. Consequently, such findings warrant interference by this Court.

40. Accordingly, it is held that "Sharbat Rooh Afza" is classifiable under Entry 103 of Schedule II, Part A of the UPVAT Act as a fruit drink / processed fruit product and is exigible to VAT at the concessional rate of 4% during the relevant assessment years. The impugned judgment(s) affirming classification under the residuary entry and levy at 12.5% are set aside.

41. In fine, the appeals are allowed. The respondent authorities shall grant consequential relief including refund or adjustment of excess tax paid in accordance with law. There shall be no order as to costs.

42. Pending application(s), if any, shall stand disposed of.

……J.
[B.V. NAGARATHNA]

……J.
[R. MAHADEVAN]

NEW DELHI;
FEBRUARY 25, 2026.