IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment delivered on: 22nd December,2023*

\+ **VAT APPEAL 15/2021**
AMWAY INDIA ENTERPRISES PRIVATE LIMITED ..... Appellant

versus

COMMISSIONER, VAT, DELHI & ORS. ..... Respondents

Advocates who appeared in this case:

For the Appellant	:	Mr. Ashok K. Bhardwaj & Mr. Manish Hirani, Advs.
For the Respondents	:	Mr. Rajeev Aggarwal, ASC with Ms. Vidisha Swarup, Advs

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HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The appellant, Amway India Enterprises Private Limited (hereafter '**Amway**'), has filed the present appeal under Section 81 of the Delhi Value Added Tax Act, 2004 (hereafter '**DVAT Act**'), impugning the judgment dated 18.08.2021, passed by the Appellate Tribunal, Delhi Value Added Tax, Delhi (hereafter '**Tribunal**').

2. The learned Tribunal, by its common impugned judgment, had decided the appeals bearing Nos. 370-394/ATVAT/2017 filed by Amway, challenging the order dated 08.01.2018, passed by the learned Additional Commissioner – Objection Hearing Authority (hereafter '**OHA**').

3. The present appeal relates to two of the issues decided by the Tribunal against the appellant in relation to classification of the coconut oil sold by the appellant and a bi-monthly publication namely 'Amagram'.

4. It was the case of the appellant that the coconut oil, being sold by it, was rightly classified under Entry No. 25 of the Third Schedule appended to DVAT Act as 'Edible Oils and Oil cake', whereas as per the Revenue, the same is to be classified as a residuary item under Section 4(1)(e) of the DVAT Act.

5. The appellant had also agitated that its bi-monthly publication namely 'Amagram' is to be classified as a periodical within the meaning of Entry No. 5 of the First Schedule appended to DVAT Act.

6. However, the Tribunal has held that the same falls under Entry No. 52 of the Third Schedule of the DVAT Act. For the ease of reference, the classification sought by the appellant and by the Revenue, is reproduced as under:

PRODUCT	CLASSIFICATION BY THE APPELLANT	CLASSIFICATION BY THE RESPONDENT
COCONUT OIL	**Entry No. 25 (Third Schedule):** *Edible Oils and Oil cake*	Residuary Entry
AMAGRAM	**Entry No.5 (First Schedule):** *Books, periodicals and journals including maps, charts and globes*	**Entry No.52 (Third Schedule):** *Printed material including diary, calendar*

BRIEF FACTS

7. The appellant, having TIN No. 07170192778 is engaged in the business of re-sale of goods by "Direct Selling Method". One of the products that the appellant deals in is Coconut Oil, labelled as "Persona Coconut Oil 100% pure edible oil". The appellant also prints and circulates a bi-monthly publication – Amagram.

8. Respondent No.1 by order dated 29.01.2013 directed the appellant to get a special audit of their business affairs under Section 58A of the DVAT Act for the period 2011-12, through the designated auditor M/s Matta & Associates.

9. The appellant received the Audit Report on 15.04.2013, and submitted the same to the Revenue on 25.04.2013. The Assessing Authority issued a Show Cause Notice dated 01.05.2013 to the appellant for submission of replies on the observations made by the

auditor to the effect that the appellant had not discharged the correct tax liability under the DVAT Act and the Central Sales Tax Act, 1956.

10. The learned VAT Officer issued twelve notices of default assessment of tax and interest for the monthly tax periods from April, 2011 to March, 2012 under Section 32 of the DVAT Act, raising a tax demand of Rs. 5,09,52,590/- (tax of Rs. 4,10,47,163/- plus interest of Rs. 99,05,427/-). The learned VATO also imposed penalties of Rs. 4,92,93,491/- on the appellant under Section 86(10) read with Section 33 of the DVAT Act. The said demand was made on three fronts. Firstly, the appellant had not paid VAT on handling and delivery charges that were charged by it. Secondly, the appellant had categorized sales of Amagram as those of periodicals and thus claimed that the same were exempt from tax, even though Amagram was a catalogue and thus taxable at 5%. Thirdly, the appellant had sold Coconut Oil and Olive Pomace Oil, charging a tax of only 5% on the pretext that the said goods were edible oils, whereas the same should have been classified in a residual entry to be taxed at 12.5%.

11. The appellant filed objections under section 74 of the DVAT Act against the demands of tax and interest before the Objection Hearing Authority('**OHA**'). The learned Additional Commissioner by order dated 08.01.2018 set aside the demand of tax, interest and penalty to the extent of handling and delivery charges, finding the said charges were not part of the "Sale Price" within the meaning of Section 2(l)(zd) of DVAT Act, 2004. The learned Additional Commissioner also found

Amagram to be a catalogue and taxable at 5%. This was predicated on the finding that any "periodical" in the nature of a "catalogue" would be covered in Entry No. 52 of Third Schedule of the DVAT Act as per the clarifications in Circular No. 2 of 2005-06. The learned Additional Commissioner also observed that Coconut Oil and Olive Pomace Oil could not be treated as edible oils by virtue of them being prominently used and sold for cosmetic purpose. The learned Additional Commissioner observed that the said oils were sold in small quantities and packaging and not in big containers as used for sale of edible oils. It was found that the VAT Officer had made a technical mistake by assessing Central Sales under the provisions of the DVAT Act, therefore, the learned Additional Commissioner remanded the matter to the said officer for appropriate directions.

12. The appellant appealed the order dated 08.01.2018 before the learned DVAT Tribunal. The learned DVAT Tribunal by the impugned judgment upheld the order of the learned Additional Commissioner, OHA, to the extent of taxability of Amagram periodicals at 5% and Coconut Oil at 12.5%. The learned DVAT Tribunal also set aside the findings of the learned Additional Commissioner with respect to Olive Pomace Oil on account of lack of corroboratory material on record. The learned Tribunal relied on the definitions under the Cambridge University Press and Collins Dictionary, and also Circular No.2 of 2005-06, to find that Amagram is a catalogue. In respect to Coconut Oil, the learned DVAT Tribunal found merit in the observations of the learned Additional Commissioner and found that the appellant had

failed to discharge the burden as to why Coconut Oil was advertised under the category of "Persona".

13. Aggrieved by the said impugned judgment, the appellant has preferred the present appeal.

14. The following questions of law are formulated for consideration of this Court:

(i) Whether the periodical 'Amagram' is rightly classified as catalogue liable for tax under Entry No. 52 of Third Schedule of the DVAT Act even though the periodicals are specifically referred in Entry No. 5 of the First Schedule of the DVAT Act.

(ii) Whether the coconut oil, despite being an edible oil, was wrongly classified under Entry No. 25 of the Third Schedule of the DVAT Act.

SUBMISSIONS

Classification of Amagram

15. The learned counsel for the appellant submitted that the Amagram is a bi-monthly publication meant primarily for the use by its direct sellers / retailers. It imparts information of products / events to keep them updated.

16. He submitted that product is a periodical within the meaning of Entry No. 5 of the First Schedule and is, thus, exempt from tax.

17. He submitted that the Tribunal and the authorities below, by relying upon Circular No. 2 dated 26.04.2005, have wrongly classified Amagram as a catalogue. In terms of the said circular, a catalogue

covered under Item No. 52 of the Third Schedule had been included within meaning of printed material catalogue.

18. Learned counsel submitted that Amagram is not a catalogue as it is published periodically and contains information about upcoming training schedules, achievement levels of distributors, etc. It is, therefore, informative guide for its subscribers. It is only for the benefit of the Amway distributors community.

19. He submitted that Amagram is a periodical, falls within the specific entry, classifiable under Entry No. 5 of the First Schedule, whereas Entry No. 52 of Third Schedule is a general entry.

20. He relied upon the judgment of the Hon'ble Apex Court in the case of ***Commercial Tax Officer v. Binani Cements Ltd. and Another*****: (2014) 8 SCC 319**, to contend that if a statute contains both a general provision as well as specific provisions, the latter must prevail.

21. He further submitted that in a taxation statute, a strict rule of construction has to be applied, which involves literal or plain meaning test. He contended that nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

22. He, thus, submitted that since Entry No. 5 specifically mentions periodicals, Amagram, being a periodical, cannot be classified in the general Entry No. 52 as a printed material.

23. He further submitted that plain reading of Entry No. 5 of First Schedule suggests that it includes all types of books, journals and

periodicals and is not restrictive to exclude the periodicals, which may be of commercial use and useful only to a particular section of people.

24. He submitted that wherever the Legislature wanted to give restrictive meaning to an entry, the same is clearly mentioned in the entry itself.

25. The learned Additional Standing Counsel for the Revenue, on the other hand, contended that the printed material referred in Entry No. 52 of the Third Schedule has been clarified on a representation being received from different trade associations by a Circular No. 2 dated 26.04.2005. It has been specifically clarified that the catalogues will be considered as a printed material under Entry No. 52 of the Third Schedule.

26. He submitted that periodicals and journals are to be interpreted to include those newspapers, which are periodically printed for the purpose of disseminating information or providing recreation to the public. The publication 'Amagram', even though claimed to be published at regular intervals, cannot be categorized as periodicals.

27. He submitted that the Karnataka High Court in the case of ***Manipal University v. State of Karnataka*** **: 2014 SCC OnLine Kar 2559**, had refused to classify the prospectus of the University as periodical or journal. It was held that the prospectus cannot be treated as a book or a book meant for reading.

28. He also relied upon the decision of the Allahabad High Cout in the case of the petitioner itself in ***M/s Amway India Enterprises v. Commissioner of Commercial Tax*** : **Sales/Trade Tax Revision**

No.280-283/2022.He submitted that the issue, as in the present case, is squarely covered by the said decision of the Hon'ble High Court wherein the brochures sold by the appellant were held to be not exempted under the category of books and periodicals.

Classification of Coconut Oil sold by the appellant

29. The learned counsel for the appellant submitted that the coconut oil is undisputedly an edible oil and falls under Entry No. 25 of the Third Schedule of the DVAT Act.

30. He submitted that the product is labelled as Persona coconut oil 100% pure edible oil. The reason that the product is capable of multi-usage, cannot be a ground for classifying it under a residuary entry when the product is admittedly an edible oil for which a specific entry has been provided. The Act does not prescribe any entry for hair oil. Coconut oil is edible oil, and therefore, cannot be put as a residuary item because the same is used as hair oil.

31. The appellant, on its website, has depicted the product for hair nourishment, which undeniably is one of the many usages of the product.

32. He submitted that the fact that the product can be used for other purposes, cannot be a ground to not classify the same as an edible oil when admittedly the product is a pure coconut oil and is edible. The only test, which requires to be fulfilled for a product to fall in the category of edible oil, is whether the same can be used for edible

purposes. The entry is not based upon the usage of the product but on the component of the product.

33. He vehemently contended that the appellant has not claimed that the product should be used for cooking purposes but the argument had always been that the product is edible oil. He relied upon the judgment passed by the Hon'ble Apex Court in the case of ***Mukesh Kumar Aggarwal & Co. v. State of M.P.*** **: 1988 Supp SCC 232**, where it was held that the user test is logical but is also inconclusive and a particular use of an article in the hands of one consumer is not determinative of the nature of the goods.

34. He, therefore, submitted that the coconut oil is a multi-purpose article and is admittedly used as a cooking medium by many households. The product sold by the appellant is labelled as a food grade item in its packaging. He also referred to the declaration on the pack of the product, which describes it as '100% pure edible oil'.

35. The learned Additional Standing Counsel for the respondents supports the judgment passed by the learned Appellate Tribunal and contended that the snapshot of the product Persona from the website of the appellant clearly shows that the intention of the appellant is very clear to treat the oil for the purpose of Persona / cosmetic and not for cooking.

36. He submitted that applying 'dominant intention test' the dominant purpose / objective from the perspective of not only the buyers but also from the seller / dealer, has to be considered, which is clearly for cosmetics. The appellant sells the oil in small packed

container, which is used for the purpose of cosmetics since the edible oil is generally sold in big container.

37. He, therefore, submitted that when the appellant itself is selling product as a hair oil / cosmetic and not as an edible oil for the purpose of consumption, the classification of it in the residual entry cannot be objected to.

38. He further submitted that the appellant, in its list of products, has been selling the cooking oil in a separate category. He relied upon the judgment passed by the Hon'ble Allahabad High Cout in ***Bombay Oil Industries (P) Ltd. v. Commissioner of Trade Tax*** **: 2008 SCC OnLine All 918**, wherein Parachute coconut oil, which is classified and taxed under the entry of cosmetics and toilet requisites of all kinds.

39. Further reliance is placed upon the judgment passed by the Hon'ble Apex Court in the case of ***State of M.P. v. Marico Industries Ltd.*** **: (2016) 14 SCC 103**, to contend that the purpose of use of the product is the primary decisive factor and it is the approach of the consumer towards the product which is material in determining classification of a particular product.

40. He also relied upon the recommendations made by the Fitment Committee in the 45th GST Council meeting wherein it was recommended that the classification of the coconut oil sold in container of less than 1000 ml would be as hair oil attracting GST of 18% irrespective of its actual end usage.

ANALYSIS

Amagram

41. As per the Collins Dictionary, 'periodicals' are "magazines, especially serious or academic ones, that are published at regular intervals".

42. In Cambridge Dictionary, 'catalogue' is defined as "a book with a list of all the goods that you can buy from a shop".

43. In terms of the DVAT Act, products referred in the First Schedule are exempted from any tax. Entry No. 5 of the First Schedule, as referred above, includes books, periodicals and journals including maps, charts and globes. Other printed material includes calendar and, as clarified in Circular dated 26.04.2005, also includes paper envelopes, diaries, calendars, race cards, catalogues, greeting cards, etc.

44. Clearly, the benefit has been given by the Legislature to goods mentioned in the First Schedule and they are exempted from tax. The dispute, therefore, is whether the product, which is called by the appellant as a periodical and referred as a catalogue by the Revenue, is entitled to exemption and is classified under Entry No. 5 of the First Schedule.

45. The argument of the appellant that the product Amagram is a periodical since it is published periodically, and is a book having collection of number of leaves or sheets or paper, is not persuasive. Even though the product is published periodically, but from the bare glance, the same in the nature of a catalogue, containing list of goods

that can be bought from Amway. Though it contains other information like upcoming training schedules, achievement levels of distributors, etc., however, the nature of the product being a catalogue, cannot be taken away.

46. As mentioned above, the dictionary meaning of a periodical is a magazine or newspaper especially serious or academic ones that are published at regular intervals. Even though the definition of book, in a wider sense, includes a collection of sheets of paper whether blank or written or printed that are bound together, however, while construing the said term for the purpose of exemption, is to be construed in a restricted sense.

47. Strictly speaking, even a diary is a book and the book is also a printed material. The printed material has been taxed under Entry No. 52 of the Third Schedule, however, the limited exemption has been given to the material which falls under Entry No. 5 of the First Schedule. The same has to be given a restricted interpretation.

48. In the case of ***Industrial and Commercial Service v. Commissioner of Sales Tax :*** **1962 SCC OnLine All 351**, the Division Bench of the Hon'ble Allahabad High Court had answered the issue whether "books" used in Section 4 of the UP Sales Tax Act would include the diaries sold by the appellant therein. In terms of Section 4 of the UP Sales Tax Act, the sale of books was exempted from taxation. The appellant therein was selling the diaries, which were claimed to be books as they were bound like a book. There were few pages in the diary containing general information on various matters and the *Shlokas* from

Bhagavad Gita were referred. The Hon'ble High Court noted that 'book' has got several meanings and in a wider sense, means a writing in the collection of sheets of paper, blank, written or printed, strung or bound together and the diary would come within this meaning. However, it held that the diary would not come within the restricted meaning because primarily it is meant to be written and not to be read. It held that the books referred to in Section 4 are not to be interpreted in a wider sense but in a restricted or popular sense, which is the one that can be read for education, knowledge, enlightenment or recreation, the book that one would find in a literary or a book seller shop. It further held that the Legislature used the words in a restricted sense, as borne out by its adding in Section 4 'magazines and newspapers'. It was held as under:

> *"4. It will be noticed that the word "book" has got several meanings; in its wider sense it means a writing and a collection of sheets of paper, blank, written or printed, strung or bound together and a diary would come within this meaning. In the restricted sense it means that which we may read and find instructions or lessons, a literary composition. A diary would not come within this restricted meaning because primarily it is meant to be written on and not to be read. That there is some writing printed on it which is intended to be, and can be, read does not make it a book because it is not primarily intended to be read like a book. The diaries in question are primarily meant for keeping a daily record and have spaces with printed dates for daily memoranda and jottings. Though a sloka from Bhagwat Gita is printed at the top of each page, they are not to be treated as Bhagwat Gitas and nobody intending to purchase a copy of Bhagwat Gita will buy such a diary. Though there is some printed material of general information and knowledge, these diaries are not meant to be used like books for acquiring general knowledge.*

Using them for information on certain matters would only be an incidental use.

5. It seems that the word "books" in section 4 is used not in the wider sense but in the restricted or popular sense. Popularly a book is what one can read for education, knowledge, enlightenment or recreation, what one would find in a literary or in a book-seller's shop. In this sense the word would not cover diaries. The context in which it has been used suggests that it means an article of such universal use and necessity as water, food, milk, salt and electricity. The Legislature evidently intended to exempt articles of universal necessity and daily use, like milk, water, food, salt, etc., and when it included books among them it must have meant books of such universal necessity and daily use as books required for education, knowledge, enlightenment or recreation and not other books, like diaries, exercise books, account books, etc. There was no reason for placing exercise books, account books and diaries in the same class as water, food, milk, salt and electricity."

49. In the case of ***Garg Book Co. v. State of Rajasthan*** **: 1973 SCC OnLine Raj 147**, the Division Bench was concerned with the classification of the 'roll registers of the University of Rajasthan'. The assessee had claimed the same to be exempted from sales tax, by virtue of Section 4 of the Rajasthan Sales Tax Act, being book. The Court held that at the first reading, the claim of the assessee might appear valid. It, however, held that if the Legislature was to give the widest dictionary meaning to the word books, there was hardly any sense in mentioning the other words such as exercise books, periodicals, journals in the same entry. Even though 'roll registers' may in wide sense fall within the definition of books, however, the same are not intended to be exempted by the Legislature. It held as under:

> *"8. What could be the meaning that we would be prepared to attribute to the word "books" in the context aforesaid? Ordinarily speeking the intention of the legislature appears to be not to tax those printed collections of papers fastened at one end and trimmed at the other, which are intended for being used for education, information, or recreation or reference. To this extent we are in agreement with the popular meaning given by the learned Judges of the Allahabad High Court in Industrial and Commercial Service, Allahabad v. Commissioner of Sales Tax (6). We are fortified in giving the aforesaid connotation to the expression "book" because the word "exercise book" though it may not be printed book for purpose of imparting information, reference, or recreation it certainly belongs to the category of that stationery which facilitates education. When we say "exercise books" the concept which comes to our minds is sheets of paper bound together and intended for providing mental exercise to a learner because it provides him with material for effective exertion. Exercise books, therefore, have been apparently exempted by the Legislature with intent to advance learning Periodical journal is intended to include those newpapers which are periodically printed for the purpose of disseminating information or providing recreation to the reading public. It is also saved from the unwelcome hand of taxation. In this context therefore if we examine the printed roll registers we find that they fail to fulfil requisite qualification. They are merely printed sheets of paper conveniently arranged to record the performance of the candidates at a given examination and only to be used by the examining bodies. They may indirectly advance education. They however do not directly assist it and therefore they escape exemption."*

50. In the present case also, the appellant is contending that 'Amagram' is a periodical since the same is published periodically and would fall within Entry 5 of the First Schedule. On first blush, the contention might appear to be merited, however, when the Entry is read as a whole, which is accompanied with journals, including maps, charts

and globes, the intention of Legislature does not appear to exempt periodicals as circulated by the appellant.

51. As noted above, even the literal definition of the term 'periodicals' implies magazines especially serious or academic ones. Therefore, not every periodical, in a wider sense, is meant to be exempted. It also cannot be disputed that the catalogue also falls within a wider meaning of periodicals being circulated at intervals and periodically.

52. In the case of ***Minerva Printing Works v. State of Bihar*** **: 1973 SCC OnLine Pat 184**, the Hon'ble Patna High Court had considered whether the sale of blank registers, exercise books, letter pads was exempted under the Bihar Sales Tax Act in the category of books and periodicals. It was held that the word 'book' is used along with the word 'periodical' and are meant for reading purposes and derive lessons from and gather information. Therefore, in a wider sense, blank registers, exercise books, etc. might fall within the category of books, the restricted meaning has to be given by looking at the entry in its entirety and gathering the intensity of the Legislature.

53. In the case of ***Manipal University v. State of Karnataka*** (*supra*), the Hon'ble High Court of Karnataka was concerned with the classification of prospectus. It was held that in a wider sense, the same might fall in the category of books and periodicals. The same cannot be classified in exempted category and was held to be classified as 'printed material'. The Court had negated the argument that the prospectus are books meant for reading. It was held as under:

> *"21. Thus, having regard to meaning of the word "prospectus", we have no doubt that the prospectus of the University cannot be treated as "book" or "book meant for reading". It is a printed document which could be called a brochure or a catalogue or a printed document detailing the courses, facilities etc., of their colleges. In any case, it cannot be treated as a book meant for reading as is known in common parlance. The prospectus of the University cannot be treated even as periodical or journal. In this view of the matter, the contentions urged on behalf of the University must be rejected. We are in agreement with the view taken by the Tribunal that the sale of prospectus and application forms would fall under Entry 71 of the Third Schedule. Thus, the questions raised in these revision petitions are answered against the petitioner-University and in favour of the respondent-State. The revision petitions are accordingly dismissed. However, there shall be no order as to costs."*

54. In the appellant's own case in ***M/s Amway India Enterprises v. Commissioner of Commercial Tax*** (*supra*), the Hon'ble Allahabad High Cout had considered whether the brochures sold by the appellant would be exempted from tax in Entry No. 7 of the First Schedule of the Uttar Pradesh Value Added Tax Act, 2008, in the category of books or should be classified as printed material attracting tax at the rate of 4%. The Hon'ble High Court noted that even though the brochure, in a wider sense, can be termed as book but the same is rightly classified in a category of printed material. It was held as under:

> *"**20.** From the reading of Section 7 of the VAT Act, it is clear that no tax under the Act is to be levied and paid on the turn over of sale and purchase which are mentioned in the said section. From the reading of Section 7(b), it is clear that tax is not levied on the sale or purchase of any goods named or described in Column (2) of Schedule I of the Act.*

21. *Schedule-I is the list of the exempted goods. Entry 7 has been inserted by the legislature granting benefit to these goods from being exempted from tax. While Part-A of Schedule-II is description of goods which are to be taxed @ 4% and Entry 100 is for the printed material including diary and calendar. The entire dispute is whether the brochure printed by the revisionist is entitled to exemption under Entry 7 of Schedule-I or to be taxed @ 4% being item covered under printed material at Entry 100 of Schedule-II Part-A.*

22. *An effort has been made by the assessee counsel to demonstrate that word book encompasses the brochure printed by revisionist and thus entitled to exemption on the strength of decision of Division Bench of this Court in case of Indo Arts (supra). The decision of Indo Arts (supra) was based upon the notification of taxing authorities issued on 01.05.1956 which had exempted books, magazines, exercise books from payment of tax. The Court then had found that brochure, booklets, magazine and folders are apprehended in the word "books" and thus they were liable to be exempted. The judgment was followed by the Punjab and Haryana High Court in case of Thomson Press (supra).*

23. *With the passage of time, State of U.P. enacted the VAT Act, 2008 and Section 7(b) provided that the goods mentioned in Column (2) of Schedule-I were liable to be exempted from tax. While the legislature simultaneously through Schedule-II had provided for the list of goods which were liable to be taxed @4%.*

24. *Thus to say that judgment in Indo Arts (supra) and Thomson Press (supra) will be applicable in the present case does not hold good, as much water has flown and the legislature while enacting the Act of 2008 had made specific provision as to what goods were liable to be exempted and what to be taxed at the rate specified in the Schedule. Entry 7 of Schedule-I specifically provides for the books and journals*

including braille books, maps, charts and globe and also work books bearing the name of the author thereon or prescribed in syllabus of any educational Board or Council. Simultaneously, Schedule-II Part-A is the list of goods which are to be taxed @ 4% and Entry 100 is of printed materials including diary and calendar. The argument of revisionist counsel to the extent that books include brochure cannot be accepted, as brochures are nothing but promotional and advertising material, which provide multiple information and have been rightly held by the Tribunal to be covered under the category printed material."

55. In the present case also, the product sought to be classified as periodicals by the appellant, is essentially in the nature of catalogue containing information in relation to the products being offered for sale. No doubt, certain other information and news in relation to events, being organized, is also mentioned for the purpose of the consumption of its dealers. The same, however, in our opinion, cannot be held to be a periodical as referred in Entry No. 5 of the First Schedule. Moreover, it is not disputed that 'Amagram' is in the nature of a 'catalogue', which has specifically been included in Entry No. 52 of the Third Schedule by Circular No. 2 dated 26.04.2005.

56. It is settled law that a person claiming exemption has to establish that the product squarely falls within the category of exempted goods. It is also settled that while interpreting the exemption notification / statute, a consideration in favour of the Revenue has to be given and in case of ambiguity, the same has to be interpreted against the assessee.

57. The Constitution Bench of the Hon'ble Supreme Court, in the case of ***Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and Others*** **: (2018) 9 SCC 1**, held as under:

> *"53. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State."*

58. Therefore, even if it is to be accepted that there is an ambiguity in relation to classification of 'Amagram', which in a wider sense, might fall within the definition of periodical, the same has to be interpreted in favour of the Revenue.

59. In view of the above, the question of law as to whether the periodical 'Amagram' is to be classified as catalogue liable for tax under Entry 52 of Third Schedule of the DVAT Act, is answered in favour of the Revenue.

<u>Coconut Oil</u>

60. It is an admitted fact that the appellant has been selling 100% coconut oil and the same, by its nature, is edible. The component of the product, therefore, is not disputed which is 100% pure coconut oil. It is also admitted that coconut oil is used as an edible oil in large part of the country. The issue, therefore, to be considered is whether the coconut

oil sold by the appellant, for the reason of it being used and purchased for cosmetic purposes, is to be classified in a residual entry attracting tax at the rate of 12.5% and not as an edible oil falling under Entry No. 25 of the Third Schedule attracting 5% tax.

61. The admitted screenshots from the website of the appellant have been produced, which show that the product is sold by categorizing as 100% pure coconut oil. It also mentioned the manner in which it is used. It states 'Warm the oil slightly. Apply to the scalp, massage well, and leave it overnight. Wash off with mild shampoo in the morning.' The product is also listed in the category of 'hair care'.

62. The Hon'ble Allahabad High Court, in the case of ***M/s Bombay Oil Industries (P) Ltd. v. Commissioner of Trade Tax, Uttar Pradesh*** (*supra*), was considering classification of 'parachute coconut oil'. It was claimed that the product falls under the entry 'oils of all kinds' and not under the entry 'cosmetics and toilet requisites' under the U.P. Trade Tax Act.

63. The Hon'ble Court noted that the product is sold in packing of 200 and 500 ml, which is not purchased by the trader dealing in edible oil but is sold to small consumers at a much higher rate than the prevalent rate of edible oil. It is also advertised in T.V. and other media as hair oil and not as edible oil.

64. The Hon'ble Court applied the popular Intention Test and held that the product 'parachute coconut oil' ought not to be classified as 'oils of all kinds'.

65. In the case of ***State of Madhya Pradesh v. Marico Industries*** (*supra*), the Hon'ble Supreme Cout considered whether the product 'Mediker', which is a shampoo used for anti-lice treatment, is a drug or it is to be categorized as a shampoo. The Hon'ble Supreme Court applied the Common Parlance Test and accepted the submission that for the purpose of classification, the Court would treat a particular product on the basis of common parlance. It was held that the product 'Mediker' is used for anti-lice treatment because of its medicinal effect. The cleaning of hair was a subsidiary function. People purchase the product for killing lice in human hair. The purpose and use of the product and the consumer's approach towards the product was considered material and decisive factor in determining the classification of the product.

66. The appellant, in the present case, is admittedly not selling the coconut oil for the purpose of cooking or being used as an edible oil. As mentioned above, the website of the appellant has displayed the product, even though as 100% pure coconut oil, but in the category of hair care. The manner in which it is to be applied has also not been mentioned.

67. It is not disputed by the appellant that the coconut oil sold by it, is purchased by consumers for applying it on hair. The product is sold in small packings which is not normally meant for cooking purposes. In a popular and common parlance, the product is looked, marketed and bought not as an edible oil, though the same being 100% coconut oil, could be used for cooking purposes as well.

68. Strong reliance is placed by the learned counsel for the appellant on the judgment passed by the learned Central Excise and Service Tax Appellate Tribunal (hereafter '**CESTAT**') in the case of ***Raj Oil Mills Ltd. v. Commissioner of Central Excise, Thane-II*** **: 2013 SCC OnLine CESTAT 2600**. It is contended that the Hon'ble Supreme Court has upheld the judgment passed by the learned CESTAT in an appeal preferred by the Revenue.

69. The reliance placed on the judgment passed by the learned CESTAT in ***Raj Oil Mills Ltd. v. Commissioner of Central Excise, Thane-II*** (*supra*) is misplaced. In the said case, the learned CESTAT considered the classification of coconut oil sold by the appellant therein in packing of 200 ml and less. It was noted that the appellant was selling the product in number of packings and the coconut oil sold by the appellant in a packing of more than 200 ml was classified as edible oil. In the facts of the said case, it was held that the appellant has always represented that the product was an edible grade coconut oil and not hair care oil. There was no reason for the Revenue to classify the product differently only because they were cleared in different packings.

70. It is not the appellant's case that the coconut oil is sold by them in different packings and the larger packings are classified as edible oil whereas the small packings are classified otherwise.

71. In the case of ***Ganesh Trading Co. v. State of Haryana*** **: (1974) 3 SCC 620**, the Hon'ble Apex Court held that the popular meaning, in the context of sales tax, is the one which is popular in commercial

circles. The main criterion for determining the classification is normally the use of the product to which it is put by the customers and the purpose for which it is generally sold.

72. Thus, in view of the admitted fact that the coconut oil is sold by the appellant in small packs; is displayed in the category of hair care; the manner in which it is to applied on hair; and the purpose for which it is purchased by the consumer leaves no manner of doubt that the coconut oil sold by the appellant is wrongly sought to be classified under Entry 25 of the Third Schedule of the DVAT Act.

73. In view of the above, the question of law as to whether the coconut oil is wrongly classified under Entry No. 25 of the Third Schedule of the DVAT Act is answered in favour of the Revenue as well.

74. The present appeal is disposed of in the aforesaid terms.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

DECEMBER 22, 2023
KDK/VG/SSH