

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Sales Tax Revision / Reference No. 73/2021

Assistant Commissioner, Commercial Tax Department, Anti Evasion, Zone-II, Jaipur.

----Petitioner

Versus

M/s Devyani Food Industries Ltd., Jhotwara Industrial Area, Jaipur.

----Respondent

Connected With

S.B. Sales Tax Revision / Reference No. 70/2021

Assistant Commissioner, Commercial Tax Department, Anti Evasion, Zone - II, Jaipur.

----Petitioner

Versus

M/s Devyani Food Industries Ltd., Jhotwara Industrial Area, Jaipur.

----Respondent

S.B. Sales Tax Revision / Reference No. 71/2021

Assistant Commissioner, Commercial Tax Department, Anti Evasion, Zone - II, Jaipur.

----Petitioner

Versus

M/s Devyani Food Industries Ltd., Jhotwara Industrial Area, Jaipur.

----Respondent

S.B. Sales Tax Revision / Reference No. 72/2021

Assistant Commissioner Commercial Tax Department, Anti Evasion, Zone-II, Jaipur.

----Petitioner

Versus

M/s Devyani Food Industries Ltd., Jhotwara Industrial Area, Jaipur.

----Respondent

S.B. Sales Tax Revision / Reference No. 74/2021



Assistant Commissioner Commercial Tax Department, Anti Evasion Zone-II, Jaipur.

----Petitioner

Versus

M/s Devyani Food Industries Ltd., Jhotwara Industrial Area, Jaipur.

----Respondent

For Petitioner(s) : Mr. Punit Singhvi with
Mr. Ayush Singh

For Respondent(s) : Mr. Alkesh Sharma with
Mr. Ayush Sharma &
Mr. Himanshu Morwal

HON'BLE MR. JUSTICE SAMEER JAIN

Order

31/01/2023

1. In the instant matters following question of law was formulated:

"Whether the Tax Board was justified in holding that Chest Freezer/Deep Freezer does not fall within Entry 5 i.e. "Air Conditioner and Refrigerator" and therefore is neither liable to be taxed under Entry Tax Act nor under RVAT Act thereby exempting the goods from payment of any kind of tax?"

2. With the consent of the parties, the matter was taken up for final disposal. Sales Tax Revision/Reference No.73/2021 is taken as lead file to peruse the facts.

3. Learned counsel for the petitioner-revenue submits that the respondent-assessee has not paid Entry Tax on Chest Freezer/Deep Freezer brought from outside the State and provided it to the dealers for use. Learned counsel has relied upon the Assessment Order dated 30.11.2015 to submit that Deep Freezer are similar to refrigerators and therefore would fall under Entry 5



i.e. "Air Conditioner and Refrigerator" and therefore be liable to be taxed at 15%. Learned counsel contends that tax was rightly imposed by the Assessing Officer vide speaking order dated 30.11.2015. The Appellate Authority (vide order dated 29.03.2019) and the learned Tax Board (vide order dated 02.02.2021) have committed a grave error in holding that Deep Freezer are not part of "Air Conditioners and Refrigerators", which has resulted in a situation where the respondent-assessee is paying nil tax on the goods in question. Learned counsel, in furtherance of his contention that Deep Freezer would fall in the broad category of "Air Conditioners and Refrigerators", has relied upon the world-wide accepted Harmonized System of Nomenclature (in short "HSN"), more specifically, entry No.84.18 of HSN, to submit that even as per HSN, Deep Freezer/Chest Freezers are placed under the same broad heading. Learned counsel further relied upon Entry 5 of Notifications dated 08.03.2006, 09.03.2011, and 14.07.2014 to submit that the intention of the legislature was always to include Deep Freezers in the board category of "Air Conditioners and Refrigerators". Learned counsel further relied upon Hon'ble Apex Court judgment of **Mauri Yeast India Private Limited Vs. State of Uttar Pradesh & Anr.** reported in **2008 (5) SCC 680**, more particularly para 34 which is reproduced below:

"34. It is now a well settled principle of law that in interpreting different entries, attempts shall be made to find out as to whether the same answers the description of the contents of the basic entry and only in the event it is not possible to do so, recourse to the residuary entry should be taken by way of last resort."



By placing reliance upon **Mauri Yeast** (supra), learned counsel submits that the revenue discharged its onus to conclude that Deep Freezer falls under the broad category of "Air Conditioners and Refrigerators"

4. *Per contra*, supporting the concurrent findings of Appellate Authority and the Tax Board, learned counsel for the respondent-assessee submits that the Revenue has failed to discharge its onus to confirm that Deep Freezers falls under the entry of "Air Conditioners and Refrigerators". Learned counsel submits that the revenue has merely relied upon the opinion of the Assessing Officer, who in turn has concluded that Deep Freezers are similar to Refrigerators by relying upon Wikipedia. Learned counsel for the respondent-assessee contends that the reliance placed by Assessing Officer on Wikipedia is untenable in view of Hon'ble Supreme Court judgment of **(2008) 15 VST 256 (SC)** titled as **Ponds India Ltd. (Merged with H.L. Ltd) Vs. Commissioner of Trade Tax Lucknow**. Learned counsel has also relied upon judgment of this in **S.B. Sales Tax Revision/Reference No.232/2020** titled as **Assistant Commissioner, Commercial Taxes Department, Anti-Evasion, Zone-III, Jaipur vs. M/s Voltas Limited, Colony, Ajmer Road, Jaipur** decided on 30.11.2022 wherein it was specifically held that Deep Freezers would not fall in the entry of "Air Conditioners and Refrigerators" under RVAT Act 2003. Learned counsel further argued that once Deep Freezers is not included in the notifications issued under Section 3 of the Act of 1999, then the same cannot be subjected to entry tax by enlarging scope and meaning of other entries.



5. Heard the arguments advanced by both the sides, scanned the record and considered the judgments cited at Bar.
6. Before advertiring to the issue it is important to consider the provisions of Section 3 of the Act of 1999. The same is reproduced as under:

"3. Levy of tax:

(1) There shall be levied, collected and paid to the State Government a tax on entry of any goods brought into a local area, for consumption, use or sale therein, [with effect from such date] and [at such rates], not exceeding present of the value of the goods, as may be specified by the State Government, by notification in the Official Gazette, and different dates and different rates may be specified in respect of different goods or different class of goods or different local areas.

(2) The entry tax shall be levied on taxable purchase value of the goods, so however that in case where it is not possible to determine the taxable purchase value of goods, the entry tax shall be levied on taxable market value of goods.

(3) The tax levied under sub-section (1) shall be paid by every registered dealer or dealer liable to get himself registered under this Act [or by a person or class of persons liable to pay tax under the Act] who brings or causes to be brought into a local area, the goods whether on his own account or on account of his principal or any other person or who takes delivery or is entitled to take delivery of such goods on its entry into a local area."

7. It is also important to consider notifications dated 08.03.2006, 09.03.2011 and 14.07.2014. The relevant portion of notification dated 14.07.2014 is reproduced below:

"S.O.54.- In exercise of the powers conferred by sub-section (1) of section 3 of **The Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 (Act No.13 of 1999) and in supersession of this department's notification number **F.12(25)FD/Tax/11-150 (S.No.2751)** dated **09.03.2011**, as amended from time to time, the State Government hereby specifies that the**



tax payable by a dealer under the said Act, in respect of the goods specified in column 2 of the List given below, and brought into any local area for consumption or use or sale therein, shall be payable at such rate as specified against them in column 3 of the said List, with immediate effect, namely:-

Sr. No.	Description of goods	Rate of tax (%)
5.	Air Conditioner and Refrigerator	15

8. While considering the provisions of Section 3 of the Act of 1999 and the notification issued therein, significant phrases are note worthy. The levy of entry tax under the Act of 1999 is triggered by Section 3, and the same is restricted to the goods which are specified in the notification. The use of the phrase "*the goods specified in column 2*", makes the intention of the notification abundantly clear, i.e. any item not specified in the list cannot be subjected to entry tax. It is the case of the petitioner-revenue that Deep Freezers would be included in the broad category of "Air Conditioners and Refrigerators". However, in support of such contention, the revenue-petitioner has not brought any cogent material/evidence to substantiate such claim. In the case in hand, it cannot be said that the petitioner-revenue has discharged its onus to conclude that Deep Freezers should be include in the entry of "Air Conditioners and Refrigerators". The Appellate Authority, vide order dated 29.03.2019 has given detailed reasons to conclude that Deep Freezers would not be covered in the entry of "Air Conditioners and Refrigerators". Relevant portion of order dated 29.03.2019 is extracted below:

"विवेचन व निष्कर्ष निम्न प्रकार है :-

(i) *Chest freezer/Defreezer* और *refrigerator* दोनों की बनावट, तकनीक, उपयोग के स्थान, कार्य पद्धति, कीमत, आम भाषा (*Common parlance*) में दोनों उपकरण/एप्लायन्सेज भिन्न भिन्न वस्तुएं हैं। दोनों के द्वारा ही शीतलन (*Cooling*) किये जाने के आधार पर कर निर्धारण अधिकारी द्वारा दोनों को समान वस्तु अवधारित किया जाना, तार्किक नहीं है। इस संदर्भ में अपीलार्थी के तक कि:- 1. फ्रीज आंतरिक रूप से दो यूनिटों में विभाजित एक घरेलू उपयोगी एप्लायन्सेज है। बड़ा यूनिट खाद्य पदार्थों का ताजा रखता है तथा छोटा यूनिट 3 से 5 डिग्री सेल्सियस पर फ्रीजर के रूप बर्फ जमाने का कार्य करता है। इस प्रकार *refrigerator* यानि फ्रीज कूलिंग और फ्रीजिंग दोनों कार्य करता है। 2. चेस्ट फ्रीजर/डी-फ्रीजर केवल एक यूनिट/रूम के रूप होता है और सामान्यतः व्यावसायिक क्षेत्र में जमी/फोजन वस्तुओं को जीरो डिग्री से कम तापमान में लम्बे समय तक स्टोर करने में प्रयुक्त होता है। इसका घरेलू उपयोग नगण्य है। चेस्ट फ्रीजर/डी-फ्रीजर जमाव बिंदु के नीचे के तापमान पर कार्य करता है। इसका कार्य खाद्य पदार्थों ठंडा रखना नहीं है वरना जमी हुई अवस्था में रखना है। 3. जिस बिंदु पर *refrigerator* का कार्य समाप्त होता है, चेस्ट फ्रीजर/डी-फ्रीजर का कार्य उस बिंदु से प्रारम्भ होता है। इस प्रकार चेस्ट फ्रीजर/डी-फ्रीजर को *refrigerator* नहीं माना/समझा जा सकता। 4. चेस्ट फ्रीजर/डी-फ्रीजर *refrigerator*, के रूप में उपयोग में नहीं लाया जा सकता।”

The learned Tax Board affirmed the decision of the Appellate Authority vide order dated 02.02.2021. The *lis* in question has also been addressed by this Court in the case of **M/s Voltas Ltd. (supra)**, wherein this court has taken a conscious view that 'Deep Freezers' and 'Refrigerators' are different products. The relevant portion of order dated 30.11.2022 in the case of **M/s Voltas Ltd. (supra)** is reproduced below:

"7. ...The Appellate Authority and the Tax Board, after considering the said factors, held that the goods in question would not be included in the entry of 'Air Conditioner and Refrigerator'. They have given reasons why Deep Freezer is a distinct and different product. They have relied upon the Notifications dated 24.03.2005, 08.03.2006 and 09.03.2011, which are authored by Revenue themselves and the reasoning adopted by the Appellate Authority as well as by the Tax Board, in my opinion, is flawless.

8. In view of the above, on account of the reason that Deep Freezer are distinct product not covered under 'Air



Conditioner and Refrigerator' and that the notification dated 09.03.2011 specifically excluded Deep Freezer, this Court is not inclined to interfere with the order impugned. The judgments of A.R. Thermosets (supra) and Mauri Yeast (supra), relied upon by the Revenue are not applicable in the facts of the present case because the entry of 'Air Conditioner and Refrigerator' is limited and there is no conflict between the entries. Further, the Hon'ble Apex Court, in the case of Atul Glass (supra), has held that goods are to be classified as per their end usage. In the case in hand, the Revenue has not discharged their onus properly to show that Deep Freezer would be covered in the specific entry, rather they have merely relied upon opinion of the assessing officer, and have therefore not discharged the onus."

9. The argument qua the HSN, adopted by learned counsel for the petitioner, is not applicable in the given facts as the same was never raised in the original application or in the show cause notice. The argument qua HSN was never raised before Appellate Authority or the Tax Board, nor was it the foundation of the show cause notice or the order in original. Even otherwise, the reliance placed upon HSN by learned counsel for the petitioner-revenue is misconceived for the reason that Deep Freezers/Chest Freezer are distinctly mentioned under different code.

10. In view of the above, this court is not inclined to interfere with the order of the learned Tax Board. The question of law formulated hereinabove is answered in favour of the respondent-assessee and against the petitioner-revenue.

11. Accordingly, the Sales Tax Revision/References are dismissed. Pending applications, if any, stands disposed of.

(SAMEER JAIN),J