

accept the appeal with costs and grant the appellant decree for dissolution of her marriage with the respondent Kanwar Vijay Pal Singh.

**Harbans Singh, C. J.**—(18) I entirely agree with my learned brother that the words “is living in adultery” cannot possibly mean that the defaulting party must continue to live in adultery till the date of the decree. It is enough if the petitioner can prove such acts of adultery of the other spouse as indicate a course of action rather than a stray act or two of infidelity. I would, therefore, prefer to base my agreement with the order proposed on this general ground, rather than on the peculiar facts of this case.

K.S.K.

CIVIL MISCELLANEOUS

*Before Bal Raj Tuli, J.*

MESSRS EXPRESS DAIRY COMPANY LIMITED, CALCUTTA,—  
PETITION

*versus.*

THE ASSESSING AUTHORITY AND OTHERS,—*Respondents.*

**Civil Writ No. 2326 of 1965.**

January 14, 1971.

*The Punjab General Sales Tax Act (XLVI of 1948)—Section 6 and Schedule B item 54—‘Guar Giri’ or ‘Guar meal’—Whether comes within the description ‘Guara and its flour’ and taxable—Such item—Whether “fodder” and exempt from sales tax—Interpretation of statutes—Words used in taxing statutes—How to be construed—Primary use of an item—Whether determines taxability.*

*Held*, that the ‘Guar Giri’ or ‘Guar meal’ cannot be termed as ‘flour of Guara’ as it is a pulverized substance, which is not in the fine powder form. It is a substance in the form of small crystals and is not produced as a result of grinding but as a result of the process which separates the outer portion from the inner one. It is really a by-product of the primary manufacturing process to which the whole grain is subjected for commercial purposes. For this reason, it cannot be termed as a ‘Guar flour’, nor can be taxed as such. (Para 6).

*Held*, that as the only use made of ‘Guar Giri’ or ‘Guar meal’ is as fodder for cattle or animals, the item squarely falls within the description

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'Fodder in all its forms (dry and green)' and hence is exempt from the payment of sales tax under item 54 of Schedule 'B' of the Act. (Para 8).

*Held*, that while interpreting taxing statutes, if the language is clear and unambiguous, it has to be given its grammatical meaning, but if there is any vagueness or ambiguity in the identification of the subject of tax, the benefit has to be given to the tax-payer and not to the Government. Words must be construed not in any technical sense nor from the botanical point of view, but as understood in common parlance. If a word is not defined in the Act, but is a word of every day use, it must be construed in its popular sense which the subject matter, with which the statute is dealing, would attribute to it. In addition to the popular sense, Court can also have recourse to the use or the uses of the goods in question. If those goods are capable of more than one use, then the primary use will have to be seen while determining their taxability. If there is only one use to which the goods can be put, then that use will be decisive. (Paras 7 and 8).

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus, prohibition or any other appropriate writ order or direction be issued, quashing the order of the Assessing Authority respondent No. 1, dated 28th June, 1965.*

G. C. GARG, ADVOCATE, for the petitioner.

M. S. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL (HARYANA), for the respondents.

#### JUDGMENT

B. R. TULI, J.—(1) This judgment will dispose of Civil Writ Nos. 2326 of 1965, 906, 916 and 917 of 1968, *M/S Express Dairy Company Limited, Calcutta v. The Assessing Authority, Hissar, and others*; and 461 of 1966, *M/S Hindustan Gum & Chemicals Ltd. Bhiwani v. The Assessing Authority, Hissar, and others*; as common questions of law and facts arise in all these writ petitions.

(2) The short point for determination is whether 'Guar Giri' or 'Guar meal' produced by the petitioners is assessable to sales tax under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act). The petitioners buy Guar in the form of grain (*Cyamopsis peoralicides*) and by a manufacturing process in their factories separate the outer skin or husk from the kernel, which is also called 'middling', and is commercially known as 'Guar meal'. Gum is manufactured from the outer skin of husk which is exported

to the United States of America, while the inner portion called 'Guar meal' is used as a fodder for feeding animals in India on account of its high protein content. This assertion of the petitioners about the use of the Guar meal has not been denied in the written statements, nor has been contradicted by the Assessing Authorities passing the orders of assessment. It has been stated in the petition that this matter was considered by the Additional Assistant Excise and Taxation Commissioner, Punjab, in Sales Tax Revision Petition No. 289 of 1962-63, and in an exhaustive order it was held that 'Guar Giri' or 'Guar flour' was nothing but a cattle feed and, therefore, exempt from the payment of sales tax under item 54 of Schedule 'B' to the Act. On behalf of the respondents, it has been stated that this order was reversed by the Financial Commissioner in a further revision. The matter has been recently considered by the Sales Tax Appellate Tribunal, Haryana, in S.T.A. 91 of 1970-71, *M/S Hindustan Gum and Chemicals Limited, Bhiwani, v. Haryana State*, and it has been held that 'Guar meal' is fodder within the meaning of item 54 in Schedule 'B' to the Act, as it is only used for the purpose of feeding the cattle. The present petitions have been filed against the orders of the Assessing Authority because of this conflict in the Department.

(3) In order to appreciate the arguments advanced by the learned counsel for the parties, it is necessary to state the history of the item concerning 'Guar' and 'Guar flour' in Schedule 'B' to the Act. The Act was enacted in 1948 and came into force with effect from May 1, 1949. Schedule 'B' to the Act, as originally enacted, contained items 1 to 14 relating to certain foodgrains and their flours and pulses but did not contain 'Guar and its flour.' 'Guar and its flour' was inserted as item 13-A in Schedule 'B' to the Act by the East Punjab General Sales Tax (Amendment) Ordinance, 1949, which was promulgated on April 14, 1949, and was published in the East Punjab Gazette Extraordinary dated April 16, 1949. Thus, when the Act came into force on May 1, 1949, 'Guara and its flour' was included in Schedule 'B' to the Act amongst foodgrains and pulses, from which the intention of the legislature seems to be evident that 'Guara and its flour' was considered to be foodgrains. At that time fodder did not find place in Schedule 'B' to the Act, which relates to goods which are exempt from the payment of sales tax. This Schedule is prepared under section 6 of the Act. Item 54 'Fodder of every type (dry or green)'—was inserted in Schedule 'B' to the Act by the Punjab Government notification No. 2183-E&T(CH)-54/533, dated the 20th

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of May, 1955, which was published in the Punjab Government Gazette dated the 27th of May, 1955. Items 1 to 14, including 13-A, and item 54 continued in Schedule 'B' till April 19, 1958, on which date items 1 to 14 were omitted from Schedule 'B' by the East Punjab General Sales Tax (Amendment) Act No. 7 of 1958. Item 54, relating to fodder, continued to remain in Schedule 'B' even thereafter and is still there. The object and purpose of omitting items 1 to 14 from Schedule 'B' was to subject them to a sales tax of 75 naya paise per hundred rupees in order to utilise the proceeds of the amount so recovered for the purposes of education and this levy was, in fact, called 'Education Cess' in the reasons and objects of the amending Act. Consequently on April 19, 1958, notification No. 1863-E&T-58/1012 was issued and the rate of sales tax on foodgrains, their flours and pulses, which were mentioned as items 1 to 14 Schedule 'B' to the Act, was fixed as 75 naya paise per hundred rupees. In this notification, 'Guara and its flour' was not mentioned. That item was inserted in the above notification by notification dated the 12th of June, 1958, and later on by notification dated the 20th of December, 1958. It was in the wake of these notifications that the Assessing Authority levied sales tax on 'Guar meal' produced by the petitioners at the rate of 75 naya paise per hundred rupees holding that it was 'Guar flour' which was not covered by the item relating to fodder.

(4) The submission on behalf of the respondent is that because the items 'Guara and its flour' and 'Fodder of every type (dry or green)' co-existed in Schedule 'B' to the Act for three years from 1955 to 1958, it has to be assumed that the Legislature did not consider 'Guara and its flour' as a fodder, otherwise there was no necessity of mentioning this item separately if it was included in the item relating to fodder. It is not possible to accept this submission for the reason that Guara is not only fodder but has other uses also. Guara or Guar in the grain form has a commercial value to which it is being put by the petitioners, that is, its outer skin is separated and is exported out of the country on a commercial scale in the form of Gum and it is nowhere urged by any of the parties that the use of that outer skin of the Guara grain or Gum produced therefrom is a fodder for the cattle. It was, therefore, necessary to keep 'Guara and its flour' in Schedule 'B' to the Act as an exempted goods because it was not necessarily fodder in all its forms. This argument is, therefore, not conclusive of the fact that 'Guara and its flour' cannot be classed as a fodder.

(5) I, however, find substance in the next submission of the learned counsel for the respondents, that is, the omission of the item 'Guara and its flour' from Schedule 'B' and its inclusion in the notification dated April 19, 1958, by the two subsequent notifications, mentioned above, is a clear pointer to the intention of the Legislature that even if 'Guara and its flour' is covered by the item 'fodder', it is not exempt from the payment of the sales tax under item 54. Item 54 is a general item whereas 'Guara and its flour' is an item relating to particular goods and if those goods have been specifically subjected to tax, it cannot be considered as exempted goods under the general item relating to 'fodder'.

(6) It has now, therefore, to be determined whether the 'Guar Giri' or the 'Guar meal', which is sought to be taxed, comes within the description 'Guara and its flour'. This substance is extracted from Guara by a manufacturing process and, therefore, cannot be treated as Guara, which means the whole grain and not every part of it, into which it is split, or every product made therefrom. That is why 'its flour' is also mentioned. The Assessing Authority has held that 'Guar Giri' or 'Guar meal' is the same thing as 'Guar flour'. This view of the Assessing Authority is being challenged in these petitions. In Stroud's Judicial Dictionary, Third Edition, under 'flour' it is stated that "Millings" are wheat offal and not flour. In support of this view *R.&W. Paul, Ltd. v. Wheat Commissioner* (1), is cited. In Aiyar's Law Lexicon of British India, 1940 Edition, at page 451, 'Flour' is defined as "the finely ground meal of wheat or any other grain; flour is the product from grain, both ground and bolted while meal is the pulverized grain ground but unbolted. "In support of this definition, reference is made to *Washington Mut. Inst. Co. v. Merchant's etc., Mus. Ins. Co.* (2): It is, thus, clear that the 'Guar Giri' or the 'Guar meal' produced by the petitioners cannot be termed as 'flour or Guara' as it is a pulverized substance, which is not in the fine powder form. It is a substance in the form of small crystals and is not produced as a result of grinding but as a result of the process which separates the outer portion from the inner one. It is really a by-product of the primary manufacturing process to which the whole grain is subjected for commercial purposes. For this reason, it cannot be termed as a 'Guar flour', nor can be taxed as such.

(1) (1937) A. C. 139.

(2) 5 Ohio St. 450.

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(7) It is a well-known canon of interpretation of taxing statutes that if the language is clear and unambiguous, it has to be given its grammatical meaning, but if there is any vagueness or ambiguity in the identification of the subject of tax, the benefit has to be given to the tax-payer and not to the Government. I am, therefore, of the opinion that if the substance produced by the petitioners, which is sought to be taxed as 'Guara flour' does not fall in that description and squarely falls within another item in Schedule 'B', namely, 'Fodder in all its forms (dry and green)', then it has to be held that it is exempt from the payment of sales tax. I have already stated above that it has been asserted by the petitioners in the writ petitions and not denied in the written statements that the 'Guar Giri' or 'Guar meal' produced by them is only used as a cattle feed and for no other purpose. This fact was also asserted before the Assessing Authority, and the Assessing Authority has not mentioned any other use of this substance. All that the Assessing Authority has held is that this substance is covered by the item 'Guara flour' which is incorrect as pointed out above. Their Lordships of the Supreme Court in *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer, Akola, and another* (3), held that the words must be construed not in any technical sense nor from the botanical point of view, but as understood in common parlance. If a word is not defined in the Act, but it is a word of every day use, it must be construed in its popular sense which the subject-matter, with which the statute is dealing, would attribute to it.

(8) I am also of the opinion that in addition to the popular sense, the Court can also have recourse to the use or the use of the goods in question and if those goods are capable of more than one use, then the primary use will have to be seen while determining the taxability of the goods in a certain transaction, but if there is only one use to which the goods can be put, then that use will be decisive. In the present cases, I again repeat that it has not been denied by the respondents that the only use made of the Guar meal or the Guar Giri, produced by the petitioners, which is sought to be taxed, is as fodder for the cattle or animals. It is, therefore, reasonable to hold that the substance being produced by the petitioners, which is sought to be subjected to sales tax by the respondents, is fodder and exempt from the payment of sales

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(3) (1961) XII S.T.C. 286.

tax under item 54 of Schedule 'B' to the Act. Fodder has been held to mean 'feed for the cattle or animals' in which category the product of the petitioners squarely falls.

(9) For the reasons given above, these petitions are accepted and the impugned orders of assessment are quashed. The respondents are further directed to refund the sales tax, if any, recovered from the petitioners on the turnover relating to the sales of 'Guar meal' or 'Guar Giri' by them. Since there was a conflict of views in the Department, I leave the parties to bear their own costs.

N.K.S.

CIVIL MISCELLANEOUS

REVISIONAL CRIMINAL

*Before R. S. Sarkaria and C. G. Suri, JJ.*

THE STATE OF PUNJAB,—*Petitioner.*

*versus.*

SHAM KAUR, ETC.,—*Respondents.*

**Cr. Re. No. 85-R of 1968.**

January 14, 1971.

*Code of Criminal Procedure (Act V of 1898)—Section 195—Punjab Land Revenue Act (XVII of 1887)—Section 37—Officer acting and deciding a matter in course of mutation proceedings under Punjab Land Revenue Act—Whether a "Court" within the meaning of section 195(1)(c) and (2) of the Code.*

*Held*, that sub-section (2) of section 195 of the Code of Criminal Procedure provides that the term 'Court' in clauses (b) and (c) of sub-section (1) includes a civil, revenue or criminal Court but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877. These officers have been made an example as border line cases about which there could be two opinions as to whether they are Courts or not. This appears to be illustration which is a guide in interpreting the term 'Court' occurring in clauses (b) and (c) of section 195(1). The Registrar or Sub-Registrar appointed under the Indian Registration Act has much better trappings of a Court than a revenue officer deciding mutation proceedings under the Punjab Land Revenue Act. If the Registrar or the Sub-Registrar is not to be treated as a Court within the meaning of section 195(2) of the Code