(2005) 12 KL CK 0006

In the High Court Of Kerala

Case No : S.T.A. No. 3 of 2005

Anthoosons Agencies — APPELLANT

Vs

Commissioner of Commercial Taxes — RESPONDENT

Date of Decision : 22-12-2005

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 59A

Citation : (2006) 1 KLT 193

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : K.U. Vijayan and K.N. Sreekumaran, for the Appellant; Georgekutty Mathew, Government Pleader (Taxes), for the Respondent

Judgement

K.S. Radhakrishnan, J.—The question that is posed for consideration in this case is whether the commodity "Jam" would fall under entry 62 of the 1st Schedule which reads as "food including vegetative or animal preparations sold in airtight containers and food colours, essences of all kinds and powders or tables used for making food preparations" or under entry 141 of 1st Schedule which reads as "Squashes, sauces, fruit juices, fruit pulp, soda, mineral water, Horlicks, Boost, Bournvita, Complan, Glucose D, Glucovita and similar other items whether or not bottled, canned or packed".

2. Conflicting views have been expressed on the question whether "Jam" would fall under entry 62 of the 1st Schedule or entry 141 of the 1st Schedule which led to the assessee to file an application u/s 59A of the KGST Act before the Commissioner of Commercial Taxes and sought a clarification on the rate of tax on "Jam". Commissioner issued a clarificatory order dated 4.7.2005 holding that the commodity "Jam" is classifiable under entry 141 of the 1st Schedule of the KGST Act and taxable at 20% upto 31-3-2005. Sri. K.U. Viiayan, counsel appearing for the appellant submitted that the word "Jam" has never appeared in any of the Schedules appended to the KGST Act, 1963. Counsel submitted "Jam" has neither been defined nor explained by the Act. Counsel placed considerable

reliance on the dictionary meaning of that expression and also the meaning given to that expression in Prevention of Food Adulteration Rules, 1955. Counsel submitted the commodity "Jam" is fit for direct consumption while fruit pulp is not directly consumed and therefore applying the above mentioned test, the clarification issued by the Commissioner is perverse. Reference was made to the judgment of the Apex Court in (1994) 93 STC 180 and a Full Bench decision of this court in Tatson Food Industries v. State of Kerala 1999 (3) KLT 174 : (1999) 7 KTR 646. Counsel also submitted, even by applying the test of commercial identity, jam and fruit pulp are different commodities and by applying the common parlance test also, the clarification is perverse. Jam and pulp are understood as different commodities in common parlance and commercial circles.

3. Counsel appearing for the Revenue Sri. Georgekutty Mathew on the other hand, tried to support the view of the Commissioner. He also placed reliance on the decision of the apex court in State of Maharashtra v. Bradma of India Ltd. (2005) 140 STC 17 and submitted that a specific entry in the schedule to a taxing statute would override a general entry but, resort has to be had to the residuary heading only when a liberal construction of the specific heading cannot cover the goods in question. Counsel submitted jam is made from fruit pulp and since fruit pulp falls under Entry 141 jam also would fall in that category and therefore Commissioner has rightly issued the clarification.

4. We find it difficult to accept the view of the Commissioner. Bread, butter and jam are indispensable food articles in many a household. The expressions "bread" and "butter" are well known, so also, ''Jam". Encyclopedia-Americana International Edition Volume 15 states that the making of jam and jelly probably began centuries ago in the Middle Eastern countries sugar cane grew naturally and where fruits were abundant. It is believed that the Crusaders first introduced the sweets to Europe when they returned from the Middle East and by the late Middle Ages, jams, jellies and fruit conserves were popular in Europe. By the end of the 17th century, books on jam-making were published.

5. Before we examine further on the question, we may extract both the entries 62 as well as 141 of 1st Schedule for easy reference.

62. Food including vegetative At the point of first sale or animal preparations sold in in the State by a dealer airtight containers and food who is liable to tax under colours, essences of all kinds Section 5. and powders or tablets used for making food preparations. 12. 141. Squashes, sauces fruitjui- At the point of first sale ces, fruit pulp, soda, mineral in the State by a dealer water, Horlicks, Boost, Bourn- who is liable to tax under vita, Complan, Glucose D, Section 5. Glucovita and similar other items whether or not bottled, canned or packed. 20.

Assessee maintained the stand that the commodity "Jam" would fall under entry 62 of 1st Schedule. According to him, it is a food, consequently fall under entry 62, while the stand of the department is that it would fall under the expression "fruit pulp" under entry 141. Entry 141 uses among other things two commodities, "fruitjuices, fruit pulp". Fruit juice is very popular item just like squashes, sauces etc. So also, the other commodities like soda, mineral water, Horlicks, Boost, Bournvita and so on. Fruit juice is commercially well known. Customer can walk into a fruit stall and ask for fruit juice, but no customer would walk into a fruit shop and ask for fruit pulp instead of jam. Both are commercially different commodities. Jam is of course prepared from fruit pulp after that has been crushed, mashed, ground or chopped into pieces. Jam is a thicker mass that spreads out slightly when unmoulded. Jam is also treated as a different commodity in the Prevention of Adulteration Rules 1955, which says that it is a product obtained by processing fresh fruit, canned fruit, dried fruit or fruit pulp with water, sugar, dextrose, invert sugar or liquid glucose either singly or in combination by boiling to a suitable consistency and with or without citric, malic, ascorbic acid; permitted preservative and colours; pectin derived from any fruit etc. So far as fruit juice is concerned after fresh fruit, one of the most common fruit products is fruit juice. Fruit juice can take on many forms, including a natural style cloudy product a "nectar" type product containing suspended solids, a fully clarified juice, juice concentrate and fruit drinks. The processing of fruit juice involves washing, extraction, clarification and preservation. Entry 141 clearly takes in fruit juice hence there is no difficulty for a common man to understand it. In our view, if the intention was to include jam, a very popular commodity, it should have found a place in Entry 141. Fruit pulp cannot be equated to jam. According to us, jam will not fall under Entry 141, resultantly the same, can fall only under the residuary Entry 177.

Under such circumstance we are inclined to allow this appeal and hold that "Jam" would neither fall under entry 62 nor under entry 141 of the 1st Schedule, but would fall under the residuary Entry 177. Clarificatory order dated 4-7-2005 is accordingly set aside. Assessing authority is directed to complete the assessment afresh as directed above.

