

(1979) 10 AP CK 0009
In the Andhra Pradesh High Court

Brooke Bond India Limited

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-10-1979

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 2

Citation : (1980) 6 ELT 65

Hon'ble Judges : B.P. Jeevan Reddy, J

Bench : Single Bench

Judgement

1. Brooke Bond India Ltd. the petitioner herein, is asking for the issuance of a Writ of Mandamus, restraining the Central Excise authorities from levying and collecting excise duty on `coffee-chicory mixture", which is one of the products marketed and sold by it.

2. The petitioner, according to the averments in the writ petition, carries on business of packing and selling tea and coffee, under various brands and trade-marks, all over India and abroad. It sells pure coffee, as well as the blend of coffee and chicory. The petitioner says that he purchases coffee in the form of cured-seed at the auction conducted by the Indian Coffee Board, while chicory is procured directly from agriculturists.

3. The Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act"), levies a duty, called "excise duty" on goods procured or manufactured in India. Duty is levied on the basis of values or on the weight or number, as the case may be. The rates of excise duty are those mentioned in the Tariff Schedule appended to the Act. Sixty- eight items are mentioned in the Schedule. Items 1 to 1-F, 2 and 3 are mentioned under the general heading "Food and Beverages". Item 2 is "Coffee". It would be appropriate to set on all the entries under Item 2:-

` Coffee-

(1) Coffee, cured One hundred rupees per quintal.

(2) Coffee commercially Twenty per cent ad valorem plus known as "Instant Coffee". the duty of the time being leviable under sub-item (1) of the Item on Coffee, cured, used in the manufacture of such "instant coffee" if not already paid.

Explanation I - For the purposes of sub-item (1) "Coffee" means the seed of the coffee tree (Coffee), whether with or without husk, whether cured or uncured, but does not include the seed while still attached to the tree.

Explanation II - For the purpose of sub-item (2) "Instant Coffee" includes instant coffee containing any ingredient in addition to coffee"

With effect from 1-3-11975, a residuary entry, being Entry 68, was introduced in the Schedule, which Entry reads as follows :-

68. All other goods, not elsewhere One percent specified manufactured in a ad valorem. factory but excluding-

- (a) alcohol, all sorts including alcoholic liquors for human consumption.
- (b) opium, India hemp and other narcotic drugs and narcotics; and
- (c) dutiable goods as defined in section 2(c) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).

Explanation.- In this Item, the expression "Factory" has the meaning assigned to it is Section 2(m) of the Factories Act, 1948, (63 of 1948).....

The rate of duty, which was 1% ad valorem initially, has been revised upwards from time to time. I am told that at present it is 8%.

4. Having introduced the residuary item, the Central Government appears to have felt that certain goods ought to be exempted therefrom. Accordingly, it issued Notification No. 55/75, dated 1-3- 1975, under Rule 8(1) of the Central Excise Rules, 1944, which is to the following effect:-

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods of the description specified in the Schedule annexed hereto and falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 from the whole of the duty of excise leviable thereon.

THE SCHEDULE

1. All kinds of food products and food preparations, including :-

- (i) Meat and meat products;
- (ii) dairy products;
- (iii) fruit and vegetable products;
- (iv) fish and sea products;

(v) bakery products; and

(vi) grain mill products.

2. Electric light and power....."

5. From 1-3-1975 onwards, the petitioner was paying duty on the coffee-chicory blend,;under Item 68, without any demur. For the first time the petitioner raised an injection to the said levy, in or about January, 1978. The department, however, overruled the objections whereupon the petitioner approached this court without exhausting the remedies of appeal and revision, provided by the Act.

6. The a contention of Mr. K. Srinivasa Murthy, the learned counsel for the petitioner, is that the coffee-chicory blend marketed/sold by the petitioner cannot be said to have been `manufactured in a factory", within the meaning of Item 68 of the First Schedule and, therefore, cannot be taxed thereunder. Alternately, he submitted that eve if it is held that it is exempted from duty under the exemption notification dated 1-3- `975, aforesaid, it being a `food" within the meaning of the notification.

7. In the counter-affidavit filed on behalf on the department, it is submitted that the Writ Petition should not be entertained without the petitioner exhausting the remedies provided by the Act, more so because certain disputed questions of fact also arise for consideration herein. It is submitted that the process employed by the petitioner in preparing the coffee-chicory blend is a manufacturing process and that, therefore, It]em 68 is attracted. It is further submitted that the blend is not a "food product" within the meaning of the exemption notification and, therefore, not entitled to exemption.

8. Mr. Upendralal Waghay, the learned Additional Standing Counsel for the Central Government, submitted that only the food products and food-preparations of the nature specified in the exemption notification alone are exempted from duty and that, the coffee-chicory blend is neither a `food product" nor a `food preparations. According to him, it is a beverage manufactured in a factory and therefore, rightly subjected to duty.

9. Thus, two question arise for consideration before me. They are: (i) whether the coffee-chicory blend is manufactured in a factory, as contemplated by Item 68 of the First Schedule to the Act; and (ii) whether it is exempted from duty under the notification dated 1-3- 1975, which exempts "all kinds of food products and food preparations".

10. By way of clearing the ground, it may be stated that the duty on coffee is paid by the grower. The petitioner purchases same at the auctions conducted by the Indian Coffee Board. It therefore does not pay any excise duty on the coffee-power sold by it, except where it is `instant coffee" Instant coffee is liable to a higher rate of duty, and the petitioner pays the same after taking credit for the amount of duty paid by the producer. So far as `chicory" is concerned - I shall

presently mention that it is - It is not subjected to duty as such. According to paragraph 14 of the counter-affidavit, the petitioner purchases the chicory roots,, roast them with the aid of mechanical process involving consumption of power, powders them in the same manner, and then it is mixed with coffee in various percentages. The blend is sold under various trade-name (I must record that both the Counsel agreed before me that the above process set out in paragraph 14 of the counter-affidavit may be taken as true for the purpose of the writ petition since any dispute with respect to the said prices cannot be inquired into in this writ petition). It is brought to my notice by both the Counsel that such a blend is sold and marketed by several another Companies and Factories in India, and almost all of them call it "French Coffee". The expression "French Government object to the same Mr. K. Srinivasa Murthy brought to my notice that the petitioner herein being a multi-national, does not use the expression "French Coffee" for the coffee-chicory blends marketed by it and that, it markets them under various trade-names, prominently mentioning that it is a blend of coffee and chicory. It neither calls it `Coffee", nor `Chicory". But so far as the other and smaller companies and factories are concerned, they sell it as "French Coffee", also mentioning that it is a blend of coffee and chicory.

11. Now I shall take up the first question for consideration, viz., whether the coffee-chicory blend can be said to have been `manufactured in a factory. That the petitioner has a factory at Ghatkesar where it prepares the said blend, is not denied. The only question is, whether a manufacturing process is involved in preparation of the blend. The expression `manufacture" is defined by clause (f) in Section 2. It reads as follows:-

"(f) `manufacture" includes any process incidental or ancillary to the completion of a manufactured product; and

(i) in relation to tobacco, includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff;

(ii) in relation to manufactured tobacco, includes the labeling or red-labeling of containers and packing from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer;

(iii) in relation to salt, includes collection, removal, appropriation, steeping, evaporation, boiling, or any one or more of these processes, the separation or purification of salt obtained in the manufacture of saltpeter, the separation of salt from earth or other substance so as to produce elementary salt, and the excavation or removal of natural saline deposits or efflorescence;

(iv) in relation to patent or proprietary medicines as defined in Item No. 14F of that First Schedule, and inflation to cosmetics and toilet preparations as defined in Item No. 14-F of that Schedule, includes the conversion of powder into tablets or capsules, the labeling or re-labeling of containers intended for consumers and re- packing from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer;

(v) in relation to goods comprised in Item No. 18A of the First Schedule, includes sizing, beaming, warping winding or reeling, or any one or more of these processes, or the conversion of any of the said goods into another form of the said goods into other form of such goods; and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs his labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

12. It is thus only an inclusive definition, and does not throw any light on the meaning and concept of the word "manufacture". But, it is relevant in so far as it includes within its sweep "Any process incidental or ancillary to the completion of a manufactured product." The several specific instances mentioned in the five clauses of the said definition also throw light upon the content of the expression.

13. The word "manufactured" occurs along with the word "produced" in Entry 84 in List 1 of the Seventh Schedule to the constitution, which reads; duties of excise on tobacco and other goods manufactured or produced in India, except.....". The Supreme Court, in *Union of India (UOI) Vs. Delhi Cloth and General Mills*, , has held that "the "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely " to produce some change in a substance", however minor in consequence the change may be". It observed further : "thus distinction is well brought about in passage thus quoted in Permanent Edition of words and Phrases, Volume 26, from the an American Judgment. The passage runs thus:

"Manufacture" implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character, or use....."

14. The Supreme Court referred to the meaning of the word " goods" to become "goods" an article must be something which can ordinarily come to the market to be bought and sold....and, then proceeded to observe : "this consideration of the meaning of the word "goods" provides strong support for the view that "manufacture" which is liable to excise duty under the Central Accesses and Salt Act, 1944, must be the "bringing into the existence of a new substance known to the market....."After referring to the definition of the word "manufacture" in the Act, the court observed :

"we are unable to agree with the learned counsel that by inserting this definition of the word "manufacture" in section 2(f) the Legislature intended to equate "processing" to "manufacture" and intended to make mere "processing" as distinct from "manufacture "in the sense of bringing into existence of a new substance known to the market, liable to duty. The sole purpose of inserting this definition is to make it clear that at certain places in the Act the word "manufacture" has been used to mean a process incidental to the mean a process incidental to the manufacture of the article.....

15. That was a case where the manufacturers of Vanaspathi contended that Vanaspathi produced by them is not taxable as "vegetable oil- essential oils, all short, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power", within the meaning of Item 23 of the Tariff Schedule. The Department's contention was that, in the course of producing Vanaspathi, the petitioners bring into existence at one stage what is known as "refined oil" which falls within the the said Item 23. The Supreme Court observed:

"Excise duty is on the manufacture of goods and not on the sale. Mr. Pathak (counsel for the department) is therefore right in his contention that the fact that substance produced by them (petitioners) at an intermediate stage is not put in the market would not make any difference. If from the raw material has been brought into existence a new substance by the application of processes one or more of which are with the aid of power and that substance is the same as "refined oil" as known to the market an excise duty may be leviable under Item 23.....But, has it been shown that the substance produced by the petitioner is at any intermediate stage before the Vanaspathi comes into existence, "refined oil" as known to the market ? we are not satisfied that this has been shown.....".

16. After discussing the several relevant facts, the Supreme Court came to the conclusion that "the raw oil purchased by the respondents for the purpose of manufacture of Vanaspathi does not become at any stage "refined" in that connection that they considered the question whether the applying to the raw material purchased by the petitioners, the processes of neutralization by alkali and bleached by activated earth and/or carbon, can be said to amount to manufacturing a "non- essential vegetable oil" within the meaning of Item 23. They held that the said process does not amount to "manufacture " and it is, in truth, a mere processing of "goods" .

17. This meaning of the words "manufacture" and "goods" was reiterated in *S. B/.Sugar Mills vs. Union of India-* 1978 E. L. T. (J 336) :AIR 1968 SC 1922. The appellant therein was a Sugar Mill. It was producing "kiln gas" by the lime-kiln, which was used in manufacturing Sugar and soda-ash. it was sought to be taxed as carbon dioxide under Item 14-H of the Tariff Schedule. The Supreme Court found that the kiln-gas produced by the appellant there in was no carbon dioxide" as understood in the market, though carbon dioxide was one of its constituents. It was observed that kiln-gas cannot be called "compressed carbon dioxide" as is generally understood by "carbon dioxide" in the market and cannot, therefore, be taxed under the said Item. it was observed that Kiln-gas is not "carbon dioxide" in a commercial sense, nor can it be used as such.

18. The next decision on this aspect which is strongly relied upon by the counsel for the department is *Shaw Wallace and Co. Ltd. Vs. The State of Tamil Nadu*, . The case arose under the Tamil Nadu Genial Sales Tax Act. Sub-Items (1) to (15) or Item 21 of the Schedule 1 to the act. mentioned several chemical fertilisers which were subjected to only single- point levy. In other words, the second sale

of those commodities within the State was exempt from Sales-tax. Shaw Wallace & Company prepared a fertiliser-mixture by dry mixing of various chemical fertilisers, mentioned under sub-items (1) to (15) of Item 21, Its contention was that the said mixture is in effect the same articles which has already been subjected to sales-tax once and therefore, the sale, of mixture being a second sale, is exempt. This contention was rejected, holding that only when a chemical fertiliser special in subject-item (1)(15) of Item 21 is sold in the same condition in which it is purchased, that it is not subject to a fresh. levy It was observed that fertiliser mixture is not the same article as the ingredients composing it and that it is sold as a different commercial product; is put to different use; and has different chemical properties. It was observed further that the question whether there is any manufacturing process involved in the preparation of fertiliser mixture or not was wholly irrelevant for the determination of the question. This decision it is clear, turned on the language of the Madras Sales-Tax Act and is thus not an authority on the language or scope of the expression "Manufacture".

19. The next decision is the one reported in State of Maharashtra Vs. The Central Provinces Manganese Ore Co. Ltd., That was a case where manganese ore of different grades got mixed up in the course of transportation it no doubt satisfied certain specification prescribed by the Government. The petitioner called in "Oriental Mixture." The question was, whether a manufacturing process was involved. It was held that it was not, because it was not shown that any process of manufacturing was involved therein, and that it was not even shown that the several ingredients have got mixed up inseparably. It was held that the "oriental mixture" is not a new commodity than the several ingredients which made it up.

Mr. K. Srinivasa Murthy brought to my notice certain decisions, viz.

- (i) Angre (C. S.) vs. State- (1965) L. L. (I) 214 (Rajasthan);
- (ii) State vs. B. R. Shetty - (1975, Tax L. R. 1908);
- (iii) Deputy Commissioner of Sales-Tax vs. PIO Food Packers - (1978) 41 S.T.C. 364; and
- (iv) Lt. Governor of Delhi vs. G. F. Mills - [1973 Tax L. R. 1923]

to show that various processes do not amount to "manufacturer. In the first of the cases, it was held that the process of grading sorting, drying or storing of potatoes by cold process taken together or separately, does not amount to "manufacturing process."

20. In the second case, it was held that mere dehusking of paddy and getting rice from it does not amount to "manufacture" That was a case arising under the Karnataka States-tax Act.

21. In the third case, it was held that preparation of pine-apples slices in tin-containers for marketing from out of the pine- apples purchased from the dealers therein does not amount to "manufacturing process."

22. In *Lt. Governor, Delhi vs. G. F. Mills*- [1973 Tax L. R. 1923], the Supreme Court held that the mere fact that the tin-sheets or tin-plates are subjected to the process of cutting and moulding into tin-containers for storing vegetable oil, will not by itself take them out of the category of the tin-sheets and tin-plates. It was held that cutting and moulding only facilitates the actual user for packing, and does not alter and the nature of the material intended for being used for packing of goods for sale. I must observe that there is no discussion in this decision about the meaning of the expression "manufacture. The decision turned entirely upon the language employed in the Central Sales-tax Act, and the question was whether the containers prepared by the dealers therein, fell within the particular Item mentioned in the Act.

23. Mr. Srinivasa Murthy, however relied strongly upon two decisions, to which a reference is now necessary. The first one is *B. Dar Laboratories vs. State of Gujarat* - (1968) 22.S.T.C.,160), a decision of a Bench of the Gujarat High Court. Entry 49 in Schedule - A of the Bombay Sales-tax Act, 1939, exempted from the levy of sales- tax, tobacco as defined in Item 4 of the First Schedule to the Central Excises and Salt Act, 1944. According to Item 4, `tobacco" includes any form of tobacco, whether manufactured or not. Accordingly, `snuff" fell within the said Item. The dealer in that case was a manufacturing-chemist, who sold a preparation described as `Ipco Dental Creamy Snuff", for application to the gums. The preparation contained 55% snuff, 40% water, 2.5% preservative, and 2.5% flavouring agents. The question was whether the said cream was `tobacco" within the meaning of Item 4 of the First Schedule to the Central Excise Act and was exempt under entry 49 in Schedule "A" to the Bombay Sales-tax Act. It was held by the Gujarat High Court that cream was essentially a `tobacco" and that, the adding of flavouring agents, or preservative or water to change its physical condition, to make it more acceptable to its customers, did not change its essential character. Therefore, the Court held that it is exempt from Sales-tax. Learned counsel for the petitioner wants to approximate the process undergone in the present case to the one involved in the said case. This submission I will deal with later. But, suffice it to mention that the said decision did to involve the question whether a manufacturing process had been gone through in that case, but was concerned with the question whether the cream continued to the `tobacco" within the meaning of Item 4 of the Tariff Schedule.

24. The other decision relied upon by the learned counsel for the petitioner, is the one reported in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, . The question which arose for consideration of the Supreme Court, was whether hydrogenated groundnut oil (commonly known as Vanaspathi) was "groundnut oil" so as to get the benefit of deduction under the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. The process of hydrogenation brought about a chemical change, and the liquid oil become hardened and assumed a solid form. In fact, it was found that the change in that case was both additive and intermolecular; and yet it was held that the refined ground-nut oil was not `groundnut oil". It was observed that there is no use to which the

hydrogenated oil could not be put to, to which the groundnut oil could be put, and vice versa. It was observed that the process of hydrogenation was merely for the purpose of improving its keeping qualities and to make it more acceptable to customers, and for easy packing and transportation. then again it is a case, it should be noted even at this stage, where the question was whether the hydrogenated oil remained and continued to be 'groundnut oil' for the purpose of the Madras Rules, aforesaid.

25. Now, keeping in view the above decisions, and in particular the decision of the Supreme Court, in Union of India vs. Delhi Cloth and General Mills - 1977 E.L.T.(J 199) : AIR 1963 SC 7971 which defines the expressions 'manufacture' and 'goods', let me consider whether the process involved in this case (set out in paragraph 14 of the counter-affidavit), amounts to a 'manufacturing process. But, before doing that, it is necessary to examine what "Chicory" is ?

26. The most extensive statement about 'chicory' is found in the Encyclopaedia Britannica, Volume V at page 493. It would be appropriate to set it out in full :-

"Chicory : Cicharium intybus (family Composite) is a plant native to Europe and introduced to the united States late in the 19th Century. It has a long fleshy taproot, a rigid branching hairy stem rising to a height of 3 to 5 ft., the leaves around the base being lobbed and toothed, not unlike those of the dandelion. The flower heads are of a bright blue colour, few in number, and measure nearly an inch and a half across. Common chicory is cultivated extensively on the continent of Europe- the netherlands. Belgium, France, Germany. In North America chicory is an introduced weed which has become widely distributed. It is abundant in pastures and along roadsides in the eastern United States and Canada. and is usually considered a pest. As a cultivated crop common chicory is grown to some extent for its root.

Its roots, roasted and ground, are used as a substitute for an adulterant of, or an addition to coffee; both roots and leaves are employed as salads; and the plant is grown as a fodder or herbage crop for cattle. In Great Britain its chiefly in connection with coffee that chicory is employed. A large proportion of the chicory root used for this purpose is obtained from neighbouring continental countries but a considerable quantity is cultivated in England, chiefly in Yorkshire. It gives the coffee additional colour, bitterness and body.

27. The loose, blanched leaves are much esteemed by the French as a winter salad, barbe de capucin. In Belgium and elsewhere tighter heads crowns called Witloof (for witloof) are preferred. There also, the fresh roots and boiled and eaten with butter, throughout Europe, the roots are stored to supply leaves for use as salads during winter.

28. The roots are grown in the open during the summer and are taken up in the fall to be forced during the winter. One method of forcing produces barbe de capucin and another produces witloof. If the seed is sown early in the spring in temperate regions having a growing seasons of five and a half to six months, the

plants may go to seed instead of forming large storage roots suitable for forcing. In such regions seed should be sown in June. The roots may be forced under greenhouse benches, in Cellars or out of doors. (See also Endive)....."

It is also called "Endive.", which is mentioned at page 378 of Vol. VIII.

29. From the above statement it is clear that chicory is a plant, the roots whereof are used for obtaining the chicory powder. Though the test-books do not say so, it appears that this plant is now being raised in certain parts of India, particularly in Uttar Pradesh, because of its commercial use. May be that on the European continent its leaves are also used as salads, but the plant as such appears to be grown as a fodder or herbage crop for cattle, though in Great Britain it is for mixing with coffee. These roots are available at a far cheaper cost, than the coffee- seeds. As stated in paragraph 14 of the counter-affidavit, these roots, after they are properly pruned and cleaned, are roasted to the proper colour and then ground into powder, with the aid of mechanical process, involving consumption of powder. It is thereafter that it is mixed with coffee-powder in varying percentages. In other words, what is a mere root with no other use in this country, is converted into a coffee-like powder for mixing with coffee, which is popularly known in this country as "French Coffee". Undoubtedly, there is a transformation, and the blend that emerges is certainly a different article 'having a distinctive name and character and use' to use the words of the Supreme Court. It is significant to notice that chicory as such would not be used as a beverage-certainly not in this country - and no one would purchase it. Only when it is blended with coffee powder then it becomes known as "French Coffee" and is used as a beverage, placed popularly in the category of 'Coffee'. In other words, in the public mind it is associated with coffee. Probably the situation would have been different, if chicory powder as such was used as a beverage - I am not sure. But I am of the definite opinion that when it is mixed with coffee and becomes what is popularly known as "French Coffee" for being used as a coffee beverage, it certainly undergoes a change and transformation. "French Coffee" has a distinctive name, character and use, different from chicory roots. The process of roasting, powdering and its mixing with coffee powder, cannot but be a manufacturing process. Further, if this aspect is judged in the context of the definition of the expression 'goods'. as pointed out by the Supreme Court, it would be clear that a new substance known to the market has been brought into existence by the aforesaid process, which cannot but be a 'manufacturing process. This is not akin to the Gujarat case, where 'snuff' was sold as a cream to make it more acceptable. Nor can the process involved herein be equated to the process of hydrogenation of the 'refined oil'. In those cases, the snuff remained as snuff, and the refined-oil or remained as refined-oil, notwithstanding the change in the form, colour, or appearance. Above all, the use was the same. That cannot be said to be the case herein. There is no conceivable similarity between the use of the original roots, and the ultimate use to which a coffee-chicory blend is put. I am, therefore, satisfied that the coffee- chicory blend falls under Item 68 of the Tariff Schedule, having been manufactured in a factory.

30. The next question is, whether the coffee-chicory blend is exempt from duty, by virtue of the exemption notification dated 1.3.1975, aforesaid, which exempts `all kinds of food products and food preparations.

31. The first submission of Mr. K. Srinivasa Murthy on this question was that coffee itself is mentioned in the Tariff Schedule under the general heading `Coffee", and if coffee is `food", coffee-chicory blend equally is : It was, however, found that the general heading for Items 1 to 3 in the Tariff Schedule was differently printed in different publications. Hence, I sent for the official publication, viz. the Central Excise Manual, Volume 1, containing the Acts and Rules (10th Edition), published in 1976 by the Board of Excise and Customs, New Delhi. This shows that Items 1 to 3 are mentioned under the general heading "Food and Beverages". In the publication Mr. Srinivasa Murthy was relying upon, while Items 1 to 3 are mentioned under the head `food", tobacco (item 4) was mentioned under the head `beverages", which is plainly impossible. I have no reason to doubt that the heads as printed in the official publication are the correct ones. That knocks the bottom out of the petitioner's contention, aforesaid. May be that in some cases the dividing line between `food" and `beverage" is very thin but, the aforesaid general heading displaces the basis of Mr. Srinivasa Murthy's argument that since coffee is mentioned as `food", the coffee-chicory blend also is `food". When both the words `food" and `beverages" are used by the Act and a question arises whether coffee is as `food" or a `beverage", the answer cannot but be that it is a beverage. Similarly, the `French Coffee" i.e., the coffee-chicory blend, also should have to be placed in the category of `beverages" and not `food" Indubitably, in common parlance, and according to commercial usage, coffee is understood as a beverage, and not as food, in this country. it would be worthwhile to notice that chicory or chicory-roots have no use in this country other than for mixing with coffee to obtain `French Coffee".

32. Mr. K. Srinivasa Murthy relied upon paragraph 1093 in Volume 18 of the "Halsbury's Laws of England" (4th Edition). Under that paragraph `Coffee" and `coffee products" are mentioned under the general heading "Food, Dairies and Slaughter-Houses, and under the sub-heading `Food Generally." Coffee-chicory blend also is mentioned in that paragraph. It should, however, be noticed that the said inclusion of coffee and coffee product under the heading `food generally" is in the context of the law of force in England. Similarly, in Corpus Juris Secundum, Volume 36, it is stated at Page 1041 : "the word food includes that which is eaten or drunk for nourishment." it includes lard, milk, milk-chocolate, Cheese, coffee..... but not tobacco, whisky, or saccharin..... In food statutes the term usually includes all articles used for food or drink by a man or by men and other animals, whether simply mixed or compound. In construing certain statutes, however, it has been held that the term `food" does not include a beverage or drink.....". It is further stated therein that under some statutes, even that articles used for medicines are also included within the meaning of the word `food". The aforesaid passages from Halsbury's Laws of England, and

Corpus Juris Secundum cannot be mechanically imported into the present case, more particularly when the Act with which we are concerned does make a distinction between foods and beverages and use both the expressions in the Tariff Schedule. further, the passage from Corpus Juris Secundum itself shows that the word `food" has no definition of universal application and that, it varies from statute to statute. As I have said earlier, in some cases, the dividing line between `beverages" and `food" may be thin - they may, in some cases, overlap - but so far as coffee or coffee- chicory blend is concerned, there can be little doubt that it is a beverage than a food.

33. Learned Counsel then relied upon certain decisions rendered under the Prevention of Food Adulteration Act. But, in my opinion, they are not of much help for the reason that those decisions are rendered with reference to the particular definition of the expression `food" in that Act, which is very widely worded. The definition reads :

"Food" means any article used as food or drink for human consumption other than drugs and water and includes.....

(a) any article which ordinarily enters into or is used in the composition of preparation of human food,

(b) any flavouring matter or condiments, and

(c) any other article which the Central Government may, having regard to its use, nature, substance or quality, declare by notification in the Official Gazette, as food for the purpose of this Act."

34. The expression `beverage", is not separately defined or dealt with by that Act. I am afraid there are no reasons to import the definition enacted for the purpose of that Act, for construing the words `food", `beverages" or for construing the expressions `food products" and `food preparations" used in the exemption notification issued under the Central Excise Act. However, a brief reference to those cases may not be out of order.

35. In Pyrali K. Tejani Vs. Mahadeo Ramchandra Dange and Others, , it was held that `Supari" is a food for the purpose of the Food Adulteration Act. Similarly, in Public Prosecutor Vs. V. Nagabhushanam, , a Bench of this court held that coconut oil is an edible oil, even though it is not so used in Andhra Pradesh. It was held that since the said oil is extensively used as a coconut medium in Kerala, Malayalees, wherever they may be, generally used coconut oil for that purpose. It was, therefore, held that it falls within the definition of the expression `food". For the reasons given above, I do not think that those cases are of any assistance herein.

36. Mr. Srinivasa Murthy relied upon a decision of the Madhya Pradesh High Court in Commissioner of Sales-Tax, Madhya Pradesh vs. India Coffee Workers" Co-operative Society Ltd. - (1970) 25 S.T.C. 43 where it was held that hot coffee is `cooked food" within the meaning of Item 9 of Schedule 1 to the Madhya

Pradesh General Sales-tax Act, 1958. Under the said Item, 'cooked food other than (a) parties, (b) a meal the charge of which excess rupees two; (c) sweet-meats' was exempted from the payment of sales-tax. The question that arose before the High Court was, whether 'hot coffee' served in the dealer's restaurant falls within the expression 'meal', and further whether it falls within the expression 'cooked food'. It was held that the word 'meal' was used in the said item as food which one takes on regular times of the day, at breakfast, dinner, supper, etc., and that, the hot-coffee and other articles like Ice-cream etc., sold by the assessee, singly or collectively, did not constitute 'meal'. It was held that fall within the meaning of the expression 'cooked food' and are, therefore, exempt from the payment of sales-tax. The said decision turned upon the language of the particular Entry concerned therein, and cannot be an authority for the general proposition that coffee must be treated as 'food' under each and every enactment.

37. It should also be noticed that what is exempted under the exemption notification is not 'food' is different from 'food products' and 'food preparations. I see some force in the said contention in the context of the very Item 68, which deals only with articles manufactured in a factory. But nothing much turns on this aspect, because I have already held that coffee-chicory blend is an article manufactured in a factory.

38. For the aforesaid reasons, the Writ Petition fails and is, accordingly, dismissed with costs.

39. Advocate's fee : Rs. 250/-