(1998) 04 KL CK 0029

In the High Court Of Kerala

Case No : T.R.C. No. 2 of 1997

General Foods (P) Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 01-04-1998

Acts Referred:

Citation : (2003) 133 STC 532

Hon'ble Judges : Om Prakash, C.J;J.B. Koshy, J

Bench : Division Bench

Advocate : K.B. Mohammed Kutty, for the Appellant; V.V. Asokan, Special Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

Om Prakash, C.J.—This T.R.C. raises a ticklish but interesting question, whether industrial stearine fatty acid is covered by entry 65 of the First Schedule to the Kerala General Sales Tax Act, 1963 (for short, "the Act"), which refers to "all acids".

2. While completing the original assessment, the assessing authority levied tax on the sales of industrial stearine fatty acid at the rate of four per cent treating the item as unclassified. Later, he reopened the assessment and held that the industrial stearine fatty acid falls under entry 65 of the First Schedule of the Act and taxed the same accordingly.

3. The contention of the revision-petitioner before the assessing authority was that the industrial stearine fatty acid sold by it, is not in the nature of "acid" at all and, therefore, that deserves to be taxed as unclassified item at the rate of four per cent. It was submitted by counsel for the revision-petitioner before the assessing authority that the acids arc basically chemical, which would be corrosive and dangerous in nature. But the industrial stearine fatty acid is derived by soliting the fatty acid, which are made out of oil and they being neither corrosive nor dangerous in nature, do not fall in the category of acids, as

understood in common parlance.

4. The dispute was carried before the Kerala Sales Tax Appellate Tribunal, which found as follows :

"Acid is one which neutralises the base. For example, caustic soda plus any acid gives a salt, i.e., sodium salt. Or lime plus any acid gives calcium salt. Acid may be classified under different categories such as organic, inorganic, commercial acid, or edible or non-edible etc. Organic acids are like free fatty acid (FFA), formic acid, citric acid, etc. Certain organic acids are edible. For example, citric acid is edible when diluted to five per cent or less. Free fatty acid is not edible as the oil is separated even though it is an organic acid. Entry 65 of the First Schedule deals with "all acids". "All acids" mean every acid whether organic or inorganic or commercial etc. The entry covers every item which is an acid. The item in question i.e., industrial stearine fatty acid is a free fatty acid (FFA) which is commercially very much an acid. Commercially also free fatty acid is an acid....."

5. Learned counsel for the revision-petitioner submits before us that one should not be swayed by the name of the product. He says that a product may be named in one way, but in popular sense that may be understood in a different way and when an item is not defined under the statute, then that should be understood in a way in which that is used in common parlance. We do not dispute the proposition as stated by learned counsel for the revision-petitioner. But the question is whether the industrial stearine fatty acid is in the nature of acid and if that is so, whether that can be excluded from the entry of the widest amplitude embracing "all acids". The clear finding recorded by the Appellate Tribunal is that the industrial stearine fatty acid is nothing but acid and that is chemically known as acid. Also the Appellate Tribunal found that the industrial stearine fatty acid is also commercially known as free fatty acid. This is a finding of fact recorded by the Tribunal, which cannot be disputed under the revision petition. Learned counsel for the revision-petitioner has not successfully shown to us that the industrial stearine fatty acid does not fall within the ambit of acid at all. So long as the industrial stearine fatty acid is commercially and chemically known as acid, that will surely fall within the ambit of the entry 65 of the First Schedule to the Act and that cannot be taxed as unclassified item.

For these reasons, the T.R.C. fails and is dismissed.

Order of C.M.P. No. 156 of 1997 in T.R.C. No. 2 of 1997 dismissed.

