**(2013) 05 GAU CK 0057**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No. 2330 of 2013

Rajnikant and Brothers APPELLANT

Vs

State of Assam and Others RESPONDENT

**Date of Decision :** 06-05-2013

**Acts Referred:**

**Citation :** (2013) 63 VST 461

**Hon'ble Judges :** Adarsh Kumar Goel, C.J;Arup Kumar Goswami, J

**Bench :** Division Bench

**Advocate :** Ashok Saraf, Ms. M.L. Gope, Ms. N. Hawelia, A. Goyal, K. Choudhury and P. Baruah, for the Appellant; R. Dubey, for the Respondent

## Judgement

Adarsh Kumar Goel, C.J.—This petition seeks quashing of order dated November 17, 2012, passed by the Commissioner of Taxes, Assam u/s 105 of the Assam Value Added Tax Act, 2003 declaring that the item "Madhusudhan brand milk powder'''' containing added sugar and fat was not "skimmed milk powder" and hence not covered by entry 60 of Part A of the Second Schedule to the Act, providing for lower rate of tax. The case of the petitioner is that it is engaged in sale of milk powder called "Madhusudhan brand milk powder" which is skimmed milk powder covered by entry No. 60 of Part A of the Second Schedule to the Act and thus taxable at lower rate, i.e., at five percent. In the common parlance the product is known as skimmed milk hut the assessing authority for assessment years 2007-08, 2008-09 and 2009-10 made provisional assessment by holding that the product was not skimmed milk powder. The stand of the Department is that the product was not "skimmed milk powder" as it was not of a low fat character. The petitioner sought a clarification u/s 105 of the Act from the Commissioner of Taxes by submitting that since in the common parlance the product was known as skimmed milk powder, the Department could not take a different stand merely because the product did hot have low fat. According to the petitioner, the criteria of low fat could not be applied for declaring the'' product to be not skimmed milk powder. The Commissioner did not accept this submission vide order dated September 4, 2010 (Rajnikant & Brothers v. State of Assam) which was challenged by way of W.P. (C) No. 5915 of 2010. The writ petition was disposed of on July 17, 2012 with the observation that the Commissioner may look info the plea of common parlance test. The Commissioner, after reconsideration, reiterated the earlier view holding as follows:

Skimmed milk powder is not defined in the Schedule. Therefore, the item has to be understood in common parlance. In common parlance, skimmed milk powder means milk powder that has less fat. The Madhusudhan brand of skimmed milk powder is marketed as skimmed milk powder but with added fat. It implies that though the name is given as skimmed milk powder but it has fat. Therefore, it cannot be regarded as skimmed milk powder because skimmed milk powder has to contain less fat.

The petitioner also submitted that even certain items are added to milk it will remain milk. Thus if milk fat and sugar is added to skimmed milk powder, it will still remain skimmed milk powder. The submission of the petitioner is not justified as under the AVAT Act two separate category of milk powder is taken into account on the basis of their fat amount, i.e., milk powder with less fat is kept under five percent category whereas milk powder with fat is kept under 13.5 percent category. The petitioner''s brand of milk powder is marketed as skimmed milk powder with added fat, i.e., milk powder with fat. Hence, it is clarified that the item, the Madhusudhan brand of skimmed milk powder containing added sugar and fat is not skimmed milk powder and therefore shall come under entry at Sl. No. 1 of the Fifth Schedule and shall be taxable at 13.5 percent.

2. The learned counsel for the petitioner submitted that in absence of any specific definition under the taxing statute, label given by the petitioner "skimmed milk powder" had to be accepted by applying the common parlance test irrespective of the fat contained. Referring to the process of manufacture as mentioned in the writ petition, it is submitted that it contains maximum 10 percent fat and 20 percent sugar.

3. On due consideration, we are unable to accept the submission.

4. There is no dispute with the legal proposition that common parlance meaning has to be given instead of a technical meaning while interpreting entry in a fiscal statute as the fiscal statues are drafted keeping in mind the common parlance terminology of the goods. However, mere averment that in common parlance a product was known as "skimmed milk powder" is not enough if contents of such milk powder belie such label. The Commissioner of Taxes has rightly held that in common parlance skimmed milk powder meant milk powder which had less fat. Merely because the dealer had used the label of "skimmed milk powder" could not be conclusive of the contents thereof. In the earlier order of the Commissioner dated September 4, 2010, reference was made to the criteria laid down in the Prevention of Food Adulteration (PFA) Rules, 1955 and standard

 

prescribed by the Bureau of Indian Standards to the effect that skimmed milk powder should not contain more than 1.5 percent milk fat and more than five percent moisture. The product of the petitioner contained 10 percent fat.

5. While the standard prescribed need not always be conclusive if it is patently against common understanding, such standard could certainly be taken into account to ascertain common sense meaning of a product. There is no material to indicate that milk powder containing 10 percent fat was to be treated as skimmed milk powder as per understanding of common man. Thus, by applying the common parlance test, the impugned order is not liable to be interfered with.

6. We, thus, do not find any ground to interfere with the view taken by the Commissioner of Taxes. The writ petition is dismissed.

 