
(2005) 09 AP CK 0103

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 53 of 1995, 66, 67, 73, 74, 91, 100, 104 and 120 of 1997, 1, 4, 6, 7, 8, 9, 24, 40 and 117 of 1998, Special Appeal No's. 41 of 1994, 36, 37 and 41 of 1997, 1, 2 and 24 of 1998 and Writ Petition No. 21392 of 2001

Sri Satya Winery and Distillery Pvt. Ltd.

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 20(2), 5, 6, 6C
Constitution of India, 1950 — Article 14

Citation : (2006) 145 STC 399

Hon'ble Judges : S. Ananda Reddy, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : M.V.K. Murthy, S. Janardhan Reddy and Y. Srinivasa Reddy, for the Appellant; The Government Pleader for Taxes, for the Respondent

Judgement

S. Ananda Reddy, J.—This batch of tax revision cases, special appeals and the writ petition are at the instance of the dealers directed against the orders passed by the Andhra Pradesh Sales Tax Appellate Tribunal and that of the Commissioner of Commercial Taxes (CT) respectively where the claims of the dealers as to the exigibility of the tax to the packing material, containers, viz., bottles and cartons at the rates specified in the respective entries in the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (for brevity "the Act"). As common issue is involved in all these tax revision cases, special appeals and the writ petition, they are being disposed of by this common judgment for the sake of convenience.

2. The dealers in these cases are either the distributors, wholesalers or retailers of liquor and beer. They were purchasing the liquor and beer filled in bottles and packed in cartons from the manufacturers, distributors, wholesalers, etc. The liquor and beer are exigible to tax under entry 1 of the Sixth Schedule to the Act and taxable at every point of sale, while the bottles and cartons as such are exigible to tax under entries 123 and 19 respectively of the First Schedule to the

Act. But the dispute in the present cases is whether the bottles and cartons are to be taxed at the rates at which the contents housed in these bottles and cartons are to be taxed. Admittedly, the liquor and beer are exigible to tax at 25 per cent at the relevant point of time, while the bottles under entry 123 of the First Schedule at 9 per cent and the cartons under entry 19 of the First Schedule at 5 per cent. The State Legislature amended the Act, by inserting Section 6-C in the Act, by Amendment Act No. 11 of 1984, with effect from July 8, 1983. By virtue of the said amended provision, a deeming sale was brought in as a result of which whenever the liquor and beer were sold in packed material, the packed material is deemed to have been sold along with the contents and tax is leviable on the packed material at the same rates as that of the material packed or housed in the packed material. The said provision was assailed in a batch of writ petitions before this Court in *Raj Sheel v. State of Andhra Pradesh* [1987] 64 STC 398 where a division Bench of this Court upheld the validity of the said provision observing that the said provision is only clarificatory of the position, which was in vogue. The division Bench also held that the sale of the packed material along with the goods packed therein is incidental or unavoidable in view of the nature of the goods sold, therefore, there is no scope for any argument that what was sold is only the contents or the goods packed in the packing material without there being any sale of the packing material or container containing the goods. The said judgment was the subject-matter of an appeal before the apex Court and the apex Court in *Raj Sheel v. State of Andhra Pradesh* [1989] 74 STC 379 while upholding the division Bench judgment of this Court as to the Constitutional validity of the provision of Section 6-C of the Act, but however, with reference to the finding of the division Bench as to the deemed sale of the packing material or the container, reversed the view expressed by the division Bench and felt that different nature of transactions may be possible. The relevant portion of the said judgment reads as follows :

It is, therefore, perfectly plain that the issue as to whether the packing material has been sold or merely transferred without consideration depends on the contract between the parties. The fact that the packing material is of insignificant value in relation to the value of the contents may imply that there was no intention to sell the packing material, but where any packing material is of significant value it may imply an intention to sell the packing material. In a case where the packing material is an independent commodity and the packing material as well as the contents are sold independently, the packing material is liable to tax on its own footing. Whether a transaction for sale of packing material is an independent transaction will depend upon several factors, some of them being :

1. The packing material is a commodity having its own identity and is separately classified in the Schedule ;
2. There is no change, chemical or physical, in the packing either at the time of packing or at the time of using the content ;

3. The packing is capable of being reused after the contents have been consumed ;
4. The packing is used for convenience of transport and the quantity of the goods as such is not dependent on packing ;
5. The mere fact that the consideration for the packing is merged with the consideration for the product would not make the sale of packing an integrated part of the sale of the product.

Therefore, in view of the above finding, the matters were remanded to the assessing authority for ascertaining as to the nature of the transaction and to give a finding. Thereafter, the assessing authorities have taken up fresh assessment proceedings and in some of the assessments, the assessing officers negated the claim of the assessee holding that though the packed material were shown as if they were sold separately, but the rate at which the tax was collected on the sale consideration of those packing material shows that tax was not collected at the rates at which the packing material was leviable, but at the rates at which the contents contained in the packing material were liable to tax. Therefore, the assessing officers negated the claim of the assessee on the premise that separate sale was shown only in order to get the benefit of a lower rate of tax even though, in fact, the tax was collected at higher rate as if the rates at which the contents of the containers are liable.

3. In some of the cases, the assessing officers accepted the claim of the assessee that in view of the separate sales shown with reference to the packing material, the turnover relating to the said packing material was subjected to tax at which they are exigible under respective entries in the First Schedule to the Act. In cases where assessing officers have not accepted the claim of the dealers, the dealers preferred appeals to the Appellate Deputy Commissioner (CT), while in the case of acceptance of the claims of the dealers by the assessing officers, the Deputy Commissioner (CT) revised the assessment orders. Where the appeals of the dealers were allowed, those orders are revised by the Joint Commissioner (CT) against which appeals are filed before the Tribunal by the dealers, while in the case of appeals allowed by the Appellate Deputy Commissioner (CT), the Commissioner (CT) revised the assessments. Hence, the present tax revision cases and the special appeals.

4. The learned Counsel Sri M.V.K. Murthy appearing for the dealers contended that in all the cases, there are separate sales of the packing material, viz., bottles and cartons, which is evident from the invoices placed before the authorities. Therefore, the provision of Section 6-C of the Act, as originally inserted, cannot be applied to levy tax on the packing material at the rates of the contents. The learned Counsel reiterated that the packing material are specified in the Schedules as separate goods, therefore, they are liable to tax at the rates that are specified in the Schedule. Further, in the course of packing or housing the contents, there is no change either physical or chemical and the identity of

the packing material continues, the same can also be reused after consuming or emptying the contents of the container. Therefore, in the light of the judgment of the apex Court in *Raj Shed v. State of Andhra Pradesh* [1989] 74 STC 379 the claims of the dealers have to be accepted that the packing material has to be taxed only as provided under entries in the First Schedule to the Act and not otherwise. The learned Counsel also contended that the case of the dealers are even supported by the action of the Government which issued G.O. Ms. No. 376, dated May 2, 1991, originally with effect from July 8, 1983 the date from which Section 6-C of the Act was inserted, declaring that the bottles and cartons used as packing material are liable to tax at the rates specified in the Schedules separately and not along with the contents. It is further contended that the Government for its own reasons amended the said G.O. on December 7, 1991 by issuing G.O. Ms. No. 1106, restricting the application of G.O. Ms. No. 376 from May 2, 1991, the date on which the said G.O. was issued. Further by issuing G.O. Ms. No. 1182, dated December 10, 1992, the G.O. Ms. No. 376, dated May 2, 1991 was rescinded. Therefore, it is contended by the learned Counsel that the above G.O. issued by the Government also supports the contention of the dealers that the Government had accepted that the packing materials are liable to tax as specified in the entries and not at the rates at which the goods packed or the contents contained in the packing material. The learned Counsel further contended that Section 6-C of the Act was again amended by Act No. 22 of 1995 with effect from April 1, 1995 as per which the rate of tax on the packing material sold along with the goods shall be the same as that of the goods packed or filled whether or not there is a separate sale or agreement of sale for the packing material and the goods packed or filled. According to the learned Counsel, the said amended provision also clarifies that the rate of the contents is applicable to the packing material only after the said amendment and not prior to the amendment. He also contended that there is a lot of variation in the wording of the amended provision with that of the original provision of Section 6-C of the Act. Therefore, the learned Counsel sought to set aside the orders impugned so as to accept the claim of the leviability of tax on the packing material, as specified in the entries of the Schedule to the Act.

5. The learned Government Pleader for Taxes, however, sought to sustain the orders contending that though the dealers claim that the packing material was sold separately by showing the sale consideration separately in the same invoice under which the goods or the contents are sold, but as found by the assessing authorities the rate at which the tax was levied on the packing material clearly shows that the sale consideration was separately shown only for the purpose of getting the benefit of lower rate of tax on the packing material even though, in fact, the dealer had charged at higher rate. The learned Counsel also contended that in some of the cases the dealers, in fact, have not charged separately but charged only a single amount, which was even recorded in its books of account basing on which assessments were framed. But later by filing appeals, the dealers claimed notional division of the value of the packing material, which was

allowed by the appellate authority even though such relief was not contemplated as per the judgment of the apex Court in *Raj Shed v. State of Andhra Pradesh* [1989] 74 STC 379. Therefore, such orders were revised by the higher authorities, and as such, absolutely there is no merit in the claim of the dealers that there were separate transactions for the sale of the packing material. The learned Counsel further contended that even the amended Section 6-C of the Act, by Act No. 22 of 1995, was assailed as to its constitutional validity and this Court upheld the constitutional validity of the said provision. Therefore, there is no case warranting interference.

6. From the above rival contentions, the issue that arises for consideration is what is the rate of tax at which the bottles and cartons are exigible to tax under the provisions of the Act.

7. Section 5 of the Act, which is a charging section, provides that every dealer shall pay tax under this Act for each year on every rupee of his turnover of sales or purchases of goods in each year irrespective of the quantum of his turnover at the rates of tax and at the points of levy specified in the Schedules. As already referred to earlier, bottles and cartons, as such, when sold are liable to tax as per entries 123 and 19 at the rate of 9 per cent and 5 per cent respectively at the point of first sale. However, in the present case, we are concerned with how these items are to be treated when sold along with the goods, viz., liquor and beer when packed or filled in it. As far as the goods which are packed or filled in these items are exigible to tax as per entry 1 of the Sixth Schedule at the relevant point of time and the same is liable to tax at every point of sale at higher rate than what the packing material in which it is housed or filled is liable or exigible to tax. Section 6-C of the Act was inserted by Act 11 of 1984 with effect from July 8, 1983, which provides for fictional sale of the packing material when goods packed in it are sold, perhaps, in order to resolve the dispute where the dealers were claiming that there was no sale of the packing material but only the contents packed therein. The constitutional validity of the said provision was assailed before this Court in *Raj Sheet v. State of Andhra Pradesh* [1987] 64 STC 398. A division Bench of this Court while upholding the constitutional validity of the said provision made it clear that the said provision is only clarificatory in nature of the position what was prior to it. While considering the said issue, the division Bench observed "In order to appreciate this contention, we have to bear in mind how these transactions are understood in trade parlance. As we have already mentioned when a bottle of beer or a bag of cement is sold in the market, both the seller as well as the buyer mutually understand the transaction as the one involving sale or purchase of the beer or the cement, as the case may be, and the sale or purchase of the containers, viz., bottle or the gunnies would not at all be a matter of significance in such a transaction. Thus, the entire sale transaction takes place in the name of the contents, beer or the cement, without any reference to the transaction involving the so-called sale of the container which gets merged inseparably in the sale transaction of the contents". In fact, the division Bench also observed that the sale of the packing material is

incidental or unavoidable as the same is being used as a convenient mode of sale of the contents. The division Bench also took note of the existing provisions of the A.P. Excise Act, which provides the sale of liquor or beer as specified in the Rules in a specified quantity of bottles and not otherwise. Therefore, the division Bench dismissed the batch of writ petitions. However, when the matter was taken in appeal to the apex Court, though the apex Court affirmed the view of the division Bench as to the constitutionality of the provision agreeing with the view of the division Bench that the said provision is only clarificatory in nature of the position what was prior to its insertion, but however, with reference to the sale of the packing material, viz., bottles and cartons is concerned, the apex Court observed "that there may be three possibilities, viz., (1) that the transaction of sale might consist of sale of the product and separate sale of the container housing the product with respective sale considerations for the product and the container separately; or (2) it may consist sale of the product and sale of container, but both the sales being conceived of an integrated components of a single sale transaction; or (3) it might consist of sale of the product and the transfer of the container without any sale consideration thereof, and that the question in every case as to what was the nature and ingredients of the sale would be a question of fact and that in every case the assessing authority had to ascertain the true nature and character of the transaction upon the facts and circumstances of each case". Therefore, remanded to the assessing authority for ascertainment of the above factual position.

8. It is also relevant to note that the apex Court negated the claim of the dealers that in spite of the fact that Section 6-C of the Act contemplates fictional sale of the packing material, still the rate applicable to the packing material as provided in the Schedule was negated and the relevant observations are "we find it difficult to accept the contentions of the appellants that a rate applicable to the packing material in the Schedule should be applied to the sale of such packing material in a case u/s 6-C when, in fact, there was no such sale of packing material and it is only by legal fiction and for a limited purpose that such sale can be contemplated".

9. Both sides relied upon various decisions rendered by both the apex Court as well as this Court under similar or identical circumstances. Therefore, it would be appropriate to consider those cases before going to the facts of the cases.

10. In *State of Tamil Nadu v. McDowell and Co. Ltd.* [1997] 105 STC 172 the apex Court had an occasion to consider the issue as to the assessability of deposits for the return of the bottles received by the distributor from its purchasers. In that case the assessee-dealer was a distributor of liquor for the principal United Breweries. As per the facts recorded, the principal was charging separately deposits with reference to the bottles in which liquor was sold. The assessee in turn similarly charged its customers at the same rate of deposit at which the assessee was charged by the principal. The said procedure was stated to have been followed year after year. From time to time the rate of deposit was

enhanced due to shortage of empty bottles. In the sale notes it was specifically stated "empty bottle deposit is refundable against the return of the bottles at the brewery. The freight on return of empties and breakages will be on purchaser's account". In the copies of the bills issued the price of liquor was separately shown and the sales tax was added to it. In the assessment proceedings, the assessing authority was of the view that there was a sale of the bottles by the principal to the purchaser and the deposit amount had to be included in the turnover and accordingly taxed. The Tribunal, however, took the view that the receipts were only deposits and not the price realised on sale of the bottles. The deposit amount could not be taxed in any way as price of bottles. According to the High Court this was a clear case where the deposit retained the character of deposit and did not acquire the character of sale price of the goods. The State further carried the matter in appeal before the apex Court. The apex Court confirmed the view of the High Court observing that the principal used to collect the deposits from the assessee whenever liquor was sold and the amount collected towards the bottle deposit is kept separate and whenever the bottles are returned, the principal used to refund the amount of deposits. The assessee in turn collects deposits at the same rates from its customers and return the same after collecting the bottles. From a perusal of the judgment it is clear that the issue was not decided with reference to any specific provision dealing with the subject, on the other hand, the decision was rendered purely on the facts recorded.

11. In *United Breweries Ltd. Vs. State of Andhra Pradesh*, the assessee is a brewery, manufactures and supplies beer to the distributors, who in turn sells to the wholesalers or retailers. The assessee supplies its brand of beer to the selling agents who deposits security of Rs. 4.80 for the bottle and Rs. 5 for crates. These deposits were returned to the selling agents when the bottles and crates were returned. This was the method of carrying on of the trade by the assessee and two circulars were issued by the assessee to explain the scheme to its customers. Additionally, it was stated that the vendees to return bottles and crates and customers are assured of better supply, if the scheme is adhered by the customers; otherwise the company expressed difficulty in supplying the liquor. The Commercial Tax Officer verified the scheme and held that the customers did not always return the bottles and crates. The sale of beer included the sale of crates and bottles. The Commercial Tax Officer also noted that the value of the bottles and crates were higher than the amount deposited as security. Therefore, it was held that the scheme was not genuine and accordingly treated the deposits as part of the taxable turnover. In appeal the Tribunal was also of the view that there was no bailment of the bottles and the crates, and there was no contractual obligation on the part of the customers to return the bottles and the crates. The scheme, therefore, was not acceptable as genuine. Thereafter, the assessee carried the matter to the High Court in tax revision case. The High Court relying upon the decision of the Supreme Court in *Punjab Distilling Industries Ltd. Vs. The Commissioner of Income Tax, Simla*, held that it

was a clear case where bottles and crates were sold along with beer and had to be included in the sale price. In further appeal, the apex Court took a different view and held that the scheme formulated by the assessee was a genuine one and it was interested in getting back the bottles in which the liquor was supplied or sold and the deposits collected by the assessee was to ensure return of the bottles. The apex Court distinguished its own judgment in Punjab Distilling Industries Ltd. Vs. The Commissioner of Income Tax, Simla, observing "that the buy back evolved by the Government was due to scarcity of bottles. It was further observed, in the present case the customers clearly know the price they will have to pay for the beer. They are required to pay an additional amount by way of deposit for taking away the bottle which is refunded if the bottle is returned. If the bottle is not returned, the deposit is retained as liquidated damages for the loss of the bottle. There is a clear intention not to sell the bottle. Hence, we are of the view that the deposit cannot be considered as price of the bottles". But in this judgment also, even though Section 6-C of the Act was on the statute by the date of the judgment rendered by the apex Court, the said provision was not considered.

12. In Kalyani Breweries Ltd. v. State of West Bengal [1997] 107 STC 190 a Bench of two learned Judges of the apex Court had an occasion to consider a similar issue as to the sale as well as the assessability of beer bottles. In that case, the issue relates to the assessment year 1974-75. The assessee brewed and sold beer in beer bottles. For the beer it gave to its purchasers one invoice and another for "the deposit on bottles". It was the case of the assessee that the rate per bottle of the deposit was adjusted so as to cover the cost of the bottles that were purchased by it. Up to March 1, 1974, the rate was Rs. 4.80 per dozen bottles, but due to the increase in their cost, the rate was raised to Rs. 9 per dozen bottles with effect from March 2, 1974. The amounts received as such deposits were credited to an account entitled "Deposit on bottles" in the assessee's ledger. When the empty bottles were returned by the customers, refunds were made at the same rate. There was no time-limit for the return and bottles taken from the assessee in one year might be returned in the next year. However, deposits were kept for three months as a liability. Afterwards the balance in the account was transferred to an account called "Bottle deposit forfeited account". From its account an amount of Rs. 1,62,974 was refunded, while at the same time an amount of Rs. 16,55,355 was forfeited. The Commercial Tax Officer treated the said amount of forfeited deposit as part of the sales realisations and taxed it. The same was confirmed by the Assistant Commissioner as well as West Bengal Commercial Taxes Tribunal. The matter was carried to the West Bengal Taxation Tribunal, whose order was appealed to the apex Court. Though the assessee relied upon the decision of the apex Court in United Breweries Ltd. [1997] 105 STC 177 as well as the decision in Raj Sheet's case [1989] 74 STC 379 and the decision in Hyderabad Deccan Cigarette Factory's case [1966] 17 STC 624 the apex Court negatived the claim of the assessee as to the liability of the forfeited bottle deposit and the relevant

observations read as under :

Now, there is nothing on record which indicates that the terms under which the deposits would be repaid were communicated to the assessee's customers. There is no suggestion that there was an oral communication of such terms to the customers or that there was any trade usage in this behalf. It is difficult to visualise a bailment the terms whereof are not made known to the bailee. The forfeiture of amounts in the assessee's "Deposit on Bottles" account does not appear to bear out the assessee's case that the empties were returnable at any time. This must also be taken into account that the customers were required to deposit for the beer bottles a rate which was exactly equal to the cost of the bottles ; this would suggest the sale thereof more strongly than the intention to get them back upon bailment. It seems to us upon these facts and circumstances that there was really a sale of the bottles to the customers, the assessee buying back the empties from some customers. It is, therefore, that the assessee could show a refund of Rs. 11,62,974 out of the total amount of deposits, namely, Rs. 30,57,143. Had there been a bailment, which necessarily pre-supposes that the bailee was aware of the terms thereof, a larger refund would have been shown.

Holding so, the appeal was dismissed.

13. In *Premier Breweries v. State of Kerala* [1998] 108 STC 598 a bench of three Judges of the apex Court had an occasion to consider the provisions of Sub-sections (5) and (6) of Section 5 of the Kerala General Sales Tax Act, 1963. Premier Breweries Limited is a dealer in Indian-made Foreign Liquor. The liquor is sold in bottles packed in cardboard cartons. For the assessment year 1982-83, the dispute was what was the rate of tax that was applicable to cardboard and cartons, whether it has to be taxed at the rate of 8 per cent under entry 97 of the First Schedule to the Kerala General Sales Tax Act, 1963 or at 50 per cent applicable to the sale of liquor. The appellant's case was agreed by the assessing officer and taxed the turnover relating to cartons at 8 per cent under entry 97 of the First Schedule. The said assessment was revised by the Deputy Commissioner on the ground that there was an error in the assessment in levying tax at the rate of 8 per cent on the packing material, viz., cardboard cartons, as, according to the Deputy Commissioner where goods sold were contained in containers or packed in any packing material, the rate of tax and the point of levy applicable to such containers or packing materials, as the case may be, should, whether the price of the containers or the packing materials was charged separately or not, be the same as that applicable to goods contained or packed. The said view of the Deputy Commissioner was confirmed by the Tribunal as well as the High Court. Hence, there was an appeal to the apex Court. The claim of the appellant was that cartons were secondary containers or packing material, which was sold separately as per the invoices. Therefore, the same has to be taxed as per the specific entry in the First Schedule at the rate provided thereunder. The apex Court after referring to the provisions of Sub-sections (5) and (6) of Section 5 of the Act observed the import of the provisions

as under :

(1) Where goods sold are contained in a container or packed in any packing material, the rate of tax payable on the containers shall be the same as that applicable to the goods contained or packed.

(2) This will be the position even if price of the containers or packing materials is charged separately.

(3) The turnover of the goods will include the turnover in respect of containers or packing materials in which the goods are contained or packed.

(4) The point of levy of the tax on the containers or the packing materials will be the same as applicable to the goods contained or packed.

(5) If the sale or purchase of goods contained in a container or packed in a packing material is exempted from tax then no tax shall be payable on the sale or purchase of the containers or packing materials in which the goods are sold.

The apex Court further negating the contentions advanced on behalf of the appellant and held :

...We are unable to uphold this contention in view of the clear language of the statute. When packed goods are sold, provisions of Sub-sections (5) and (6) will apply. There will be one rate of tax and one point of levy for such packed goods. This rule will apply "whether the price of the containers or the packing is charged separately or not". In view of this, there is no scope for any assumption that Sub-section (5) was based on an inarticulate premise that the provisions of that Sub-section will not apply if the goods and the containers are sold and charged separately.

The apex Court also after referring to Section 6-C of the Andhra Pradesh General Sales Tax Act, 1957, as was considered by the apex Court in *Raj Sheet's case* [1989] 74 STC 379 observed that Pathak, C.J., gave a restricted meaning to the deeming provision contained in Section 6-C. Therefore, distinguished the said decision in view of the clear and unambiguous language contained in Sub-sections (5) and (6) of Section 5 of the Act.

14. In *Mysore Breweries Limited v. State of A.P.* [1992] 86 STC 394 a division Bench of this Court had an occasion to consider similar issue in the case of *Mysore Breweries Limited*, which is also a party in the present dispute. The assessee-manufacturer sells beer and other alcoholic beverages. The issue that was considered by the division Bench was as to whether there is a separate sale of bottles in which the beverages are sold and if so, what is the rate of tax applicable to such sales. The assessing authority rejected the claim of the assessee that the deposit of the bottles as well as the value of packing material like, cardboard boxes, cartons, labels, etc., shall not form part of the turnover and treated all the items as part of the turnover liable to tax. The assessee carried the matter to the Deputy Commissioner (Appeals) unsuccessfully and

hence further appeal to the Sales Tax Appellate Tribunal. The Appellate Tribunal confirmed the findings of the Deputy Commissioner (Appeals) that there was a sale of bottles notwithstanding the description of the price thereof as bottle deposit. But, however, in view of the decision of the Supreme Court in *Raj Sheel v. State of Andhra Pradesh* [1989] 74 STC 379 it felt that the rate of tax applicable had to be determined with reference to Section 6-C of the Act and the guidelines indicated in the above decision. Therefore, the matter was remitted to the assessing authority for determining the rate of tax. The said order was assailed before this Court. This Court relying upon the decisions in *United Breweries Ltd. v. State of Andhra Pradesh* [1988] 68 STC 214 as well as *Raj Sheel Vs. The State of Andhra Pradesh*, as decided by the High Court and the decision of the apex Court in *Punjab Distilling Industries Ltd. Vs. The Commissioner of Income Tax, Simla*, upheld the view of the Tribunal that the assessee had sold the bottles along with beer and the sale price of bottle was also assessable to tax. But however, remanded to give an opportunity to the assessee to show the case of the assessee as to the issue of rate of tax applicable in the light of the principles laid down by the Supreme Court in *Raj Sheel v. State of Andhra Pradesh* [1989] 74 STC 379.

15. In *Rayalaseema Enterprises v. State of Andhra Pradesh* [1990] 78 STC 121 a division Bench of this Court had an occasion to consider the issue whether there was a separate agreement for the sale of bottles in which liquor is sold. Though the assessee was unsuccessful before the Tribunal, the division Bench, however, set aside the order of the Tribunal on the ground that the issue was not considered in the light of the decision of the apex Court in *Raj Sheel v. State of Andhra Pradesh* [1989] 74 STC 379 and remitted the matter to the Tribunal to find out whether there was a separate agreement express or implied for the sale of bottles and the packing material used while selling the liquor. If it was found that there was no separate agreement for the sale of bottles/packing material, the turnover relating to bottles/packing material will also be charged at the rate applicable to the contents. In such a case, the turnover would be "one", i.e., one relating to liquor. If, however, it is found that there is a separate agreement for the sale of bottles/packing material, the orders passed by the lower authorities will be valid.

16. In *State of A.P. v. Phipson & Co.* [1995] 97 STC 622 ; (1995) 20 APSTJ 21 a division Bench of this Court had an occasion to consider whether there was an implied sale of bottles when the price of the bottles is realised by way of separate debit notes. In this case, the assessee sold beer along with bottles. The contention was that bottles were given to the purchaser by taking deposit for the price of the bottles and therefore, there was no sale of the bottles. The assessing authority on consideration of the record noted that both invoices and the debit notes had been raised on the same day and the amounts charged in the invoices and the debit notes pertain to a single sale and form the turnover. It also added that though the assessee called the price of the empty bottles as "deposit", it was not treated as such in accounts and that the accounts did not disclose that

the amounts were deposited in individual khatahs. It further added that there was no condition or any sale agreement that the bottles should be returned within a stipulated time and that there was clearly a transfer of property in the bottles for money consideration along with the liquor or beer sold. Therefore, the deposit was treated as part of the turnover. The appellate authority confirmed the said finding. On further appeal, the Tribunal came to the conclusion that the rate of tax applicable is as per entry 123 of the First Schedule, i.e., at 6 per cent on the premise that the deposit amounts were separately mentioned in the bills by the assessee, and therefore, they have to be treated as representing the value of empty bottles and taxed under entry 123. Therefore, the State carried the matter in revision before this Court. This Court after referring to the decision of the Supreme Court in *Raj Sheet v. State of Andhra Pradesh* [1989] 74 STC 379 observed that it was neither stated nor proved by the assessee that the sale of bottles was separate from the contents, and therefore, the bottle cannot be taxed at the rate applicable to the content. It is only when the assessee proves the existence of an agreement to the effect that the bottles were sold separately from the contents thereof, the bottles will have to be taxed as an independent item. Having regard to the provisions of Section 6-C of the Act, the bottles will have to be taxed at the rate of the contents. Therefore, the revision filed by the State was allowed.

17. In *Jamana Flour & Oil Mill (P) Ltd. v. State of Bihar* [1987] 65 STC 462 the apex Court was considering the issue whether there was an implied agreement to sell the packing material along with the product contained therein as per the Roller Mills Wheat Products (Price Control) Order, 1964. With reference to the net weight as to the rate fixed under the said Control Order, the dealer in that case claimed that the turnover relating to the gunny bag cannot be separated and taxed at higher rate as it was sold as part and parcel of the wheat product itself, and therefore, taxable at 2 per cent instead of 4.5 per cent. The assessing officer negated the said claim. The assessee was unsuccessful before the authorities, and therefore, preferred a revision before the Tribunal. The Tribunal also upheld the view of the departmental authorities in levying tax at different rates on the turnover representing the sale of gunny bags in which wheat products were sold. While considering the said issue, the apex Court held that the Tribunal and the High Court recorded a finding that there was an implied contract for the sale of the gunny bags along with the wheat products contained therein, which were sold by the dealer at an all-inclusive price fixed under the Roller Mills Wheat Products (Price Control) Order. It was held the net weight as contemplated under the Control Order meant that the weight of the bag was included in the price to be charged by the dealer, the turnover of gunny bags was assessable and the direction of the Tribunal to separately ascertain the price of the gunny bags from the all-inclusive price and tax the turnover of gunny bags at the higher rate of 4.5 per cent was valid.

18. In *Commissioner of Sales Tax Vs. Gill and Company Ltd.*, the assessee claimed deduction of freight on the ground that he had not charged

the same although the same might have been shown in the bills produced. The assessing officer disallowed the claim, which was confirmed by the appellate authority. However, on further appeal, the Board of Revenue allowed the appeal by giving credit for the freight, but dismissed the appeal so far as packing materials were concerned. At the instance of the department, reference was made. While considering the said issue, the Madhya Pradesh High Court held on the facts and circumstances of the case, the railway freight deducted in the bill could not be a part of the sale price. According to the Madhya Pradesh High Court, two things are necessary in order to make the freight part of the sale price. First there should be no agreement about the charging of freight separately, and secondly it should not be charged separately, but it should be a part and parcel of the total sale price that the assessee might charge the purchaser. The recitals in the bill have great evidential value, which in the absence of any other evidence ought to be taken to be correct. But they cannot be treated as conclusive piece of evidence and the presumption arising from them is rebuttable. If there is other material to show that there was an agreement not to charge freight as part of the price and that actually it was not so charged, the freight cannot constitute a part and parcel of the sale price as defined by Section 2(o) of the Madhya Pradesh General Sales Tax Act, 1958.

19. In *Government of Madras v. Simpson and Co. Ltd.* [1968] 21 STC 21 (SC) the assessee was a dealer in motor cars, motor parts and accessories, also dealt with the sale of Perkins Diesel Engines. In the course of assessment proceedings, the assessing officer included the turnover representing the value of diesel engines. The assessee claimed that it was a works contract where he had carried out the repairs and in the process fixed the diesel engine, therefore, there is no sale as such. Though the said contention was accepted by the High Court, on the ground that a consolidated bill was issued by the assessee, the apex Court reversed the said finding observing that the bill evidenced an agreement to sell a particular diesel engine, the price of which was separately mentioned in the bill, and to fit it in the customer's vehicle. In other words, the engine was contracted to be delivered as an engine and afterwards affixed to the customer's vehicle. Therefore, the apex Court upheld the finding of the Appellate Tribunal that there was no works contract in the said case.

20. In *K.C.P. Ltd. v. Commercial Tax Officer* [2002] 126 STC 303 ; (2002) 34 APSTJ 198 a division Bench of this Court to which one of us is a party (S.A.R., J.) has rejected the claim of the assessee that the packing material has to be taxed only as per the rates specified in the First Schedule to the Act. The said issue was considered by this Court where there was a challenge to the provisions of Section 6-C of the Andhra Pradesh General Sales Tax Act, 1957, as amended by Act No. 22 of 1995.

21. In *State of Andhra Pradesh v. Mysore Breweries Limited* (1999) 29 APSTJ 142 See *State of Andhra Pradesh Vs. Durga Wines Industries*, a division Bench of this Court while considering the issue as to the rate at which cartons are to be taxed

held that the cartons being secondary packing material, which are intended to be used only for the convenient transport of the bottles packed in it, it could not be treated as packing material sold along with the contents. Therefore, this Court held that as far as cartons are concerned, the turnover has to be taxed under entry 19 of the First Schedule to the Act.

22. In *Rassi Cement Ltd. v. Commercial Tax Officer* [1997] 106 STC 169 ; (1997) 24 APSTJ 100 a division Bench of this Court to which one of us (B.S.R., J.) is a party had an occasion to consider the constitutionality of the provision of Section 6-C of the Act, as amended by Act No. 22 of 1995. The division Bench specifically noted the words "whether or not there is separate sale or agreement for sale for the packing material and the goods packed or filled" incorporated in the amended provision and thereafter, after considering the rival contentions in the light of various decisions cited before it, including the decision of this Court as well as the apex Court in *Raj Sheet v. State of Andhra Pradesh* [1989] 74 STC 379 and the decision of the apex Court in *Vasavadatta Cements v. State of Karnataka* [1996] 101 STC 168 and other decisions held that the amended provision is not invalid. The division Bench further observed as under:

That point is *res Integra* and we cannot but hold that irrespective of the incorporating the underlined words in the impugned provision treating the first mode of sale on the same footing as the second mode of sale, noted above, wherein the price of the container is treated as a component of the sale price of the contents in goods packed or filled, the assessing authority is not absolved of the obligation of determining what are the ingredients of the contract and the intention of the parties in accordance with the decision of the Supreme Court in *Raj Sheel's* case [1989] 74 STC 379 as also in *Vasavadatta Cements'* case [1996] 101 STC 168.

The division Bench while holding that the impugned provision is not violative of Article 14 of the Constitution of India, however, further held "that notwithstanding the phraseology of the impugned provision the assessing authority has to determine in each case the ingredients of the contract of sale or agreement for sale relating to the container and also the intention of the parties in accordance with the judgment of the Supreme Court in *Raj Sheel's* case [1989] 74 STC 379". Therefore, the writ petitions were allowed to the extent indicated above.

23. Though the learned Counsel relied upon the decisions of the Supreme Court in *McDowell and Co. Ltd.* [1997] 105 STC 172 and *United Breweries Ltd.* [1997] 105 STC 177 those decisions were rendered on the facts of those cases as to whether the bottle deposits form part of the turnover without reference to any specific provision. Therefore, those decisions are of little assistance to the dealers in the present cases where the claim is separate sale of bottles and cartons. Hence, the issue has to be decided on the factual findings arrived at by the authorities and the material placed before this Court.

In Kalyani Breweries Ltd. [1997] 107 STC 190 the apex Court while considering the issue of deposit on bottles, on facts though found the deposit on bottles were shown in the ledger maintained by the dealer as such, but to the extent of the deposits shown as forfeited was held to be correctly treated as part of the turnover liable to tax. The said decision was rendered after considering the decisions of the same court in Raj Steel and Others Vs. State of A.P. and Another, and United Breweries Ltd. Vs. State of Andhra Pradesh, .

In Premier Breweries [1998] 108 STC 598 the apex Court was dealing with the similar issue with reference to the provisions of Sub-sections (5) and (6) of Section 5 of the Kerala General Sales Tax Act. The issue was whether the cartons are to be taxed as such or to be taxed along with the contents at higher rate. The apex Court negated the claim of the dealer that cartons are the secondary packing material, and as such, it has to be taxed separately as per the scheduled rates and not along with the contents packed therein. The apex Court observed that Pathak, C.J., gave a restricted meaning to the deeming provision contained in Section 6-C of the Act.

A division Bench of this Court in Mysore Breweries Limited [1992] 86 STC 394 and in Rayalaseema Enterprises [1990] 78 STC 121 remanded the matters for ascertaining the factual details to decide the issue as there was no finding whether there was a separate sale of the packing material or not. But in State of Andhra Pradesh Vs. Phipson and Co., in view of the finding recorded by the authorities that the accounts of the dealer did not disclose that the alleged deposits were credited in the individual khatahs, this Court has even reversed the order of the Tribunal that bottles are to be taxed under entry 123 of the First Schedule to the Act as a separate item and allowed the revision of the State and ordered to be taxed at the rates at which the contents are liable to tax.

In Jamana Flour & Oil Mill (P.) Ltd. [1987] 65 STC 462 the apex Court, while considering the issue as to the rate at which gunny bags are to be taxed, held that the Tribunal and the High Court recorded a finding of fact that there was an implied contract for the sale of gunny bags along with the wheat products contained therein which were sold by the dealer at an all-inclusive price fixed under the Control Order and upheld the view that the turnover relating to the gunny bags was liable to tax at higher rate of 4.5 per cent, in the absence of any specific provision to treat the turnover of gunny bags as part of the turnover of wheat products.

In Gill & Company Ltd. [1974] 33 STC 536 the Madhya Pradesh High Court while upholding the view of the Board of Revenue observed that two things are necessary in order to make the freight part of the sale price. First there should be no agreement about the charging of freight separately, and secondly, it should not be charged separately, but it should be a part and parcel of the total sale price. The Madhya Pradesh High Court further upheld the view that there is other material to show that there was an agreement, not to charge freight as part of the price and that actually it was not so charged, the freight cannot constitute a

part and parcel of the sale price.

In *Simpson and Co. Ltd.* [1968] 21 STC 21 the apex Court reversed the finding of the High Court that there was no sale of diesel engine, observing that the bill evidenced an agreement to sell a particular diesel engine, the price of which was separately mentioned in the bill, and to fit it in the customer's vehicle. Thus, the apex Court held that the same was liable to tax.

In *K.C.P. Ltd.* [2002] 126 STC 303 a division Bench of this Court rejected the claim of the assessee that packing material has to be taxed only as per the rates specified in the First Schedule while considering the provisions of Section 6-C of the Act, as amended by Act No. 22 of 1995.

In *Mysore Breweries Limited See State of Andhra Pradesh Vs. Durga Wines Industries*, a division Bench of this Court considered the issue how the turnover relating to the cartons are to be taxed and the division Bench holding that cartons are being secondary packing material, which are intended to be used only for convenient transport of the bottles packed in it, it should not be treated as packing material sold along with the contents, therefore, liable to be taxed under entry 19 of the First Schedule to the Act.

24. From the above it is clear that the issue has to be considered more on the facts as to the existence of an agreement, express or implied, for the sale of the packing materials, viz., bottles and cartons. Therefore, it would be appropriate to refer to the facts in some of the cases as recorded by the authorities. In fact, these cases came to be decided after remand.

In *M/s. Mysore Breweries Limited, Vijayawada* (Special Appeal No. 41 of 1994), the dealer claimed that the turnover representing the bottles and cartons for the period December 15, 1992 to March 31, 1993 has to be taxed as per the entries 123 and 19 respectively of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act"). But this claim was rejected by the assessing officer on the ground that G.O. Ms. No. 376, Revenue Department dated May 2, 1991, which facilitated the levy of tax on the bottles and cartons separately as per the entries under the First Schedule was rescinded by the orders of the Government in G.O. Ms. No. 1182, dated December 15, 1992. Therefore, the value of the bottles and cartons involved in the sales turnover of beer and liquor is not eligible for the reduced rate of tax. The said assessment order was the subject-matter of an appeal before the Appellate Deputy Commissioner (CT), Guntur. The Appellate Deputy Commissioner relying upon the judgment of the Supreme Court in *Raj Sheet* [1989] 74 STC 379 allowed the appeal observing that both the bottles and cartons are capable of being reused, there will not be any change either chemical or physical in those commodities when they are being used for housing and packing of the contents, i.e., beer and liquor. They are essential for convenient transport of the contents. Further, their value is quite significant compared to the value of the contents. The sale invoices filed by the dealer also show the value of the bottles, and

packing materials are separately charged. Therefore, the assessment was set aside to the extent of the said claim for charging the turnovers representing the bottles and cartons as per the entries provided in the First Schedule to the Act. The said order of the Appellate Deputy Commissioner (CT) was the subject-matter of a revision by the Commissioner of Commercial Taxes. According to the Commissioner, there cannot be any separate sale of the contents when the packing material in which the content was packed. The Commissioner also referred to the provisions of the Excise Act as per which there is a compulsion on the manufacture of the beer and liquor, which have to be sold in the specified sizes of the containers. It is impermissible to sell the contents without the containers housing the contents. The Commissioner also referred to the decision of the Supreme Court in *Raj Sheet's* case [1989] 74 STC 379 and after examining the said decision and the ratio laid down therein, came to the conclusion that there cannot be two separate sale transactions with reference to the liquor, beer and the containers in which they are filled. Therefore, the order of the Appellate Deputy Commissioner was set aside.

The same dealer, i.e., M/s. Mysore Breweries Limited is the petitioner in tax revision cases (T.R.C. No. 24 of 1998, etc.). The assessment years are 1984-85 to 1991-92. The assessment proceedings show that as per the accounts maintained by the dealer, it was maintaining only single account for the sale of beer and liquor, which is inclusive of all taxes. In the assessments which were made in December, 1984 and thereafter till G.O. Ms. No. 376, dated May 2, 1991 was issued, no separate claims have been made either for deduction or for levying tax at the scheduled rates separately with reference to packing material, viz., bottles and cartons. Therefore, the entire turnover was assessed and the tax was levied at the same rates as are leviable with reference to the contents of the containers. However, appeals were filed against the assessment orders and a claim was made in terms of the aforesaid G.O., and deductions were claimed before the appellate authority by working out notionally the cost of bottles and cartons, after obtaining the said particulars from the suppliers, and the appellate authority in the light of the said G.O. Ms. No. 376 allowed the appeals for the above years by subjecting the turnovers relating to the bottles at 6 per cent as per entry 123 of the First Schedule and cartons at 5 per cent as per entry 19 of the First Schedule. The above orders were the subject-matters of revisions u/s 20(2) of the Act. The revisional authority revised the appellate orders by setting aside the orders of the Appellate Deputy Commissioner. Aggrieved by that, the dealer preferred appeals before the Sales Tax Appellate Tribunal. The Appellate Tribunal though conceded the claim of the dealer with reference to the cartons following its own earlier order treating the same as secondary packing material, but however, with reference to the turnover relating to the bottles it held against the dealer and upheld the orders of the revisional authority.

25. In the matter of *Raj Sheel Wine Merchants, Himayatnagar, Hyderabad* (T.R.C. No. 120 of 1997), the assessment relates to the assessment year 1987-88. The dealer was selling liquor and beer both as a wholesale and retail seller. It was

holding licence in FL-27, FL-15 and FL-24 under the Excise Act. The dealer was purchasing the goods not only from the manufacturer but also from the local dealers. In the assessment proceedings, the assessee objected for levying tax with reference to the packing material and the rates of the contents relying upon the decision of the Supreme Court in the assessee's own case (*Raj Sheel v. State of Andhra Pradesh* [1989] 74 STC 379). According to the assessee, if the ratio of the said decision is applied, the packing material has to be taxed separately as provided under the First Schedule of the Act. According to the assessee, the packing material is a commodity having its own identity and is separately classified in the Schedule. There is no change chemically or physically in the packing material at the time of packing or at the time of housing the contents. The packing material is capable of being reused after the contents have been consumed. The packing is used for convenience of the transport and the quantity of the goods as such is not dependent on packing. The mere fact that the consideration for the packing is merged with the consideration of the product would not make the sale of the packing material as integrated part of the sale of the product. The assessing officer after considering the said objections and after verifying the invoice came to the conclusion that the dealer may show at varying figures with reference to the value of the packing material, than the total cost of the packing material along with the product. But, however, the invoice shows that the dealer was charging sales tax not at the rates as was applicable to the bottles or cartons, but was charged at almost near the rates that are applicable to the contents. Therefore, concluded that the sale of bottles and cartons was not a separate sale, but was an integral part of the content housed in the said packing material. Therefore, the assessing officer rejected the claim of the assessee and levied the tax at the rates that are applicable to the liquor and beer, as per the original assessment order dated May 3, 1991. But, however, on the premise that G.O. Ms. No. 376, dated May 2, 1991 was received by the assessing officer before the assessment order was dispatched, the assessing officer has modified the original assessment order and granted the benefit of lower rate of tax, as contemplated under the said G.O., on bottles and cartons. Therefore, the Deputy Commissioner (CT) initiated revision proceedings and holding that when once an assessment order has been framed by the assessing officer the assessing officer has no power to modify the assessment even if the assessment order was not served on the assessee. Therefore, the assessment was set aside to the extent of the benefit of lower rate of tax that was granted in respect of bottles and cartons. The dealer carried the matter in further appeal to the Tribunal. The Tribunal after considering the entire material on record concluded against the dealer holding that G.O. Ms. No. 376 dated May 2, 1991 has no application for the relevant assessment year in question. Apart from that, the Tribunal has also gone into the merits of the matter in the light of the decision of the apex Court in *Raj Sheel's* [1989] 74 STC 379 and thereafter following its own orders in various other similar matters, modified the order of the Deputy Commissioner (CT) to the extent of granting relief of lower rate of tax in respect of cartons while confirming the order of the revisional authority as to

the taxability of the bottles at the same rate as the contents are liable. The Tribunal while granting the relief in respect of cartons followed its own earlier order, wherein it was held that cartons are the packing material, which the manufacturer used for the convenient transport of the goods, i.e., bottles. Therefore, they are not liable to tax at the rates that are applicable to the contents housed in the bottles. To the extent the decision went against the dealer, the dealer has come up in the present tax revision case. In so far as the relief granted on the cartons, the State did not file any revision.

26. From the above decisions, it is clear that the issue in question has to be decided on the facts of each case. In the present batch of cases, no finding was recorded by any of the authorities that there was an agreement, express or implied, for the separate sale of bottles or cartons. But, however, in so far as the cartons are concerned, as the issue has already been decided in favour of the dealers treating them as a secondary packing material not required to be sold along with the contents packed therein, the dealers are entitled for the relief that the turnover representing the cartons are to be taxed at the rates fixed under entry 19 of the First Schedule to the Act and not along with the contents and at the rates at which the contents are liable to be taxed. Insofar as the bottles are concerned, categorical findings are recorded by the authorities that even in cases where the sale consideration was separately shown in the sale bill, the rate of sales tax levied on the sale consideration of the bottles clearly shows that they were not intended to be sold separately to be taxed as per the rates shown in the First Schedule to the Act. In fact, in respect of M/s. Mysore Breweries Limited, Vijayawada (Special Appeal No. 41 of 1994) for the assessment years 1984-85 to 1991-92, the assessing officer recorded a finding that as per the accounts maintained by the dealer, it was maintaining only a single account for the sale of beer and liquor, and therefore, the assessing officer assessed the entire turnover and levying tax at the rates at which the contents are liable to tax. It is only after the issue of G.O. Ms. No. 376, dated May 2, 1991 the assessee claimed the benefit of lower rate of tax on the bottles and cartons by working out notionally the cost of bottles and cartons after obtaining the said particulars from the suppliers, which was accepted by the appellate authority. But. the said order was revised by the higher authorities and confirmed by the Sales Tax Appellate Tribunal.

27. From the above it is clear that originally the dealers were claiming that there was no sale of packing material, viz., bottles and cartons but only security deposits were being collected for the return of bottles. The Legislature had brought an amendment to get the turnover relating to the same to the tax net under the deemed sale where there was a claim that no sale was effected, by inserting Section 6-C in the Act. In view of the above specific provision containing a deemed sale now the dealers have resorted that there is a separate sale of bottles and cartons from the sale of contents filled or packed, perhaps in the light of the observations made by the apex Court in Raj Sheet's case [1989] 74 STC 379 while considering the constitutionality of the said newly inserted

provision of Section 6-C of the Act. In fact, these matters came to be considered by the authorities after remand and in the light of the observations or guidelines laid down by the apex Court in Raj Sheet's case [1989] 74 STC 379. But, however, the dealers were unable to show that there were agreements for separate sale of bottles and cartons from the contents filled or packed therein. In fact, as found in M/s. Mysore Breweries Limited for the assessment years 1984-85 to 1991-92, there is only a single consideration for the sale of liquor and beer along with the packing material, viz., bottles and cartons, as recorded in the dealer's ledger, and the same was offered by the dealer for the assessment. But, however, in the appeals filed by the dealer, in the light of G.O. Ms. No. 376, the dealer claimed the benefit of lower rate of tax on the packing material, viz., bottles and cartons on their notional value. But the said relief claimed by the dealer was negatived having found that there was no agreement to sell packing material separately, or in fact, there was any such separate sale. Further, even to curb or restrict such claim of separate sales and to avoid the dispute the Legislature had amended Section 6-C by Act No. 22 of 1995 so as to include the turnover of the packing material, viz., bottles and cartons even if there is a separate sale of such materials.

28. From the above facts, it is clear that though the learned Counsel for the dealers contended that there was separate sale of packing material, the findings recorded by the authorities are otherwise. In the light of the specific findings recorded by the authorities, the dealers are not entitled for the benefit of taxing the turnover representing the bottles at the rates provided in the First Schedule to the Act. But, the turnover relating to cartons is to be taxed as secondary packing material at the rate provided in the First Schedule to the Act in the light of the decisions of this Court referred to earlier.

29. In view of the above, the dealers are not entitled to any relief in the special appeals as well as tax revision cases to the extent of the bottles, but, however, they are entitled to the relief in respect of the cartons.

30. The special appeals and tax revision cases, are accordingly disposed of.

31. The Writ Petition No. 21392 of 2001, is filed seeking stay of collection of tax pending disposal of T.R.C. Nos. 6, 7 and 9 of 1998 filed by M/s. Mohan Breweries & Distilleries. As these tax revision cases are also disposed of the cause of action in the writ petition does not survive. Accordingly, the writ petition is dismissed. No costs.