

(2003) 10 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 8970, 9516, 9850, 10743, 12324, 13459, 13709, 13750, 14176, 14566, 14986, 15069, 15549, 18251 and 21487 of 2003

Surya Mineral Waters

APPELLANT

Vs

Commissioner of Industries and Chairman, State Level Committee

RESPONDENT

Date of Decision : 22-10-2003

Acts Referred:

Citation : (2005) 139 STC 348

Hon'ble Judges : P.S. Narayana, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : NP Anjana Devi and P. Srinivasa Reddy, for the Appellant; The Government Pleader for Industries and Commerce and Special Government Pleader for Taxes, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—A typical case of bureaucratic hangover resulting in waste of public time and energy is noticed in all the orders impugned in these writ petitions, which reflect total disregard to the directives issued by this Court. Had the respondents spent some time to understand the various process involved, on the basis of the material placed, in the making of packaged drinking water (otherwise known as mineral water) and given a finding as to whether the petitioners are entitled to tax concession as provided under G.O. Ms. No. 108, Industries and Commerce (IP) Department dated May 20, 1996, so much of public time and energy could have been saved. On the contrary, the respondents chose to adopt a slip shot method and rendered decision declaring that the petitioner-units are not eligible for sales tax concession as provided in G.O. Ms. No. 108 dated May 20, 1996, which action left the issue undecided even after the matter was remitted to the respondents twice by this Court for appropriate decision on the point as to whether the process undertaken by the petitioners in the making of packaged drinking water is a manufacturing activity and entitled

for the benefit under the G.O., especially so when the ordinary drinking water is brought under item No. 12 of the Fourth Schedule to the Andhra Pradesh General Sales Tax Act, 1957, which is totally exempted from payment of tax whereas aerated and mineral water are brought under item No. 21 of the Sixth Schedule and taxed at 12 per cent.

2. The Government of Andhra Pradesh issued G.O. Ms. No. 108 dated May 20, 1996 through which certain incentives were offered for the industries to be established in certain areas in the State of Andhra Pradesh. In the said G.O. it is clarified by the Government that after reviewing the concessions earlier granted and in modification of earlier orders, the Government decided to introduce a new industrial policy called "Target-2000" in order to accelerate the industrial development in the State of Andhra Pradesh. The following are the incentives that are granted under the abovesaid G.O. :

(1) All new industrial units, whether large, medium or small other than those listed in the annexure to be located anywhere in the State of Andhra Pradesh, except within the Municipal Corporation areas of Hyderabad, Vijayawada and Visakhapatnam and going into commercial production on or after November, 15, 1995 are eligible for the following incentives :

(a) Investment subsidy : 20 per cent of the fixed capital investment but not exceeding Rs. 20 lakhs.

(b) Deferment/tax holiday on sales tax : Sales tax deferment limited to 135 per cent of fixed capital investment in a period of 14 years. The deferred amount will be treated as deemed loan on making available security of fixed assets of the industry, part passu with financial institutions and on finalisation of assessment by the commercial tax authorities for each year, or

(c) Sales tax exemption for a period of 7 years, limited to a ceiling of 135 per Cent of fixed capital investment, during the entire holiday period, at the option of the industry, effective from the date of commencement of commercial production.

Apart from the above concessions, the rebate in electrical charges was also stipulated as under :

"All new industries, other than those listed in the annexure and other than those set up in the Municipal Corporation areas of Hyderabad, Vijayawada and Visakhapatnam, will be eligible for 25 per cent rebate in power bills (both demand and energy) for a period of 3 years from the date of commencement of commercial production. The rebate shall be allowed by the A.P. State Electricity Board in their monthly bills. The maximum total admissible rebate for the 3 years will be Rs. 50.00 lakhs in respect of large and medium industries and Rs. 30.00 lakhs in respect of small-scale industries."

3. These petitioners claim, pursuant to the incentives announced by the Government of Andhra Pradesh in the G.O. Ms. No. 108 dated May 20, 1996 to have established small-scale industries for mineral water, production, which is

now called as packaged drinking water. It is alleged that initially the industries department and the commercial tax department extended the benefits under the G.O., and that the industries department granted eligibility certificates in tune with the scheme contemplated under the G.O., but later at the instance of the commercial tax department, the incentive relating to exemption of payment of sale tax was withdrawn.

4. Questioning the action of the respondents seeking to withdraw the exemption in payment of sales tax, a batch of writ petitions in W.P. No. 3672 of 2001 See *Vummaneni Mineral Water Products (Private) Limited Vs. Commercial Tax Officer, Gajuwaka, Visakhapatnam and Others*, [App] infra [*Vummaneni Mineral Water Products (P.) Ltd. v. Commercial Tax Officer*] were filed on the ground that the eligibility certificates were issued by the State Level Committee and if at all the cancellation is to be effected, the matters shall be placed before the State Level Committee, which alone is competent to cancel the eligibility certificates. A division Bench of this Court, See *Vummaneni Mineral Water Products (Private) Limited Vs. Commercial Tax Officer, Gajuwaka, Visakhapatnam and Others*, [App] infra [*Vummaneni Mineral Water Products (P.) Ltd. v. Commercial Tax Officer*] having regard to the facts and circumstances of the case, primarily agreeing with the submissions made on behalf of the petitioners, set aside the orders impugned therein and remanded the matters to the State Level Committee and the petitioners were also granted liberty to place necessary material before the Committee and the Committee was required to take appropriate decision.

5. However, earlier stand was reiterated by the Commissioner of Industries as if the Committee had authorised him to pass orders which were again questioned by another batch of writ petitions in W.P. No. 5959 of 2002 and batch. In the second round of litigation, a division Bench of this Court having regard to the facts and circumstances of the case, passed the following order:

"On the basis of submissions made by the learned counsel for the petitioners and the learned Government Pleader for Taxes and learned Government Pleader for Industries, we are of the view that there is no finding at all by the respondent to the effect that the activity undertaken by the petitioner in the making of mineral and packaged drinking water is not a manufacturing activity. That apart as rightly pointed by the learned counsel for the petitioner that though show cause notices were issued and objections were invited, opportunity for explaining their stand before the Committee was not extended to the petitioners, which deprived the petitioners from explaining the process involved in the making of mineral water/package drinking water."

6. While observing as above, the writ petitions were allowed setting aside the impugned orders and matters were again remitted to the respondents with specific directions to place the matter before the appropriate Committee. The Committee was directed to give an opportunity to the petitioners to participate at the hearing on the date so fixed by the Committee. The Committee was further given liberty to collect such other information as is required for taking a decision

on the issue as to whether the activity undertaken by the petitioners is a manufacturing activity or not.

7. The present batch of writ petitions are filed complaining to this Court that in the two rounds of litigation, the respondents did not exempt the packaged drinking water from sales tax and through impugned orders, the Commissioner of Industries has once again reiterated the same stand following a decision of the Kerala High Court in Teejan Beverages Ltd. v. State of Kerala [2002] 128 STC 216 holding that the process involved in making of packaged drinking water does not amount to a manufacturing activity and therefore the petitioner-units are not entitled for sales tax incentives.

8. The learned counsels representing the petitioners primarily contended that in earlier two rounds of litigation though the matters were remitted to the State Level Committee, but the Committee has failed to examine the process involved in the making of packaged drinking water. It is also stated, each industrial unit costs more than Rs. 8 lakhs to Rs. 25 lakhs, and that the respondents have not taken note of these factors. It is also submitted that the expression "manufacture" is not defined in the G.O. Ms. No. 108 dated May 20, 1996 and that the ordinary water is mentioned at item No. 12 of the Fourth Schedule under the Sales Tax Act and the same is distinct from the mineral water which is mentioned at item No. 21 of the Sixth Schedule to the Act. The ordinary water mentioned under item No. 12 is exempted from the tax, whereas the water mentioned at item No. 21 of the Sixth Schedule is liable to be taxed at 12 per cent. The learned counsel for the petitioners pleaded that the respondents failed to note this distinction between the ordinary water and the packaged drinking water finding places in different Schedules. It is further submitted that though sufficient material was placed before the Committee showing the process involved and the expenditure incurred in establishing the small-scale industries, yet the third respondent again in a routine manner passed the impugned orders even without affording an opportunity to the advocates who represented the petitioners before the third respondent. In the circumstances, the learned counsel submitted that the view taken by the third respondent denying concession basing on the decision of the Kerala High Court (Teejan Beverages Ltd. v. State of Kerala [2002] 128 STC 216), is not applicable to the facts and circumstances of the case and therefore prayed, for an appropriate direction in this behalf.

9. The learned Government Pleaders appearing on behalf of the respondents, while taking us through several incentives announced by the Government of A.P., in G.O. Ms. No. 108 dated May 20, 1996, contended that the sales tax incentives are to be extended only as provided under Note-(a) of the G.O., and the sales tax here refers to sales tax on products manufactured in the new industrial units. Laying emphasis on this Note-(a), the learned Government Pleader states that the activity undertaken by the petitioners in the making of packaged drinking water (which is popularly known as mineral water) is not a manufacturing

activity and as such the respondents are justified in denying the concession relating to the grant of sales tax exemption. As far as other exemptions are concerned, according to the learned Government Pleader, they have been extended to the petitioners and therefore, submitted that the orders passed by the respondents are in tune with the scheme and as such no interference is called for.

10. As observed by us in the opening paragraph, in the two rounds of litigation, this Court had specifically directed the appropriate authority to give a finding on all counts and yet, the authorities failed to do so. Thus the matters have come up before us in the third round of litigation. The incentives under the scheme "Target2000" in G.O. Ms. No. 108 dated May 20, 1996 are intended to accelerate the industrial development of the State whether large, medium or small, in various areas. It is also noticed by us that initially the respondents had extended all the concessions, as provided in G.O. Ms. No. 108, dated May 20, 1996 to all these petitioners, but later the benefit of exemption of payment of sales tax was sought to be withdrawn on one pretext or the other, particularly on the ground that the activity undertaken by the petitioners in the making of packaged drinking water is not a manufacturing activity. As rightly pointed out by the learned counsel for the petitioners the expression "manufacture" is not defined in the notification itself. When the authorities are not sure about the facets of manufacturing and the activities which would fall within the ambit of manufacture, it is difficult for us to appreciate as to how the benefits extended in the G.O., are sought to be withdrawn to the extent of sales tax incentive. It is also noticed by us that though these petitioners have placed sufficient material before the authorities and explained the process involved in the making of the packaged drinking water, expenditure incurred for plant and machinery for the purpose of these units, which runs from Rs. 8 lakhs to Rs. 25 lakhs and above, the respondents have failed to take notice of these factors while deciding the issue relating to extending tax benefits. Though, twice this Court had directed the authorities to examine the cases, the authorities failed to examine and gave a finding that this activity does not fall within the so called manufacturing activity, though the expression "manufacture" is not at all defined in the G.O. Ms. No. 108, dated May 20, 1996.

11. It is noticed that the Government of Andhra Pradesh under the sales tax Schedules distinguished the ordinary water from the packaged drinking water/mineral water. The ordinary water is brought under the Fourth Schedule at item No. 12, whereas the packaged drinking water/mineral water is brought under Sixth Schedule at item No. 21. As far as the ordinary water is concerned, no tax is collected, but however the packaged drinking water/mineral water or aerated water, which are brought under the Sixth Schedule at item No. 21 is taxed at 12 per cent. This distinction has to be read in the context of the contentions raised by the learned counsel appearing on behalf of the petitioners. As indicated by us the expression "manufacture" is not defined in the G.O. by the Government while announcing incentives. It is not necessary for us to give a finding as to whether

the process involved in the making of packaged drinking water would amount to manufacturing activity or not. We are convinced that since the Legislature itself has distinguished these two commodities as separate and taxed them at different rates, the respondents are not justified in denying the concessions on the ground that activity undertaken by the petitioners in the making of packaged drinking water, falls under the Sixth Schedule and liable to be taxed at 12 per cent. Though it is submitted by the learned Government Pleaders appearing on behalf of the Industries and Commercial Taxes that the ratio laid down by the Kerala High Court has to be taken into consideration, we think that these cases do not fall on the lines of the case decided by the Kerala High Court. In the decision rendered by the Kerala High Court, in the notification, the expression "manufacture" was defined and in the light of the definition being provided, the Kerala High Court has taken a view that the activity undertaken by the petitioners therein would not fall within the ambit of manufacture. In the case on hand no such definition is provided for the expression "manufacture" in the notification, and as such we are of the opinion that the ratio laid down by the Kerala High Court would not apply to the facts of this case. Having regard to the distinction between these two items, as shown in the sales tax Schedule, we are of the considered view that the respondents cannot deny the concessions extended through G.O. Ms. No. 108, dated May 20, 1996.

12. We also examined the pros and cons as to whether these matters could be sent back to the authorities with a specific direction to give a finding on the basis of material available. Having regard to the fact that earlier on two occasions the authorities failed to examine the issue as directed by this Court, but passed the impugned orders in a routine fashion, we think no useful purpose would be served in sending the matters once again to the very same authorities who are to decide the issue.

13. For the foregoing reasons, we hold that the petitioner-units, which are involved in the making of the packaged drinking water, are also entitled for sales tax exemptions as per the G.O. Ms. No. 108, dated May 20, 1996. The writ petitions are accordingly allowed. No order as to costs.

14. That rule nisi in all the writ petitions has been made absolute as above.