
(2003) 03 KL CK 0046

In the High Court Of Kerala

Case No : W.A. No's. 1075, 1078, 1082, 1084 and 1089 of 2002

Teejan Beverages Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-03-2003

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10
Prevention of Food Adulteration Rules, 1955 — Rule 5

Citation : (2003) 131 STC 538

Hon'ble Judges : K. Balakrishnan Nair, J;G. Sivarajan, J

Bench : Division Bench

Advocate : V.V. Asokan, for the Appellant; Raju Joseph, Special Govt. Pleader (Taxes), for the Respondent

Judgement

G. Sivarajan, J.—The first four appeals arise from the common judgment in O.P. Nos. 35719 of 2001, 4430 of 1999-B, 34182 and 34092 of 2001 of the learned single Judge Reported in [2002] 128 STC 216. W.A. No. 1089 of 2002 arises from the separate judgment in O.P. No. 31415 of 1999 following the common judgment in the writ petitions which are the subject-matter of the first four appeals. Though the appellants in all these appeals are different persons, the question involved in all these appeals is one with regard to the eligibility for exemption from payment of sales tax under the Notification S.R.O. No. 1729 of 1993 in respect of their product styled as "mineral water" and later called as "packaged drinking water". Therefore, all these writ appeals are being disposed of by this common judgment.

2. The petitioners in the writ petitions are the appellants. They are either proprietary concerns, or partnership firms or private limited companies. However, all the appellants are small-scale industrial units registered as such with the Industries Department concerned. They have also taken out registration both under the Kerala General Sales Tax Act, 1963 (for short, "the Act") and under the Central Sales Tax Act, 1956. They are also assesseees on the files of the

respective Sales Tax Officers having jurisdiction over their business places.

3. According to the appellants, they are small-scale industrial units registered with the Industries Department and are engaged in the business of manufacture and sale of mineral water/package drinking water. According to them, the sales turnover of their product is entitled to exemption from payment of sales tax for a period of seven years under S.R.O. No. 1729 of 1993 issued u/s 10 of the Act.

4. The appellant in W.A. No. 1075 of 2002 started commercial production on January 10, 1998 and as such it claimed exemption from payment of sales tax under the Notification S.R.O. No. 1729 of 1993 for the period from January 10, 1998 till January 9, 2005. Its capital investment on fixed assets is Rs. 12,06,195. The District Level Committee constituted under the notification considered the appellant's application for sales tax exemption dated September 14, 1998 and issued an eligibility certificate dated October 20, 1998 (exhibit P3) as per which exemption from payment of sales tax was available from January 10, 1998 to January 9, 2005 for an amount of Rs. 12,06,195. Based on the said eligibility certificate, the assessment of the appellant for the year 1997-98 and 1998-99 were completed granting the sales tax exemption. While so, the Sales Tax Officer, II Circle, Perumbavoor (first respondent both in the writ petition and in the writ appeal) issued a notice dated October 31, 2001 (exhibit P7) under Rule 21(10) of the Kerala General Sales Tax Rules, 1963 (for short, "the Rules") stating that the Government has clarified that manufacture of mineral water will not amount to "manufacture" as defined in Clause 11(ix) of S.R.O. No. 1729 of 1993 and proposed to complete the assessment denying the exemption. The appellant then filed writ petition, O.P. No. 34262 of 2001 challenging the said notice. However, the said writ petition was disposed of on the submission of the Special Government Pleader that the first respondent is withdrawing the said notice. Later the assessing authority issued exhibit P11 series of notices under Rule 21(9) of the Rules proposing to complete the monthly assessments for the period from April, 2001 denying the exemption. Exhibit P.8 is a circular dated January 23, 1999 issued by the Government clarifying that as per the definition of "manufacture" given in S.R.O. No. 1729 of 1993 dated November 3, 1993 purifying water and filling it in bottles will not amount to manufacture. In view of the said clarification, the appellant has filed writ petition, O.P. No. 35719 of 2001 challenging exhibit P8 circular and exhibit P11 series of notices.

5. The appellant in Writ Appeal No. 1078 of 2002 started commercial production on December 16, 1996 and claimed exemption from payment of sales tax for a period of seven years up to December 15, 2003. The appellant's capital investment on fixed assets came to Rs. 66,20,000. Though they had submitted the application for exemption from payment of sales tax under the Notification S.R.O. No. 1729 of 1993 no final decision is taken in the application. It is stated that the application was initially considered by the District Level Committee and* later placed before the State Level Committee for consideration and the matter is pending. According to the appellant in view of the circular dated January 23,

1999 (exhibit P4) no relief can be expected from the said authorities. It is stated that no final assessments under the Act have been made on the appellant. In view of the said clarification, the appellant has filed writ petition, O.P. No. 4430 of 1999.

6. The appellant in W.A. No. 1082 of 2002 started commercial production on June 11, 1998 and as such they claimed exemption from payment of sales tax for the period up to June 10, 2005. Their capital investment on fixed assets came to Rs. 12,39,721. The District Level Committee considered their application dated May 22, 2001 and issued proceedings dated June 6, 2001 (exhibit P4). The exemption claimed on the sales turnover of mineral water was denied but exemption to the tune of Rs. 42,250 on hot and cold water dispensers was granted for the period from June 11, 1998 to June 10, 2005. This order was communicated to the appellant on October 10, 2001. The appellant filed an appeal against the said proceedings before the State Level Committee and the same is pending. In the meantime, the appellant received demand notice (exhibit P7) dated October 27, 2001 from the assessing authority. It is in these circumstances, the appellant filed the writ petition, O.P. No. 34182 of 2001 seeking to quash exhibit P4 and for a direction to the respondents to grant sales tax exemption to the appellant in terms of S.R.O. No. 1729 of 1993.

7. The appellant in W.A. No. 1084 of 2002 started commercial production on December 4, 1998 and claimed exemption from payment of sales tax for the period up to December 3, 2005. Their capital investment on fixed assets is shown as Rs. 21,07,831. The District Level Committee considered the exemption application and issued proceedings dated September 4, 2001 (exhibit P4) rejecting the claim. The said order was communicated to the appellant on October 15, 2001. The appellant filed appeal against the said order before the State Level Committee. The assessing authority in the meantime has issued demand notice dated October 20, 2001 (exhibit P7). It is the case of the appellant that in view of the clarification dated January 23, 1999 (exhibit P8) the appellant does not expect any favourable result in the appeal. It is in these circumstances, the appellant has filed the writ petition, O.P. No. 34092 of 2001 seeking to quash exhibits P4, P7 and P8 and for a direction to the respondents to grant sales tax exemption to the appellant in terms" of S.R.O. No. 1729 of 1993 and/or to direct the third respondent to decide exhibit P5 appeal uninfluenced by exhibit P8.

8. The appellant in W.A. No. 1089 started commercial production on February 20, 1997 and claimed exemption for the period up to February 19, 2004. The District Level Committee granted exemption from payment of sales tax to the tune of Rs. 59,56,697 for the period from February 20, 1997 to February 19, 2004. However, the first respondent by order dated November 26, 1999 (exhibit P2) cancelled the said eligibility certificate stating that the circular dated January 23, 1999 (exhibit P3 in the writ petition) was omitted to be considered while issuing exhibit P1 eligibility certificate. The appellant has sought to quash exhibit P2

order and exhibit P3 circular and also sought for a declaration that it is entitled to the exemption under the notification.

9. As already noted, the appellants' case is that they are engaged in the manufacture and sale of mineral water. They had also set out the process employed by them on ground water in the manufacture of mineral water. According to them by the process so employed, a totally different commodity, viz., mineral water emerged. The appellants, thus, contended that the process so employed constitutes "manufacture" as defined in the Notification S.R.O. No. 1729 of 1993. The appellants in W.A. Nos. 1075 and 1089 of 2002 have advanced a further contention that the eligibility certificate issued by the competent authority, viz., District Level Committee has not been cancelled in accordance with law and, therefore, the exemption available as per the eligibility certificate is still in force. Yet another contention was also raised that the appellants have also manufactured bottles for filling it with mineral water and, therefore, the turnover of bottles is also entitled to exemption from payment of sales tax under the notification. The learned single Judge, after detailed examination of the matter, rejected all the contentions of the appellants and the writ petitions were dismissed. Hence these appeals by the petitioners.

10. We have heard the learned counsel appearing for the appellants in all these cases and also the learned Special Government Pleader appearing for the respondents. The case of the appellants, as already noted, is that they are small-scale industrial units set up for the manufacture and sale of "mineral water", now called as "packaged drinking water", that their units have obtained permanent registration with the Industries Department and that the assessing authorities have treated the appellants as manufacturing units. It is also their case that, being small-scale industrial units engaged in the manufacture of mineral water, they are entitled to sales tax exemption for a period of seven years from the date of commencement of commercial production under S.R.O. No. 1729 of 1993. They have also furnished the date of commencement of commercial production. As already noted, in the case of the appellants in W.A. Nos. 1075 and 1089 of 2002 eligibility certificates granting sales tax exemption were issued. The eligibility certificate issued to the appellant in W.A. No. 1075 of 2002 was not cancelled but the eligibility certificate in the case of the appellant in W.A. No. 1089 of 2002 was cancelled without notice to the appellant. In the case of the appellant in W.A. No. 1078 of 2002 the application for exemption is pending before the District Level Committee. In the case of other appellants, the sales tax exemption claimed on the sales turnover of mineral water/package drinking water was rejected holding that the process employed by them in bringing out the product did not satisfy the definition of "manufacture" contained in the Notification S.R.O. No. 1729 of 1993.

11. The main question to be considered in these cases is as to whether the item "mineral water/package drinking water" which is the product of the appellants qualifies for sales tax exemption as a manufactured product within the definition

of the word "manufacture" in the Notification S.R.O. No. 1729 of 1993 issued by the State Government u/s 10 of the Act. Clause 11(ii) of the Notification S.R.O. No. 1729 of 1993 defines "manufacture" as follows :

" "Manufacture" shall mean the use of raw materials and production of goods commercially different from the raw materials used but shall not include mere packing of goods, polishing, cleaning, grading, drying, blending or mixing different varieties of the same goods, sawing, garbling processing one form of goods into another form of the same goods by mixing with chemicals or gas, fumigation or any other process applied for preserving the goods in good condition or for easy transportation. The process of producing desiccated coconut out of coconut (chemical treatment of rubber wood and production of dressed or tanned hides out of raw hides) shall be deemed to be "manufacture" for the purpose of this notification."

The following processes shall not be deemed to be "manufacture" for the purpose of this notification :--

- (a) Crushing copra and producing coconut oil and coconut oil cake.
- (b) Converting timber logs into timber sizes.
- (c) Crushing rubble into small metal pieces.
- (d) Converting sodium silicate into liquid silicate.
- (e) Tyre-retreading.
- (f) Cutting granite or marble slabs into smaller pieces and or polishing them.
- (g) Such other processes as may be notified by Government in this behalf.
- (h) Conversion of rubber latex into centrifugal latex, raw rubber sheet, ammoniated latex, crepe rubber, crumb rubber, or any other item falling under entry 110 of the First Schedule to the Kerala General Sales Tax Act, 1963 or treating the raw rubber in any form with chemicals to form a compound of rubber by whatever name called.

The processing and bottling of drinking water is explained by the appellants. It is stated that the processing involves three steps (1) collection of water, primary filtration treatment and pre-treatment to modify parameters like TDS, iron, arsenic, manganese, etc. (2) disinfection, the most important step and the final filtration and (3) filling and packing. The learned single Judge has extracted the said process as follows :

1. Alum dosing.
2. Sedimentation.
3. Chlorination.
4. Aeration.

5. Sand filtration.
6. G.A.C. filtration.
7. Series filtration.
8. Ultra virus sterilization.
9. Ozonation.

The effect of all these processes, according to the petitioner leads to the following quality achievement :

microbiological parameters

Raw water

Treated water (mineral water)

1.

Total viable count/ml

(>)1000

Nil

2.

MPN

3

Nil

3.

E. coli

6

Nil

chemical parameters

Sl. No.

Parameters (in PPM)

Raw Water

Treated water (mineral water)

1.

Turbidity

3 NTU

Nil

2.

Total solids

280

180

3.

Fe

0.5

0.05

4.

Manganese

3

0.1

5.

Arsenic

0.05

0.001

6.

Lead

0.02

Nil

7.

PH

7.2

7.3

8.

Nitrite

0.02

Nil

9.

Sulphide (as H₂S)

0.07

Nil

10.

Nitrate

0.02

Nil

11.

Ammonia free & Saline

0.01

Nil

12.

Ammonia Albuminoid

0.1

Nil

13.

Sulphate

26

14

14.

Chlorides

22

16

15.

Alkalinity

95

82

16.

Flouride

2.2

0.1

17.

Oxygen absorbed

0.3

0.1

18.

Hardness

94

86

12. According to the appellants, by employing these processes a different and distinct commodity both in commercial parlance and in technical parlance, substantially different from the raw ground water is produced. The appellants have also contended that the crucial test to determine whether there is manufacture or not is that the goods to which some labour--manual or mechanical is applied results in the production of a new and distinct commodity. In other words in the process of manufacture the resulting commodity will have a distinct and separate identity from the raw material. According to them, by the process described above, there occasioned a transformation, a new and different commodity emerged, having a distinct commercial use. They have also contended that mineral water is a specified commodity under the Act as covered by entry 87 of the First Schedule to the said Act whereas water is taxable as an item falling under the residuary entry. It is also their contention that the production of mineral water is treated as manufacture and the manufactured product--mineral water--is an excisable commodity liable to excise duty under Chapter 22, item No. 22.01 and 22.02 of the Central Excise Tariff Act, 1985. They have also alleged that certain other industrial units doing identical line of business were granted sales tax exemption under S.R.O. No. 1729 of 1993 and the denial of the same benefits to the appellants is discriminatory and violative of Articles 14, 19(1)(g) and 301 of the Constitution of India.

13. The respondents have filed a counter-affidavit in O.P. No. 31415 of 1999 which is the subject-matter of Writ Appeal No. 1089 of 2002 wherein they have taken the stand that the term "manufacture" for the purpose of the notification is defined as production of goods commercially different from the raw material used and will not include packing of goods, polishing, cleaning, grading, drying, blending or mixing different varieties of the same goods by mixing with chemicals or gas, fumigation or any other process applied for preserving the goods in good condition or for easy transportation. It is also stated that the Government as per letter dated January 23, 1999 (exhibit P3) clarified that as per the definition of "manufacture" given in S.R.O. No. 1729 of 1993 dated November 3, 1993 purifying water and filling it in bottles will not amount to

manufacture. It is further stated that an eligibility certificate was issued to the appellants without noticing the circular issued by the Government and that is the reason why it was cancelled later. In short, the contention of the respondents is that purifying of water by the process employed by the appellants and bottling it do not amount to manufacture within the definition of "manufacture" in the Notification S.R.O. No. 1729 of 1993.

14. Under S.R.O. No. 1729 of 1993 sales tax exemption is available to industrial units on the sale or purchase, as the case may be, of goods by such industrial units subject to the conditions and restrictions specified therein. Under Clause 1, in the case of new industrial units under small-scale industries, exemption for a period of seven years from the date of commencement of commercial production is available in respect of tax payable by such units under the Act on the turnover of sale of goods manufactured and sold by them within the State. Conditions and restrictions are imposed in Clause 10 of the said notification. Under Sub-clause (vii) thereof the small-scale industrial units claiming such exemption shall produce the proceedings of the District Level Committee consisting of the District Collector (Chairman), the Deputy Commissioner of Agricultural Income Tax and Sales Tax (Member) and the General Manager, District Industries Centre (Member Secretary) having jurisdiction over the District. Clause 11 in the form of an explanation for the purposes of this notification Sub-clause (ix) gives a definition of the word "manufacture" use in the notification, We have already extracted the said definition earlier in this judgment. As per the said definition, the term "manufacture" shall mean the use of raw materials and production of goods commercially different from the raw materials used. It further provides that manufacture shall not include mere packing of goods, polishing, cleaning, grading, drying, blending or mixing different varieties of the same goods, sawing, garbling, processing one form of goods into another form of the same goods by mixing with chemicals or gas, fumigation or any other process applied for preserving the goods in good condition or for easy transportation. It is also clarified that the process of producing desiccated coconut shall be deemed to be "manufacture" for the purpose of this notification. It further specifies certain other process which shall not be deemed to be manufacture for the purpose of this notification. One such process mentioned is crushing copra and producing coconut oil and coconut oil cake. Nobody will deny that in common parlance copra, coconut oil and coconut oil cake are totally different commercial commodities. Yet for the purpose of this notification it is stated that the process employed in converting copra into coconut oil and coconut oil cake will not fall within the definition of manufacture for the purpose of this notification. Thus, it would be clear that the definition of "manufacture" in the notification is an artificial definition solely for the purpose of grant of exemption from payment of sales tax under the notification. However, it has to be noted that the main part of the definition of the term "manufacture" speaks of the use of raw materials and production of goods commercially different from the raw materials used. In other words the test to be applied is as to whether there is a manufacturing process

involved in the conversion of the raw material into the finished product and as to whether the raw material after undergoing the process brings into existence a totally different commodity from the raw material known as such in the market or as to whether notwithstanding the process employed the substantial identity of the raw material remained the same. It would appear that even in a case where the main part of the definition, viz., a new and different commercial commodity different from the raw materials used emerges as a result of the process employed is satisfied still it would not satisfy the definition of "manufacture" if the different product emerges as a result of the processes mentioned in the remaining portion starting with "but shall not include" and in the specific exclusions (a) to (g).

15. The respondents have a case that the activity of the appellants will fall under the expressions "processing one form of goods into another form of the same goods by mixing with chemicals, gas, fumigation" even if the process employed by the appellants results in bringing into existence a different commercial commodity which will take the process out of the definition of "manufacture" in the notification.

16. Meaning of the word "manufacture" in the context of exemption under a similar notification was considered by the Supreme Court in *Commissioner of Sales Tax v. Jagannath Cotton Company* [1995] 99 STC 83. The question considered therein was as to whether the process undertaken by the respondent applying which he obtains cotton from waste cotton can be called manufacturing activity. In that context the Supreme Court observed that "manufacture" in its ordinary connotation, signifies emergence of new and different goods as understood in the relevant commercial circles. It was also observed that the use of the expression "purchase of raw materials" itself shows that what is ultimately produced is different goods than the raw materials used, that the repeated use of the expression "finished products" and the grant of exemption in the case of small-scale industries both in respect of raw materials as well as finished products indicates that these concessions at substantial cost to the public exchequer were being provided with a view to encourage units engaged in the manufacture or production of goods and not to help those units which merely engaged themselves in some sort of processing whereunder the goods remain essentially the same goods even after the said process. It was also observed that even if a process is adopted, the test is the same, viz., whether different goods emerge as a result of application of such process.

17. It is a well accepted principle that resort to the dictionary meaning or the popular meaning of an expression used in the taxing statute can be made only when there is no definition of that word in the said statute. In the instant case the Notification S.R.O. No. 1729 of 1993 itself defines the word "manufacture" for the purpose of the said notification and therefore there is no need to resort to the dictionary meaning or to the meaning of that word as judicially decided.

18. In a case where there is no definition of the word "manufacture" in a taxing

statute the test to be applied for determining the meaning of the word "manufacture" is by now settled by a series of decisions of the Supreme Court. The classic passage occurring in the decision of the United States Supreme Court in *Anheuser-Busch Brewing Association v. United States* (1907) 52 L.Ed. 336, 338 in the following terms--"Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary.....There must be transformation ; a new and different article must emerge, "having a distinctive name, character or use" and further : "At some point processing and manufacturing will merge. But where the commodity retains a continuing substantial identity through the processing stage we cannot say that it has been "manufactured"" was adopted as the basis for determining the meaning of the word "manufacture" by the honourable Supreme Court in those decisions. The classic decision of the Supreme Court is *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers* [1980] 46 STC 63 where the Supreme Court had adopted the principles laid down in the aforesaid passage for determining the question as to whether the processing of pineapple fruit into pineapple slices for being sold in sealed cans would amount to manufacture. The question arose in the context of the provisions of Section 5A(1)(a) of the Kerala General Sales Tax Act, 1963 which envisages the consumption of a commodity in the manufacture of another commodity. The Supreme Court had laid down the principle thus :

"There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly, manufacture is the end-result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity."

The Supreme Court then posed the question thus :

"Does the processing of the original commodity bring into existence a commercially different and distinct article ?"

After referring to the earlier decisions of the Supreme Court on this issue it was held that there is no essential difference between the pineapple fruit and the

canned pineapple slices. It was also observed that :

"The dealer and the consumer regard both as pineapple. The only difference is that the sliced pineapple is a presentation of fruit in a more convenient form and by reason of being canned it is capable of storage without spoiling. The additional sweetness in the canned pineapple arises from the sugar added as a preservative. On a total impression, it seems to us, the pineapple slices must be held to possess the same identity as the original pineapple fruit."

The Supreme Court referred to the contention for the revenue that pineapple slices have a higher price in the market than the original fruit and that implies that the slices constitute a different commercial commodity and observed that "The higher price, it seems to us, is occasioned only because of the labour put into making the fruit more readily consumable and because of the can employed to contain it. It is not as if the higher price is claimed because it is a different commercial commodity". The Supreme Court also met an argument of the counsel appearing for the assessee that pineapple slices appeal to a different sector of the trade and that when a customer asks for a can of pineapple slices he has in mind something very different from fresh pineapple fruit by observing that "here again, the distinction in the mind of the consumer arises not from any difference in the essential identity of the two, but is derived from the mere form in which the fruit is desired". The principles laid down in this decision were followed by the Supreme Court in later decisions also (*Sterling Foods v. State of Karnataka* [1986] 63 STC 239) where it was held that shrimps, prawns and lobsters even after processing them by cutting of head and tails, peeling, deveining, cleaning and freezing them before export the goods remained commercially the same. In *Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, it was held that blending of ore while loading it in the ship by means of the mechanical ore handling plant did not constitute manufacturing or processing of ore within the meaning of Section 8(3)(b) of the Central Sales Tax Act, 1956 and Rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957. It was observed by the Supreme Court thus :

"The point which arises for consideration under the first question is as to whether blending of ore in the course of loading it into the ship through the mechanical ore handling plant constituted manufacture or processing of ore. Now it is well-settled as a result of several decisions of this Court, the latest being the decision given on 9th May, 1980, in Civil Appeal No. 2398 of 1978, *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, that the test for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but it recognised in the trade as a new and distinct commodity. This Court speaking through one of us (Pathak, J.) pointed out : "Commonly, manufacture is the end-result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed

there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place". The test that is required to be applied is : does the processing of the original commodity bring into existence a commercially different and distinct commodity ? On an application of this test, it is clear that the blending of different qualities of ore possessing differing chemical and physical composition so as to produce ore of the contractual specifications cannot be said to involve the process of manufacture, since the ore that is produced cannot be regarded as a commercially new and distinct commodity from the ore of different specifications blended together. What is produced as a result of blending is commercially the same article, namely, ore, though with different specifications than the ore which is blended and hence it cannot be said that any process of manufacture is involved in blending of ore."

All these decisions of the Supreme Court are to the effect that when the statute does not define the word "manufacture" the test to be applied is to find out as to whether the original commodity even after undergoing all the processes employed transforms into a new and different article having a distinct name, character or use. In other words the question is as to whether a different commercial commodity emerges as a result of the processes employed by the assessee on the original raw material. The difficulty experienced by the court is only in the application of the principles to the facts of a particular case to find out whether the original commodity after various processes emerges as a new and different article having a distinctive name, character or use.

19. So far as the Notification S.R.O. No. 1729 of 1993 is concerned, it is unnecessary for us to find out the meaning of the word "manufacture" used in the said notification either by referring to the dictionary meaning or the meaning given to the said word by judicial pronouncements. The notification itself defines the word "manufacture" for the purposes of the said notification. Suffice to say that the definition of the word "manufacture" in the said notification is largely based on the decision of the Supreme Court in Poo Food Packers' case [1980] 46 STC 63 and other decisions of the Supreme Court. It is also keeping in mind the exemptions granted to some of the goods under other notifications (copra and coconut oil) exclusion clauses are made to the definition of the word "manufacture". The other exclusion clauses, it appears, are also included based on the decisions of the Supreme Court deciding the matter either way to clear any ambiguity and to make the intention clear.

20. Thus the main question to be considered in this case is as to whether process of making the goods, viz., "mineral water" later named as "packaged drinking water" dealt with by the assessee satisfies the definition of "manufacture" given

in the notification. In *Chandausi Chemicals v. Commissioner, Sales Tax, Uttar Pradesh* [1981] 47 STC 436 the Allahabad High Court considered the question as to whether water for injection is covered by the expression "distilled water" occurring in the explanation to Section 4(a) of the U.P. Sales Tax Act, 1948, and is not exempted from sales tax as water. The Allahabad High Court after referring to the British Pharmaceutical Code, 1973 dealing with water for injection held that water for injection is sterilised distilled water and it is intended for parenteral administration and in other sterile products and therefore it is covered by expression distilled water. In *Commissioner of Sales Tax v. Oil Processors Private Limited* [1998] 108 STC 44 the Bombay High Court considered the question as to whether conversion of used waste lubricating oil into usable lubricating oil will amount to manufacture and as to whether a new commodity is emerged. The Bombay High Court considered the question with reference to the principles laid down by the Supreme Court in *Tangabhadra Industries Ltd. v. Commercial Tax Officer* [1960] 11 STC 827, *State of Maharashtra v. Shiv Datt & Sons* [1992] 84 STC 497, *Chowgule & Co. Pvt. Ltd. v. Union of India* [1981] 47 STC 124, *Deputy Commissioner of Sales Tax v. Pio Food Packers* [1980] 46 STC 63, *State of Orissa v. Titaghur Paper Mills Co. Ltd.* [1985] 60 STC 213 and *Sterling Foods v. State of Karnataka* [1986] 63 STC 239 besides the decisions of the Bombay High Court and held that the activity of converting the used waste lubricating oil into usable lubricating oil was not a refining process and as such was not covered by explanation II to Section 2(17) of the Bombay Sales Tax Act, 1959. It was also held that the process undertaken by the assessee on the used lubricating oil to make the same fit for reuse as lubricating oil could not be regarded as a process of manufacture. Since this decision has got some relevance in deciding the issue on hand, we will refer to this decision a little more in detail.

21. In that case the assessee was a dealer under the Bombay Sales Tax Act, 1959. It purchased used waste lubricating oil, removed impurities therefrom and resold the same as lubricating oil. The assessee applied to the Deputy Commissioner of Sales Tax u/s 52 of the Act calling upon him to decide the question whether the lubricating oil sold by them after removing impurities from the used lubricating oil is liable to sales tax and if so at what rate ? The process applied by the assessee to the used lubricating oil for removing the impurities and making the same fit for sale as lubricating oil is stated as under :

"Lubricating oils during service, get contaminated with abrasive materials like metal particles--sediments, carbon particles from combustion in auto engines, dust particles from atmosphere as also water and fuel. Therefore, as per the recommendation of machine manufacturers, the lubricating oil is drained out of the machine at some fixed time. The oil does not cease to have its lubricating property but due to aforesaid abrasive contaminates it has to be drained. Once the contaminants are removed the oil is as good as the original oil. In order to lauder-reclaim, re-refine or purify the used lubricating oil, it is chemically treated to breakdown the additives that are in the oil. The oil is neutralised by alkali and

water dilutants, etc., are removed by distillation. It is then bleached with earth to improve the colour. The oil is then blended with additives to bring it back to its original performance level."

The Deputy Commissioner of Sales Tax did not accept the contention of the assessee as he was of the opinion that the lubricating oil obtained as a result of the processing of the re-refining undertaken by the assessee was a new and different commercial commodity and in that view of the matter, the process undertaken by the assessee amounted to manufacture. The assessee took up the matter before the Tribunal and contended that no new or different commercial commodity emerged as a result of the process applied by it to the used lubricating oil for removing impurities to make it reusable, because despite the removal of impurities, lubricating oil continued to be lubricating oil. Revenue, on the other hand, contended that the process undertaken by the assessee being quite elaborate, as a result of which the lubricating oil which had become unusable after use became fit for re-user, it amounted to manufacture. The Tribunal did not accept, the contention of the revenue. According to the Tribunal despite the process undertaken by the assessee the lubricating oil remained lubricating oil. At the instance of the revenue the matter was taken up before the High Court and contended that the process undertaken by the assessee to purify the used lubricating oil is covered by the definition of manufacture contained in Section 2(17) of the Act read with explanation II thereto. The Bombay High Court considered the meaning of the expression "manufacture" and observed as follows :

"So far as the meaning of the expression "manufacture" is concerned, it is well-settled by a catena of decisions of the Supreme Court and this Court that every process undertaken by a dealer on the goods to make them fit for the market or improving their marketability does not amount to a process of "manufacture". "Manufacture" implies a change but every change is not manufacture. Something more is necessary. There must be a transformation as a result of the process undertaken on the product and a new and different article, having a distinctive name or character, must emerge. The true test for determining whether manufacture has taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity but is recognised in the trade as a new and distinct commodity. The difference between "processing" and "manufacture" is by now well understood and well recognised. "Processing" means subjecting a commodity to a process or treatment so as to develop it or make it fit for market. With each process, the original commodity undergoes a change. But it is only when the change takes the commodity to a point where it can be no longer regarded as the original commodity but is recognised in the trade as new and distinct commodity that a manufacture can be said to take place. Where the commodity retains a continuing substantial identity through the processing stage, it cannot be said that there has been a "manufacture"."

It was also noted that the Bombay High Court have summed up the legal propositions emerging from the various decisions of the Supreme Court in Commissioner of Sales Tax v. Ruby Surgical and Allied Products Private Limited [1997] 106 STC 26 as follows :

"(i) Manufacture implies a change, but every change is not manufacture. Something more is necessary. There must be transformation and a new different article must emerge, having a distinctive name, character or use. (ii) The true test for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but is recognised in the trade as a new and distinct commodity, (iii) Where the commodity retains a continuing substantial identity through the processing stage, it cannot be said that it has been manufactured."

Thereafter the Bombay High Court applied the aforesaid principles to the facts of the assessee's case as follows :

"Applying the above principles to the facts of the present case, it is abundantly clear that the process undertaken by the assessee on the used lubricating oil to make the same fit for reuse as lubricating oil cannot be regarded as a process of "manufacture". Nothing was manufactured as a result of the process. Lubricating oil remained lubricating oil even after processing, with the only difference that on removal of impurities, etc., by the process undertaken by the assessee it became fit for reuse as lubricating oil. Both before and after the processing, it was regarded as "lubricating oil". That being so, in our opinion, the Tribunal was fully justified in holding that the activity of converting the used waste lubricating oil into usable lubricating oil is not a refining process and as such not covered by the explanation II to Section 2(17) of the Bombay Sales Tax Act and allowing the assessee the benefit of resale claim in respect of the sale of such refined lubricating oil."

The Bombay High Court for coming to the above conclusion had relied on the decision of the Supreme Court in Tungabhadra Industries Ltd. v. Commercial Tax Officer [1960] 11 STC 827 mentioned earlier where hydrogenated groundnut oil (commonly called vanaspati) was held to be groundnut oil and further noted that the Supreme Court had held that processing of groundnut oil in order to render it more acceptable to the customer by improving its quality would not render it a commodity other than groundnut oil.

22. In Deputy Commissioner of Sales Tax (Law) v. Coco Fibres [1991] 80 STC 249 the Supreme Court considered the question as to whether conversion of coconut husk to coconut fibre involves manufacture in the context of the provisions of Section 5A of the Kerala General Sales Tax Act and the Supreme Court had noted that the word "manufacture" has not been defined under the Act and therefore the meaning of the word known in commercial parlance has to be looked into. The Supreme Court referred to the dictionary meaning of the word

"manufacture" and observed that going by the meaning of the word "manufacture" occurring in Black's Law Dictionary by the process of manufacture something is produced and brought into the existence which is different from that, out of which it is made, in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied and that the material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties. The Supreme Court then referred to the Constitution Bench decision in *Ujagar Prints v. Union of India* [1989] 74 STC 401 where it was held as follows :

"The prevalent and generally accepted test to ascertain that there is "manufacture" is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognised as a distinct and new article that has emerged as a result of the processes. The principles are clear. But difficulties arise in their application in individual cases. There might be border-line cases where either conclusion with equal justification may be reached. Insistence on any sharp or intrinsic distinction between "processing" and "manufacture", we are afraid, results in an oversimplification of both and tends to blur their interdependence in cases such as the present one."

The Supreme Court then referred to the decision in *Commissioner of Sales Tax v. Harbilas Raji and Sons* [1968] 21 STC 4 where it was held that the word "manufacture" has various shades of meaning, and in the context of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial article, it cannot be said that the final product is the result of manufacture. The test laid down by this Court is that the article which comes into being must be commercially different from the one from which it is made or manufactured. The Supreme Court on the basis of the aforesaid decisions held that in view of the admitted position the green husk is soaked into saltish sea water for days together and after decomposition, on being subjected to beating either by manual or mechanical process, fibre is produced in the process, which is a distinct commodity known in the commercial parlance and no one in the market would sell or supply husk when fibre is asked for. It was held that the coconut fibre is commercially a different identifiable commodity known as such in the commercial parlance. The decision of the Supreme Court in *Pio Food Packers'* case [1980] 46 STC 63 was explained by stating that sliced pineapple even after the process remains the same as pineapple and that there is no consumption of commodity nor any process of manufacture of other goods. Again the Supreme Court in *Krishna Chander Dutta (Spice) Pvt. Ltd. v. Commercial Tax Officer* [1994] 93 STC 180 considered the question as to whether whole black pepper and whole turmeric converted into pepper powder and turmeric powder for sale can be treated as different goods. It was contended on behalf of the assessee that pepper and pepper powder and turmeric and turmeric powder are one and the same goods. It was pointed out that pepper and turmeric are sometimes

used in its original form and sometimes in its powder form and that pepper and turmeric powder are but a form of pepper and turmeric and they are not different goods. The Supreme Court held that so far as whole black and white pepper and pepper powder are concerned they are same goods whether applying the functional test or the test of common parlance/commercial parlance. So far as pepper is concerned, it is used equally in whole as well as powdered form. The Supreme Court also considered the decision in Rajasthan Roller Flour Mills Association's case [1993] 91 STC 408 and observed that when Section 14(i)(iii) mentioned wheat, it meant wheat alone and not the products of wheat like flour, maida and suji and the said decision has no application to the present case. In State of Maharashtra v. Shiv Datt & Sons [1992] 84 STC 497 the Supreme Court considered the question as to whether the recharged batteries sold by the respondents were not a different commodity from the dry batteries purchased by them from the manufacturers. Referring to the definition of "manufacture" in Section 2(17) of the Bombay Sales Tax Act it was observed thus :

"The purpose of Section 8 is that, where substantially the goods purchased are resold, there should be a deduction of the turnover on which purchase tax has already been paid. This provision should be interpreted in a practical and workable manner. The mere fact that the words used in the definition, of "manufacture" are very wide should not lead us to so widely interpret them as to render the provision practically meaningless and so as to treat the goods sold as different merely because some slight additions or changes are made in the goods which are purchased before they are sold. It is true that under the section it is not necessary that there should be "manufacture" in the sense that a new commodity has been brought into existence as would have been required if that word is interpreted in its literal sense. But, at the same time, the section should be so interpreted to mean only such of the various processes referred to in the definition and applied to the goods as are of such a character as to have an impact on the nature of the goods."

The Supreme Court held that the recharged batteries sold by the respondents were not a different commodity from the dry batteries purchased by them from the manufacturers. It was observed that even before the dry batteries were manufactured the plates were immersed in the electrolyte and completely charged and were kept immersed in the electrolyte, that only, before the goods were actually delivered to the dealers the electrolyte was thrown out because there might be risks if the electrolyte were to spill during transportation and that all that the dealer did was to reintroduce the electrolyte into the batteries after they were purchased and, where efflux of time made it necessary, also to recharge them so that may serve the purpose for which they were required.

23. A Constitution Bench of the Supreme Court in Tangabhadra Industries Ltd. v. Commercial Tax Officer [1960] 11 STC 827 considered the question as to whether hardened or hydrogenated groundnut oil (commonly called as vanaspati) is "groundnut oil" within the meaning of Rule 18(2) of the Madras

General Sales Tax (Turnover and Assessment) Rules, 1939. Rule 18(2) provides that every registered manufacturer of groundnut oil will be entitled to a deduction under Clause (k) of Sub-rule (1) of Rule 5 equal to the value of the groundnut and/or kernel, purchased by him and converted into oil and cake if he has paid the tax to the State on such purchases. The appellant therein claimed deduction under Rule 18(2) both in respect of refined groundnut oil and in respect of hydrogenated oil. The Tribunal has taken the view that when raw groundnut oil is converted into refined oil there is no doubt processing, but this consists merely in removing from raw groundnut oil that constituent part of the raw oil which is not really oil ; the elements removed in the refining process consist of free fatty acids, phosphotides and unsaponifiable matter ; after the removal of this non-oleic matter therefore the oil continues to be groundnut oil and nothing more ; the matter removed from the raw groundnut oil not being oil cannot be used after separation as oil or for any purpose for which oil could be used ; for this reason refined oil continues to be groundnut oil within the meaning of Rule 18(2) notwithstanding that such oil does not possess the characteristic colour, or taste, odour, etc., of the raw groundnut oil ; in the case of hydrogenated oil which is prepared from refined oil by the process of passing hydrogen into heated oil in the presence of a catalyst (usually finely powdered nickel), two atoms of hydrogen are absorbed ; a portion of the oleic acid which formed a good part of the content of the groundnut oil in its raw state is converted, by the absorption of the hydrogen atoms, into stearic acid and it is this which gives the characteristic appearance as well as the semi-solid condition which it attains ; in the language of the chemist, an intermolecular or configurational chemical change takes place which results in the hardening of the oil ; though it continues to be the same edible fat that it was before the hardening, and its nutritional properties continue to be the same, it has acquired new properties in that the tendency to rancidity is greatly removed, is easier to keep and to transport ; both the Tribunal as well as the learned Judges of the High Court held that the hydrogenated oil (or vanaspati) ceased to be groundnut oil by reason of the chemical changes which took place and which resulted in the acquisition of new properties including the loss of its fluidity and they held that vanaspati or hydrogenated oil was not groundnut oil but a product of groundnut oil manufactured out of groundnut oil and therefore not entitled to the benefit of the deduction under Rule 18(2). The Supreme Court observed that if the removal of impurities by a process of sedimentation does not render groundnut oil any the less so, it follows that even the process of refining, by the application of chemical methods for removing impurities in the oil, would not detract from the resulting oil being "groundnut oil" for the purpose of the rule. The contention of the Advocate-General appearing for the respondent that the Tribunal and the learned Judges of the High Court erred in holding that even refined groundnut oil was "groundnut oil" for the purpose of the rule, was rejected. The Supreme Court observed that the High Court laid an undue emphasis on the addition by way of the absorption of the hydrogen atoms in the process of hardening and on the consequent inter-molecular changes in the oil. It was observed that :

"The addition of the hydrogen atoms was effected in order to saturate a portion of the oleic and linoleic constituents of the oil and render the oil more stable thus improving its quality and utility. But neither mere absorption of other matter, nor inter-molecular changes necessarily affect the identity of a substance as ordinarily understood. Thus for instance there are absorptions of matter and inter-molecular changes which deteriorate the quality or utility of the oil and it might be interesting to see if such additions and alterations could be taken to render it any the less "oil". Groundnut oil when it issues out of the expresser normally contains a large proportion of unsaturated fatty acids--oleic and linoleic--which with other fatty acids which are saturated are in combination with glycerine to form the glyceride which is oil. The unsaturated fatty acids are unstable, i.e., they are subject to oxidative changes. When raw oil is exposed to air particularly if humid and warm, i.e., in a climate such as obtains in Madras, oxygen from the atmosphere is gradually absorbed by the unsaturated acid to form an unstable peroxide (in other words the change involves the addition of two atoms of oxygen) which in its turn decomposes breaking up into aldehydes. It is this oxidative change and particularly the conversion into aldehydes that is believed to be responsible for the sharp unpleasant odour, and the characteristic taste of rancid oil. If nothing were done to retard the process the rancidity may increase to such extent as to render it unfit for human consumption. The change here is both additive and inter-molecular, but yet it could hardly be said that rancid groundnut oil is not groundnut oil. It would undoubtedly be very bad groundnut oil but still it would be groundnut oil and if so it does not seem to accord with logic that when the quality of the oil is improved in that its resistance to the natural processes of deterioration through oxidation is increased, it should be held not to be oil."

It was further observed that :

"Both the Tribunal as well as the High Court have pointed out that except for its keeping quality without rancidity and ease of packing and transport without leakage, hydrogenated oil serves the same purpose as a cooking medium and has identical food value as refined groundnut oil. There is no use to which the groundnut oil can be put for which the hydrogenated oil could not be used, nor is there any use to which the hydrogenated oil could be put for which the raw oil could not be used. Similarly we consider that hydrogenated oil still continues to be "groundnut oil" notwithstanding the processing which is merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desire to consume groundnut oil. In our opinion, the assessee-company was entitled to the benefit of the deduction of the purchase price of the kernel or groundnut, under Rule 18(2), which went into the manufacture of the hydrogenated groundnut oil from the sale turnover of such oil."

24. Now we will deal with the item which is the subject-matter of these appeals. As already noted originally the product was styled as "mineral water" and later known as "packaged drinking water". The process of converting raw ground

water into mineral water/packageged drinking water has already been detailed in paragraph 11 of this judgment. The appellants have detailed the microbiological parameters and chemical parameters of the raw water as well as treated water. According to them the treated water is different from raw water. There is no dispute that the raw water continues to be water even after treatment. The only contention is that by the processes employed the raw water gets converted into a new commodity available in the market. It is also the contention of the appellants that mineral water is a distinct and different commercial commodity which is even recognised under the Sales Tax Act. Mineral water is covered by entry 87 of the First Schedule to the Kerala General Sales Tax Act. It is their further contention that production of mineral water is treated as manufacture and the manufactured product--mineral water--is an excisable commodity leviable to excise duty. Under chapter 22 item No. 22,01 and 22.02 of the Central Excise Tariff Act, 1985 mineral water is an excisable commodity. Rule 5 of the Prevention of Food Adulteration Rules, 1955 under appendix B thereto prescribes the standards for mineral water as item A.32 as follows :

"A. 32--Mineral water :

1. Natural mineral water means the mineral water obtained directly from potable natural or drilled sources like spring artesian well, drilled well or from an underground formation and not from public water supply. It shall be free from dirt, foreign matter or any other ingredients injurious to health. It shall not be transported in bulk container for packaging or any other processing before packing.

2. Fortified mineral water means the water derived from any source of potable water which may be blended, treated/fortified with mineral salts.

Mineral water shall be packed in clean and sterile containers.

Mineral water shall also conform to the following standards, namely :--

Turbidity (not more than) (NTU) -5 Total dissolved solids (not more than) mg/1 -1500 PH value -6.5-8.5 Copper (Cu) mg/1 (not more than) -1.0 Iron (as Fe) mg/1 (not more than) -0.3 Nitrate (as No) mg/1 (not more than) -45 Residual Free Chlorine mg/1 (not more than) -0.2 Fluoride (as F) mg/1 (not more than) -1.5 Mercury (as Hg) mg/1 (not more than) -0.001 Cadmium (as Cd) mg/1 (not more than) -0.01 Arsenic (as As) mg/1 (not more than) -0.05 Cyanide -absent Lead (as Pb) mg/1 (not more than) -0.05 Mineral oil -absent Chromium (as Cr) mg/1 (not more than) -0.05 Chlorides (as CD mg/1 (not more than) 200 Sulphates (SO) mg/1 (not more than) 250 Alkalinity (as HCO) mg/1 (not more than) 600 Yeast & mould count -absent E.coli -absent Salmonella and Shigella -absent Clostridium Welchii, C, Botulinum -absent Bacillus cirrus -absent Vibrio cholerae and V. Parahaemolyticus -absent

(Note.--Without prejudice to the standards laid down in this appendix, whenever water is used in the manufacture or preparation of any article of food such water

shall be free from micro-organism likely to cause disease and also free from chemical constituents which may impair health)."

None of the appellants has a case that the product sold by them previously as "mineral water", and now as "packaged drinking water" conforms to the standards prescribed for "mineral water" as provided above. The fact that the appellants have changed the name of their product from "mineral water" to packaged drinking water in view of the standards fixed for mineral water in the Prevention of Food Adulteration Act clearly establishes that what was sold by them earlier in the label "mineral water" was in fact not mineral water. The ground water which is taken and used by the appellants as raw material for their finished product, viz., mineral water/package drinking water can be used for all purposes for which the so called mineral water is used. Similarly the so called mineral water can be used for all the purposes for which the ground water can be used. What is done by the appellants is to employ various processes described by them to bring the commodity more acceptable to a section of people for drinking purposes. According to us, notwithstanding the various processes employed by the appellants in converting the ground water it continues its identity as water, its character and use also remain the same though the quality of the said water has been raised to a certain level which is more acceptable to a section of people. Applying the principles laid down by the Supreme Court in the various decisions discussed above, and in the light of the definition of the word "manufacture" used in the notification mineral water/package drinking water produced by the appellants in their units has to be treated as substantially the same as ground water. In other words it cannot be said that a new and distinct commercial commodity has emerged by the employment of various processes described by them on the ground water. In these circumstances, going by the meaning of the word "manufacture" as noted in the various decisions of the Supreme Court and other courts and by the definition of the same used in the notification the raw material, viz., the ground water even after the various processes undertaken by them has continued to be water with the same characteristic or use. The decision of the Constitution Bench of the Supreme Court in *Tungabhadra Industries Ltd.*'s case [1960] 11 STC 827 and the decision of the Bombay High Court in *Oil Processors Private Limited* case [1998] 108 STC 44 mentioned above squarely apply.

25. Though this will dispose of the main contentions of the appellants we will refer to the other decisions relied on by the appellants for completion sake. The counsel appearing for the appellants relied on the decision of the Allahabad High Court in *Goel Industries (Pvt.) Ltd. v. Commissioner of Sales Tax* [1971] 28 STC 729, the decision of the Jammu and Kashmir High Court in *Glacier Cold Storage & Ice Mills v. Assessing Authority, Sales Tax* [1974] 34 STC 426 , the decisions of the Supreme Court in *M/s. Chillies Exports House Ltd. Vs. Commissioner of Income Tax*, and in *Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others*, , the decisions of this Court in *State of Kerala v. Abraham* (2002) 3 KLT 22 (Case No. 31), *Deputy Commissioner (Law), Board of*

Revenue (Taxes), *Ernakulam v. Excel Rubber Industries, Ernakulam* (1998) 6 KTR 289 and in *Ernakulam Regl. Co-operative Milk Producers Union Ltd. v. State of Kerala* (2001) 9 KTR 459 and the decision of the Bombay High Court in *Commissioner of Sales Tax v. Indian Oil Corporation Ltd.* [1978] 41 STC 471.

26. In *Goel Industries (Pvt.) Ltd.*'s case [1971] 28 STC 729 mentioned above, the Allahabad High Court had considered the question as to whether ice is water. The High Court held that chemically, ice and water may have the same composition, but in commercial and popular sense they are different commodities. The reasoning of the court was that while water is generally available free, ice is always sold in the market. In *Glacier Cold Storage & Ice Mills*" case [1974] 34 STC 426 (J&K) mentioned above the asscsco claimed that ice is included in water and exempted from sales tax under the Jammu and Kashmir General Sales Tax Act. The Jammu and Kashmir High Court held that ice derives its source or genus from water by being reduced to a solid state, yet water on solidification into ice completely changes its stage and becomes a distinct entity and therefore ice and water are not the same things. The court also observed that the Government was fully alive to the two forms of water, namely, water simpliciter and ice, and if the intention of the Government was to exempt ice also then either they should have mentioned this substance in item 37 of Schedule II or they should have added that water would be exempted in any form whatsoever. It was also observed that water is of universal and common use and the Government did not want to make it costly by imposing taxation on its use or supply. The Allahabad High Court in *Chandausi Chemicals*" case [1981] 47 STC 436 mentioned above has considered the question as to whether water for injection is covered by the expression "distilled water". The court referring to the provisions of Section 4 of the U.P. Sales Tax Act where the explanation to the section gave the meaning of the word "water" does not include mineral water, aerated water, tonic water, distilled water or scented water, held that water for injection is covered by the expression "distilled water" occurring in the explanation to Section 4(a) of the Act and therefore excluded from the definition of "water". The Supreme Court in *Rajasthan Roller Flour Mills Association*'s case [1993] 91 STC 408 was concerned with the question as to whether flour, maida and suji derived from wheat are "wheat" within the meaning of Section 14(i)(iii) of the Central Sales Tax Act, 1956. The Supreme Court after considering the various decisions of that Court and of other Courts held that flour, maida and suji derived from wheat are not wheat within the meaning of Section 14(i)(iii) of the Central Sales Tax Act, 1956 as they are different goods from wheat. The Supreme Court in *Nagar Mahapalika*'s case (1996) 4 KTR 297 mentioned above was concerned with the question as to whether empty bottles can be subjected to levy of entry tax. The respondents claimed that the said empty bottles are covered by the exemption contained in the notification and in entry 13 of the second part of the said notification which reads--empty milk cans, mineral water bottles, kerosene oil tins and drums, gas cylinders, wine bottles, and drums and gunny bags if imported for being refilled with the

commodities for which they are in ordinary use. In that case the Supreme Court observed that while they agree with the learned counsel for the appellant-corporation that mineral water and aerated water/cold drinks are different and distinct articles, whether in common parlance or in the commercial parlance they are not inclined to interfere in the matter in view of the findings recorded by the High Court that mineral water as we know today was not known in commercial circles and therefore when the notification used the expression mineral water, it meant aerated water or the cold drinks. In Excel Rubber Industries" case (1998) 6 KTR 289 this Court considered the question as to whether foam beds and cushions produced by cutting, sizing or foam rubber sheets and covering by cloth would constitute a different merchandise product. This Court held that the foamed rubber sheets purchased by the assessee and the bed or mattress made out of it and brought to sale by the assessee are different goods in commercial parlance, that the foamed rubber sheets can be used for many purposes, that once such use is making of bed or mattress, that mattress cannot be made by a mere covering of the foamed rubber sheet with cloth, that admittedly the foamed rubber sheet had to be cut and shaped and then covered by the cloth to make mattress and that after such process, in which the rubber sheet are consumed, a different product in commercial parlance or common parlance, namely, the mattress or the bed, is being sold by the assessee. A Full Bench of this Court in Tatson Food Industries" case [2000] 119 STC 265 has considered the question as to whether chilli powder, coriander powder and turmeric powder are different and distinct goods from chilli, coriander seeds and turmeric. The Full Bench held that turmeric and turmeric powder are different commodities. However, the Full Bench in the matter of chilli and chilli powder and coriander and coriander powder remitted the matter to the Tribunal to find out the process employed for converting chilli and coriander into chilli powder and coriander powder. This Court in Ernakulam Regl. Co-operative Milk Producers Union Ltd."s case (2001) 9 KTR 459 mentioned above considered the question as to whether pasteurised milk is same as fresh milk and held that they are two distinct and different commercial commodities. The appellants relying on the judgment of the Supreme Court in M/s. Chillies Exports House Ltd. Vs. Commissioner of Income Tax, and of this Court in Tatson Food Industries Vs. State of Kerala, mentioned above contended that at any rate an investigation is required to find out whether the process employed by the appellants to the raw material, viz., ground water will amount to manufacture so that a different commercial commodity, viz., mineral water emerged.

27, From the various decisions of the Supreme Court, particularly the decisions of the Supreme Court in Pio Food Packers"s case [1980] 46 STC 63 and Jagannath Cotton Company"s case [1995] 99 STC 83 discussed above any process employed is not sufficient to constitute "manufacture" and what is required is that as a result of the various processes employed to the raw material used, a totally distinct and different commercial commodity having a distinctive name, character or use must emerge. In other words, if notwithstanding all the process employed on the raw material used if the substantial identity continues

to exist it cannot be said that manufacture took place and a distinct and different commercial commodity had emerged. It is also relevant to note here that the definition of "manufacture" in the notification S.R.O. No. 1729 of 1993 did not stop by saying "the use of raw materials and production of goods commercially different from the raw material used". It further states that the end products emerged as a result of the process specified below the expressions extracted above and the processes specifically excluded as Clauses (a) to (h) thereunder will not satisfy the definition of manufacture in the notification. Thus, the idea is very clear that the Government intended to give the benefit of exemption from payment of tax only to industrial units engaged in the manufacture of goods by using raw materials which are commercially distinct and different having distinctive name, character or use and not to any process of conversion. For all these reasons we are of the view that the appellants' product named as "mineral water" did not lose its identity as "water" which is the raw material even after all the processes employed by the appellants. If the product was mineral water which satisfied the standards, specified in the Prevention of Food Adulteration Rules in appendix B then the position may have been different. We are not expressing any final opinion on this point as the same does not arise for decision in this case. The appellants admit that their products does not satisfy the standards fixed for mineral water and that is why they have changed the name of their product to "packaged drinking water".

28. One other question which arises for consideration in some of the these Writ Appeals, W.A. Nos. 1075 of 2002 and 1089 of 2002 is that in those two cases exemption from payment of sales tax was granted to the appellants originally. In W.A. No. 1075 of 2002 exemption was granted as per eligibility certificate dated October 20, 1998. The said certificate was not cancelled by the competent authorities by issuing any proceedings. Relying on the circular dated January 23, 1999 issued by the Government clarifying that for the purpose of S.R.O. No. 1729 of 1993 purifying water and filling it into bottles will not amount to manufacture the assessing authority proposed to reject the claim for exemption. Similarly in W.A. No. 1089 of 2002 the eligibility certificate dated June 14, 1999 was cancelled by proceedings dated November 26, 1999 stating that in view of the circular dated January 23, 1999 the District Level Committee was not justified in granting exemption from payment of tax to the appellants.

29. It is true that an eligibility certificate issued by the competent authority as per Notification S.R.O. No. 1729 of 1993 will continue to be in force till it is legally cancelled and that in the ordinary course such cancellation have only prospective operation. On the other hand if the eligibility certificate is obtained by a dealer by fraud or collusion, it vitiates the entire proceedings. Similarly if the authority issues an eligibility certificate without jurisdiction then also such eligibility certificate will be infirm and non est. In the instant case, it must be noted that the appellants claimed before the Industries Department as well as before the competent authority under the notification that their product is mineral water. In fact the product which is produced by the appellants is not

mineral water at all and that is the reason why they have changed the name of the product when standards have been prescribed for mineral water in the Prevention of Food Adulteration Act and the Rules. From this it is clear that though the product is named as "mineral water" it is not mineral water and by the use of the name mineral water the appellants were trying to mislead the authorities for the purpose of getting exemption. In other words the appellants had given the name mineral water without the product being mineral water. According to us, this misrepresentation on the part of the appellants vitiates the entire proceedings and consequently the appellants cannot get the benefit of the eligibility certificate erroneously issued.

30. We have perused the common judgment of the learned single Judge. We find that the learned single Judge had considered all the relevant matters in the proper perspective and had come to the conclusion that the appellants are not entitled to exemption from payment of sales tax on their product, i.e., mineral water/package drinking water under Notification S.R.O. No. 1729 of 1993.

31. The appellants had raised one more contention that they have manufactured bottles for the purpose of filling their product "drinking water" and therefore, they are entitled to get exemption from payment of sales tax under the Notification S.R.O. No. 1729 of 1993 at least in respect of the turnover of the bottles. The learned Single Judge had rejected this contention holding that this is only a packing material or container for sale of the main product and, therefore, no separate claim can be made on the bottles used for filling up with drinking water. On a consideration of the provisions of the notification, we are of the view that the appellants can claim the benefit of the said notification in respect of the empty bottles used for filling up the drinking water, provided the bottles are manufactured by them. The competent authority under the notification will consider the same and pass appropriate orders in regard to the turnover of empty bottles.

These writ appeals are disposed of as above.

Order on CMP No. 2770 of 2002 in W.A. No. 1082 of 2002 dismissed.