
(2002) 04 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 4430 of 1999

Teejan Beverages Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-04-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10(1)

Citation : (2002) 3 ILR (Ker) 393 : (2002) 128 STC 216

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : K.I. Mayankutty Mather and Jijimol J. Vadakken, for the Appellant;
Sojan James, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The petitioners in these cases claim sales tax exemption on "drinking water" packed in bottles and sold by them under various Brand names. In fact, the very same item was earlier sold as "mineral water" and the sales tax exemption claimed in all these cases pertain to that period also. It is now conceded that after the prescription of standards for mineral water and for packed drinking water (other than mineral water) vide G.S.R. No. 760 (E) dated 29.9.2000 with effect from 29.3.2001, under the Prevention of Food Adulteration Rules, 1955, the petitioners have changed the name of their product from "mineral water" to "drinking water". Therefore, the admitted position is that the item in respect of which sales tax exemption claimed in the O.Ps., namely, "mineral water" earlier, and now renamed "drinking water" is one and the same. Now the question is whether this item qualifies for sales tax exemption as a "manufactured product" within the meaning of notification, SRO 1729/93 issued by the Government of Kerala. The said notification among other things grants sales tax exemption on new SSI units in regard to manufacture and sale of products subject to certain limitations for a definite period. The petitioners are admittedly SSI units, who obtained registration from the Industries Department

as such. The basic condition for claiming sales tax exemption by SSI units is that the unit is engaged in the manufacture of a product. The notification defines "manufacture" and therefore what has to be decided is whether the processes engaged by the petitioners constitute "manufacture" and whether their product, namely, "mineral water", or "drinking water", is a manufactured product to qualify for exemption under the said notification. The definition of "manufacture" contained in SRO 1729 of 1993 is 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 process 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 polishing them.
- (g) Such other process 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.

2. The petitioners' arguments are two fold, the first is that the entire processing and packing of mineral water amount to manufacture under the definition of the term contained in the notification, and the second is that it is not an item in the negative list provided in the very same notification, nor is it an item, the process of which is notified by the Government under Clause (g) of the said definition, to exclude the same from the scope of manufacture. The processes stated to be engaged by the petitioners in the processing and bottling of drinking water briefly are:

1. Alum dosing.
2. Sedimentation.
3. Chlorination.
4. Aeration.
5. Sand Filtration.
6. G.A.C.Filtration,
7. Series Filtration.
8. Ultra violet sterilization.
9. Ozonation.

The effect of all these processes, according to the petitioners, lead 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. Nitrate 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

The petitioners contend that the resultant product after the above processes can be called mineral water, the euphemism used earlier for the present "drinking water" marketed by them.

3. The main argument is that there has been change in the commercial identity of the product, and that is sufficient to bring in the process within the meaning of "manufacture" as contained in the above definition. The petitioners have referred to various decisions, particularly that of the Supreme Court in *Rajasthan Roller Mills v. State of Rajasthan* 1993 KLJ (TC) 599, wherein the Supreme Court has held that flour, maida and suji produced from wheat are different and distinct goods from wheat. Similarly in the decision of the Jammu and Kashmir High Court in *Glacier Cold Storage and Ice Mills and Others Vs. Assessing Authority, Sales Tax and Another*, , and that of the Allahabad High Court in *Goel Industries (Pvt.) Ltd. Vs. Commissioner of Sales Tax*, both the High Courts held that ice is a different product and is not the same as water, even though water and ice may have same chemical composition. Another decision relied on by the petitioners is that of a Full Bench of this Court in *Tatson Food Industries v. State of Kerala*, (1999) 7 KTR 646 (Ker.) wherein this Court has held that turmeric powder produced from turmeric has higher utility and the same is commercially distinct and different from turmeric. The decision of the Allahabad High Court in *Chandausi Chemicals v. Commissioner of Sales Tax*, UP STC 47 436 is cited for the proposition that distilled water is not the same as water. In the decision in *Commissioner of Sales Tax Vs. Indian Oil Corporation Ltd.*, , canvassed by the petitioners, it was held by the Bombay High Court that the definition of the word "manufacture" as defined in Section 2(17) of the Bombay Sales Tax Act, 1959, is very wide and includes within its scope certain activities which in ordinary parlance cannot be considered as manufacture. Accordingly, it was held that the activity mixing of methanol with distilled water was a manufacture.

4. I find that none of the decisions cited by the petitioners supports their contention that processing and bottling of drinking water/mineral water amounts to manufacture as defined in the notification under which exemption is claimed. This is because the various processes engaged by the petitioners described above amount only to purification of water by removal of waste and sterilization

of water by ultra violet radiation. In other words, the water is made fit for human consumption without any risk or hazard. Except the sterilisation and ozonation all other processes are engaged by municipal authorities and water supply authorities of the State while supplying water for drinking purposes. The processes required for the treatment of water for making it fit for human consumption are relative and depend upon the nature and source of the original commodity. If the petitioners are able to source water from a clean source, many of the processes are unnecessary because water in its natural form from many sources is clean and potable, which otherwise the petitioners bring about by treatment. The petitioners' contention is that their product "drinking water" was in fact being sold as "mineral water" until changes were brought about in the Prevention of Food Adulteration Rules, 1955 prescribing standards for mineral water. On going through the standards prescribed for mineral water under Rule 5 of the Rules under Appendix B, it includes all kinds of mineral water or natural mineral water by whatever name it is called and sold (i) natural mineral water is water clearly distinguished from ordinary drinking water because (a) it is characterised by its content of certain mineral salts and their relative proportions and the presence of trace elements or of other constituents; (b) it is obtained directly from natural or drilled sources from underground water bearing strata and not from public water supply for which all possible precautions should be taken within the protected perimeters to avoid any pollution of, or external influence on, the chemical and physical qualities of natural mineral water, etc. Under item 4 of A. 32 of the said Appendix mineral water shall conform to standards prescribed for 48 items. None of the petitioners has a case that the product sold by them previously as "mineral water" and now as "drinking water" conforms to the standards prescribed for "mineral water" as provided in the Prevention of Food Adulteration Rules, 1955. In fact as already stated, the petitioners by changing the name from mineral water to drinking water have confirmed that the product earlier sold by them as "mineral water" was in fact not mineral water at all. It was only a name given to drinking water. Even by applying the test of commercial identity, I do not find any change from water to drinking water. Water in natural form also may be clean and fit for drinking. In fact it is well known that millions of people all over the world drink water from its natural source such as well, river, etc. Only an insignificant number of people that too in cities drink bottled water for fear of contamination in pipe water. Unless it is assumed that the petitioner collect impure water and process the same to drinking water, even the commercial identity test also is not answered in favour of the petitioner. It is illogical and absurd to make such an assumption to conclude that there is manufacture in the process. Moreover manufacture of a product is not a subjective process. If that be so, the person who uses impure water for making drinking water may be engaged in manufacture while the person sourcing clean water is not engaged in manufacture because the latter is only bottling the item. When fairly good water is available all over Kerala, whether ground water or river water, it cannot be assumed that petitioners will collect impure water and waste huge money on purification just to establish

"manufacture" in terms of the definition contained in the notification. Certainly the petitioners are engaged in filtration, and sterilisation to make the water safe for drinking purposes. However, these processes do not answer the description of "manufacture" contained in the notification because the notification specifically excludes processes such as cleaning, blending, packing, etc., from the scope of the definition of "manufacture". Therefore I do not find that the petitioners' contention that the various processes engaged by them in the processing and bottling of drinking water, earlier marketed by them as mineral water under various brand names, amount to manufacture within the meaning of the term contained in SRO 1729/93, and therefore the petitioners are not entitled to sales tax exemption. Since the processes engaged by the petitioners do not amount to "manufacture" as defined in the notification, there was no necessity to bring the process or the item under the negative list and the petitioners argument that the item or process is not in the negative list also has no relevance.

5. Lastly the petitioners relied on the decision of the Supreme Court in *Commissioner of Sales Tax, UP v. Indra Industries* 122 STC 100 and that of the Kerala High Court in *Deputy Commissioner of Sales Tax v. Surya Refineries (P) Ltd* 1991 KLJ 513 for the contention that sales tax exemption once granted to the petitioners cannot be taken away without any notice to the petitioners. The decision of the Supreme Court is that the Government circulars are binding on the departmental officials, and the decision of the High Court is that the sales tax authorities cannot ignore the sales tax exemption granted under the certificate issued by the Industries Department. This is not a case where there is any conflict between the department of industries and that of the sales tax authorities. The certificate wrongly issued was withdrawn. In fact it is pertinent to note that the petitioners never manufactured what is called "mineral water" as defined under the Prevention of Food Adulteration Rules and this position is conceded when they changed the name of their product from "mineral water" to "drinking water" after the amendment to the Prevention of Food Adulteration Rules. Therefore the original certificate obtained by them was by misdescribing their product and by misleading the authorities. Of course notice should have been issued to the petitioners, as the withdrawal amounts to adverse order against the petitioners. The question then is what would have been the position, if notice was issued. If the petitioners are able to substantiate that they are entitled to exemption, then of course the hearing has a meaning. However, in this case, as already stated, the admission of the petitioners themselves that what they were selling as mineral water was not mineral water, but was only drinking water which is evident from the present change of name to drinking water, would disentitle the petitioners for exemption. Therefore the denial of opportunity before withdrawing the exemption already granted does not affect its validity. Further, one of the petitioners canvassed for the proposition that bottles are manufactured by the petitioner, and therefore, they are entitled to exemption at least on bottles. I do not think this has any relevance. The exemption is claimed on the item sold in the containers and so long as there is no sale of the

bottles manufactured independently they are not entitled to any exemption on the same.