

(1979) 08 MAD CK 0035

In the Madras High Court

Case No : T.C. No. 68 of 1976 (Revision No. 19 of 1976)

The State of Tamil Nadu

APPELLANT

Vs

Indodan Milk Products

RESPONDENT

Date of Decision : 09-08-1979

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 38

Citation : (1980) 45 STC 498

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant; S.K. Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—This revision petition has been filed u/s 38 of the Tamil Nadu General Sales Tax Act and it raises a short point.

2. The assessee deals in condensed milk. It contended before the assessing authority that condensed milk is also milk and the relevant sales are eligible for exemption. The assessing authority rejected this claim. The Appellate Assistant Commissioner also rejected the claim of the assessee and confirmed the assessment as far as this point is concerned. The assessee brought the matter on appeal to the Sales Tax Appellate Tribunal and the Tribunal, following a decision of the Allahabad High Court in *Indodan Milk Products Ltd. v. Commissioner of Sales Tax* [1974] 33 S.T.C. 381, (in the case of the same assessee), held that the assessee was eligible for exemption. The State has brought the matter in revision to this Court.

3. The relevant notification runs as follows:

In exercise of the powers conferred by Section 17 of the Madras General Sales Tax Act, 1959 (Madras Act 1 of 1959), the Governor of Madras hereby exempts, with effect on and from the 1st April, 1966, all sales of paddy (rice in husk), rice

(husked paddy), cholan, cumbu, ragi, thina, varagu, samai and kudiraivali, rice products (for example rice flour and rice bran) and milk, from the tax payable under the said Act." (underlining (Here italicised) is ours)

4. The object of exemption is milk. A Full Bench of the Allahabad High Court in *Indodan Milk Products Ltd. v. Commissioner of Sales Tax* [1974] 33 S.T.C. 381, examined the contention of the assessee in detail and came to the conclusion that condensed milk is nothing but milk in concentrated form which is obtained by evaporating water from milk in a fluid state, and thereafter some sugar or preservative is added to it. It was held that it was in fact milk and not a milk product as contemplated by the notification dated 31st March, 1956. It may be stated here that the notification in Uttar Pradesh included milk products also. But the High Court accepted the assessee's claim for exemption on the basis that condensed milk was nothing but milk in concentrated form.

5. The learned Government Pleader contended that this decision of the Allahabad High Court is wrong and that the term "milk" has to be understood in its popular parlance and for obtaining condensed milk, some manufacturing process has been employed and that, therefore, the product is different from milk.

6. As far as the processed milk is concerned, in T.C. No. 428 of 1976 [*State of Tamil Nadu represented by the Deputy Commissioner (CT), Madras Division, Madras-600001 v. Imperial Lassie*] by judgment dated 28th October, 1976, this Court held that simply because milk was boiled and sugar and spices were added it did not cease to be milk. Similarly, in the present case, the process employed for obtaining condensed milk has been described by the Allahabad High Court by referring to a passage in *Encyclopaedia Britannica*. What is actually done is to dehydrate the milk or take the water out of the milk, so that the milk can with added preservative stand for a long time. Such milk does not cease to be milk because the water content has been reduced or removed. This is what happens in every kitchen every day while boiling, and boiled milk does not cease to be milk. We are, therefore, unable to accept the submission that merely because there is some process employed, the milk has ceased to be milk. The popular concept of milk also does not appear to be different. We understand that even the bottled milk supplied by the Madhavaram Dairy where also some process is employed is not subjected to tax. The authorities themselves appear to understand that bottled milk is nothing but milk. The conclusion cannot be different in the present case also.

7. The revision petition fails and is dismissed. No costs.