

(1999) 05 CAL CK 0025

In the Calcutta High Court

Case No : Appeal No. 180 of 1991 and Matter No. 157 of 1991

Union of India (UOI)

APPELLANT

Vs

Kalyani Breweries Ltd.

RESPONDENT

Date of Decision : 21-05-1999

Acts Referred:

Customs Act, 1962 — Section 25(1)

Customs Tariff Act, 1975 — Section 2, 2(5), 3, 4

Citation : (1999) 113 ELT 39

Hon'ble Judges : S.N. Bhattacharjee, J; S.B. Sinha, J

Bench : Division Bench

Advocate : Mitra, for the Appellant; Bajoria and Khaitan, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Whether "beer" is a "food article" within the meaning of an Exemption Notification No. 125/86-Cus., dated 17-2-1986 has fallen for our decision in this appeal. The said notification reads thus :-

"In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (2) of the Table hereto annexed and falling under Chapter 39 or 73 or 84 or 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for use in processing/Packaging of food articles, from - 788 SEC.XVI.CH. 84 - MACHINERY & MECH. APPLIANCES - CUS.

(a) So much of that portion of the duty of Customs leviable thereon which is specified in the said First Schedule, as is in excess of the amount calculated at the rate of 35 per cent ad valorem; and

(b) the whole of the additional duty leviable thereon u/s 3 of the said Customs Tariff Act.

In the Table to the said notification against Serial No. 20 is mentioned Automatic Bottle Labelling Machine.".

2. The writ petitioner is a company registered and incorporated under the Companies Act. It imported a fully automatic bottle labelling machine. The petitioner contend that the said machine is classifiable u/s IV of the First Schedule appended to the Customs Tariff Act, 1975, and, thus eligible for exemption from payment of customs duty in terms of the aforementioned notification.

3. It is not disputed that under the said notification exemption from customs duty have been granted to the goods specified in Column 2 of the Table annexed thereto when imported into India for use in processing/packaging of food articles. The petitioner has contended that beer is a food article on the following grounds :-

"(a) Beer falls within the purview of the Ministry of Food Processing Industries of the Government of India. The said Ministry was established in July, 1988. In this connection, copy of the Annual Report for 1989-90 of the said Ministry is annexed hereto and marked "C".

(b) The Bureau of Indian Standards has laid down a standard specification for Beer namely IS : 3865-1978. Beer is specified in the Agricultural and Food Products Sectional List of the said Bureau and falls within the purview of its Food and Agriculture Department. The said IS 3865-1978 was formulated by the Sectional Committee of the said Bureau which consisted of, inter alia, representatives from Central Committee for Food Standards, Ministry of Health and Family Welfare and Technical Standardisation Committee (Food Stuffs), Ministry of Agriculture and Irrigation. In this connection, copies of the said Indian Standard the said Sectional List and the Programme of Work of the Food and Agriculture Department of the said Bureau are annexed hereto and collectively marked "D".

(c) The Agricultural and Processed Food Products Exports Development Authority Act, 1985 was enacted to provide for the establishment of an authority for the development and promotion of exports of certain agricultural and processed food products. Section 2(i) of the said Act defines "Scheduled Product" as any of the agricultural or processed food products included in the schedule to the said Act. Alcoholic and non-alcoholic beverages have been specified at serial number 8 of the said Schedule. Under the provisions of the said Act and the Rules framed thereunder your petitioner is required to get itself registered since it is manufacturing and exporting inter alia, Beer. In this connection, copies of the relevant extracts from the said Act and the application for registration required to be made under the provisions of the said Act and the Rules made thereunder are annexed hereto and collectively marked "E".

(d) Appendix 17 of the Import and Export Policy for the period 1990 to 1993 contains the import policy for registered exporters and provides for import

replenishment benefit allowed in respect of certain export products. The different Export Product Groups have been specified in Part I of the said Appendix. Beer has been specified at serial number 6 of the Export Product Group for "Filds". Copy of the relevant portion of the said policy is annexed hereto and marked "F".

(e) Beer falls within the purview of the Prevention of Food Adulteration Act, 1954. The said Act defines food as meaning any article used as food or drink for human consumption other than drugs and Water Copy of the relevant extract from the said Act is annexed hereto and marked "G".

(f) Beer is food and supplements and functions of the human body. Beer has rich value as a diuretic (to improve excretion of urine), as a high caloric drink to increase body weight, as a soothing drink for constipation as well as for dehydration. Beer is also consumed as an energy replenisher in sports. Beer has a stimulating effect on the nervous system for muscle contraction, blood coagulation, bone and tooth metabolism, as electrolytes for enzyme activation and for hormone control. Beer is rich in vitamins and is a source of energy. In this connection copy of the paper entitled "Beer as Food" prepared by Professor Anton Piendl of the Institute of Brewing Technology and Micro-Biology,, Technical University of Munich, West Germany, is annexed hereto and marked "H". Also included in Annexure "H" hereto is an extract from the publication "Breau-industrie" which also sets out the physiological value of Beer.

(g) Beer has been specified under Group "Food Products" of the Monopolies and Restrictive Trade Practices (Classification of Goods) Rules, 1971. Relevant extract from the said Rules is annexed hereto and marked "I".

(h) Your petitioner states that Beer is manufactured out of Malt (barley), rice, sugar and Yeast by a process of fermentation. All the said items namely Malt (Barley), Rice, Sugar and Yeast are food articles. Your petitioner further states that the expression "Food" would not only include solids but would also include drinks and/or liquids since both have food value. Your petitioner states that Beer is an item of food which is served at the dining table.

(i) Further it would be evident from the said notification the exemption is sought to be granted to the machineries required for all types of food articles including drinks, beverages etc."

4. The appellant herein raised various preliminary objections as regards the maintainability of the writ application including an alleged admission made by the petitioner to the effect that no exemption under the notification in the said machine shall be claimed. The learned Trial Judge having regard to the aforementioned contentions of the writ petitioner inter alia held that "beer" comes within the purview of "food article". For arriving at a said finding, the learned Trial Judge has referred to the objects and reasons of the notification, and taken recourse literal construction of the word "food article" and "food" as also as understood in common parlance. The learned Judge further held that even if "food article" is literally construed, Beer would come within the purview

thereof.

5. Mr. Mitra, the learned Counsel appearing on behalf of the appellant submitted that a bare perusal of Section of IV appended to the Customs Tariff Act, it would appear that "Food" and "Beverages" have been treated differently and thus, "beer" being an alcoholic beverage, cannot be held to be included in the exemption notification. The learned Counsel submits that even in common parlance, "Beer" cannot be held to be a "Food Article" and in support of the said contention, strong reliance has been placed on Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd., . The learned Counsel has also relied upon in Union of India v. V.M. Salgaoncar & Bros. (P) Ltd. and Ors. reported in 1998 (4) SCC 263 and 1983 ECR 395D

6. Mr. Bajoria the learned Counsel appearing with Mr. Khaitan on the other hand submitted that the Heading of the Schedule appended to the Customs Tariff Act is not very relevant as the same inter alia relates to the prepared Food Stuff, Beverages, Spirits and Vinegar, Tobacco and Manufactured Tobacco substitutes. If according to the learned Counsel, Section 4 is taken in aid of in construction of the notification in question it must be held that under the said heading beverages, spirits and vinegar would also come within the purview of definition of food article. In this connection it has been contended that under the said "Section", even food which is being consumed by the animals has been included. The learned Counsel would urge that the question will have to be considered from a broader angle and, thus, whatever can be consumed by a human being would be "food" and in that view of the matter beverages being consumable articles being both alcoholic and non-alcoholic, the same would also come within the purview thereof.

7. Our attention has further been drawn to ground No. 7 of the Memorandum of Appeal which reads thus :-

"For that the learned Judge erred in holding that the exemption notification being Notification No. 125 of 1986 dated 17-2-1986 applies in case of the writ petitioner on the ground that the Automatic Bottle Labelling Machine which was imported for packaging beer was for processing/packaging Food Article, as mentioned in Item 20 of the said Notification, although admittedly the said machine was imported for packaging Beer."

8. Customs Tariff Act, 1975 was enacted to consolidate and amend the law relating to Customs duty. Section 2 of the said Act provides for the rates at which the duties of Customs shall be levied as specified in the first and second schedule appended thereto.

9. "Customs Tariffs" have been sub-divided into 99 chapters. With a view to appreciate rival contentions, provisions of some of the "Sections" may be noticed. Section I deals with "Live Animals and Animal Products" which undoubtedly would also be a food in strict sense. Section II deals with "Vegetable Products". Section III deals with Animal or Vegetable Fats and their cleavage

products etc. Section IV deals Prepared Food Stuffs, Beverages and Spirit, Vinegar, Tobacco and Manufactured Tobacco substitutes etc. Chapter 16 of the said Section refers to preparation of meat of fish or of crustaceans, molluscs or other aquatic invertebrates. Chapter 23 deals with residue and waste from the food industries; prepared animal fodder. Chapter 24 deals with Tobacco and manufactured tobacco substitutes. Section V refers to Mineral Products which includes salt.

10. A bare perusal of the aforementioned sections would clearly show that the same do not deal with food articles alone, inasmuch as noticed hereinbefore, the same refer not only to the "food articles" in different Section but also refers to animal food which cannot be a food article consumable by human beings or even tobacco or its products which can by no stretch of imagination can within the purview thereof.

11. Food or Food Article have not been defined. In *The State of Bombay Vs. Virkumar Gulabchand Shah*, the Apex Court inter alia held that food stuffs being not defined, it can be interpreted in a restricted sense as also in broader sense. Vivian Bose, J., referred to some decisions which demonstrate that a particular item may be treated as a "food" for the purpose of one act and may not be so treated for another. His Lordship referred to *Hinde v. Allmond* reported in 87 LJKB 893 wherein tea has not been held to be the food but the same had been held to be food in *Sainsbury v. Saunders* reported in 88 LJKB 441.

12. It is a trite law that heading of a provision as regards classification of goods which has not been made on scientific basis does not control the meaning of such goods.

13. In *The Municipal Corporation for the city of Thane and others Vs. Asmaco Plastic Industries and Others*, , it was held :-

"In Entry 32(c) of the Rules framed under the Corporation Act or under Entry 53(c) of the Octroi Schedule framed under the Municipalities Act, we are concerned with the expression "plastic, plastic goods and plastic powder". We may contradistinguish this entry with a relatable entry in the Customs Tariff Act, 1975 where the goods are more scientifically categorised. Under Chapter 39 of the Customs Tariff Act, the expression "plastic and articles thereof is used to bring within that heading the primary forms, polymers of ethylene, polymers of propylene or of other olefins, polymers of styrene, vinyl acetate or other vinyl esters". Polymers of vinyl chloride or of other Halogenated olefins in primary forms and vinyl chloride polymers are also brought in under this heading. In the present enactment, when the expression "plastic, plastic goods and plastic powder" is used along with bakelite and bakelite goods and the manner in which the legislature uses these expressions will clearly indicate that the intention is to cover all kinds of plastic material whether in primary form or in any other secondary form."

14. Learned Counsel on either side relied on technical literature on the matter to

impress upon us the strength of their respective cases. We do not think it would be appropriate to rely upon such data to interpret the entry in question in one manner or the other because in the tax enactments when particular commodities are brought to taxation, the meaning attributed to the commodities will be with reference to their commercial parlance, that is, if those who deal with the goods understand the said goods in one manner or the other. The technical material though of course may be useful on certain aspects, the same will not be decisive of the matter."

15. In *Union of India (UOI) and Another Vs. V.M. Salgaoncar and Bros. (P) Ltd. and Others*, the Court took recourse to the contextual meaning.

16. In *Pandit Ram Narain Vs. The State of Uttar Pradesh and Others*, as regard heading of a statute it is stated :-

"A tax on "circumstances and property" is a composite tax and the word "circumstances" means a man's financial position, his status as a whole depending, among other things, on his income from trade or business. Far from militating against the principle that in considering the circumstances of a person his income from trade or business within the Town Area may be taken into consideration, the decision approves of the principle. In the course of his judgment, Bind Basni Prasad, J. referred to Section 128, U.P Municipalities Act, 1916 where "taxes on circumstances and property" appear as a head distinct from the "taxes on trades, callings and vocations and employment's" and the argument was that the taxes being under different heads should be treated as being entirely different, one from the other."

17. In *Municipal Board, Saharanpur Vs. Imperial Tobacco of India Ltd. and Another Etc.*, while considering the interpretation of the words "common compound" it was observed :-

However, on the express language of Section 129 Explanation (a), it must be held that no two views are possible but only one view is possible, namely, that the connotation of the term "common compound" is entirely different and wider in nature as compared to the connotation of "compound" as defined in Section 2, Sub-section (5) as has earlier."

18. The word "food articles" must be understood as in common parlance. Technical meaning of the word food or its dictionary meaning may not be of much relevance. However, the dictionary meaning of the word "food" also varies. Food is also defined differently in different statute.

19. There cannot however, be any doubt whatsoever that while interpreting a taxing statute, the intention of the legislature must be given due importance. An exemption notification must, thus, also be construed keeping in view the text and context thereof.

20. In *State of Bihar and Others Vs. Steel City Beverages Ltd. and Another*, the Apex Court referring to various decisions held that the meaning of the word

"plant" for the purpose of grant of concession/exemption/rebate from payment of Sales Tax should be considered in the context of the relevant rules. The Apex Court held that the definition of plant which was wider one, was not relevant for correct interpretation. The Court referred to its earlier judgment in Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, and held that the definition of plant cannot be given universal application. It was observed :-

"Obviously, if plant is defined differently under a different provision or if the context so requires, it may have to be given a different and a narrower meaning. The Deferment Rules do not define plant and, therefore, what would have been considered by the High Court was what meaning should be given to it in the context of the Deferment Rules."

21. Furthermore, it is also a well settled principle of law that the recourse to the definition of a word in another statute which is not in pari materia with the concerned statute should not be taken into consideration.

22. The learned Trial Judge unfortunately has accepted the submission made on behalf of the petitioners that the words "food" or "food articles" should be construed in the light of definition thereof under the Agricultural and Processed Food Products Exports Development Authority Act, 1985 and the Notifications and Circulars issued thereunder. It was further erroneously held that the object and context of the notification has to be gathered from the provision of Agricultural and Processed Food Products Exports Development Authority Act, 1985 and various other statutes and the dictionary meanings.

23. The words "food" and "food articles" admittedly had not been defined in the Customs Tariff Act. If the same had not been defined, the words had to be interpreted as may be understood by the common people in the context of the concerned statute. Customs Tariff Act is a special statute. It provides for the rates of duties payable for import or the items specified therein. It has also the power to issue notifications exempting the importer from payment of the customs duty either in whole or in part. Such exemption from payment of customs duty must be contra-distinguished from such notification in terms whereof exemptions are granted from payment of the sales tax and other taxes and duties by way of incentives for setting up of industries in a backward area.

24. The notification is headed "specified goods for food industries". The heading of a notification is not important in the present case. It is clear that the notification applies to those goods which are specifically provided for food industries but as indicated hereinbefore the said heading thereof in this case will have no relevance as if it is taken into consideration the same would result in absurdity inasmuch as thereby even "tobacco" would come within the purview of definition of "food" which by no stretch of imagination can be said to be a food or food article. See The Municipal Corporation for the city of Thane and others Vs. Asmaco Plastic Industries and Others, .

25. The learned Trial Judge, therefore, in the considered opinion of this Court

committed an error in referring to several Acts, encyclopedias and dictionaries in holding that the Beer is food.

26. In construing the words "food" or "food articles" reference to the Agricultural and Processed Food Products Exports Development Authority Act, 1985 or the Notifications issued thereunder was also wholly irrelevant. The said Act was enacted for the development and promotion of exports of certain agricultural and processed food products whereas; Customs Tariff Act is a taxing statute. Both the Acts being not in pari materia, the words defined in one Act which was for the purpose of giving effect to the scope and object thereof cannot be applied while construing the same words where the text and context are different.

27. The learned Trial Judge further committed an error in referring to the said Act which was enacted for the purpose of making special efforts to regulate and control processed food in the country with one of the ultimate objects being the generating sufficient surplus thereby to earn foreign exchange. Customs Tariff Act has got nothing to do with earning of foreign exchange. An equipment may be imported either for using the same for manufacture of products which may be used for domestic consumers or export. Import of a "Bottle Labelling Plant" has not nothing to do with furtherance of the export policy. Only because under the export policy a provision for export of Beer has been made as an item of food, the same could not be taken in aid of construing the word "food article" used in an exemption notification issued under the Customs Tariff Act. In a case of this nature, it is for the person who claims exemption to show that he comes within the purview of the notification.

28. Furthermore, a provision of a statute may be construed in the context of the constitutional provision, viz. Article 47 of the Constitution of India contained in part-IV thereof which contains directive principles of State policy. Beer admittedly is an alcoholic beverage. It may have some nutritional value but it has no role to play as regard raising of the level of nutrition; on the other hand it has adverse role in relation to standard of living of its people and the improvement of public health. Article 47 of the Constitution of India provides for a duty to the State to make an endeavour to bring about prohibition of intoxicating drinks and drugs which are otherwise injurious to health except for medicinal purposes. Beer to common people being an obnoxious article, is not consumed for the sake of nutrition but for the purpose of intoxication and/or pleasure. An article may be consumed by persons for different purposes. What is, thus, relevant is the principal purpose for which it is taken, which should be the deciding factor. In our opinion, no common Indian would consume beer for its nutritional value.

29. Beverages have been included in the class of food in Encyclopaedia Britannica or Brewers' Digest but the same, in our considered view, is of no moment keeping in view the fact that the makers of the Constitution thought that intoxicating drinks, which Beer is, would not be in the interest of improvements of public health and in fact the same would be injurious to health.

30. It is also incorrect to contend that food article if literally construed, would include Beer. The same would be beyond the perception of common men.

31. Let us now consider some of the decisions referred to by the learned Trial Judge.

32. In *Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange and Others*, the Apex Court was considering the provisions of Prevention of Food Adulteration Act, 1954 where the word "food" has been defined very widely as covering any article used as food and every component which enters into it and even flavouring matter and condiments. It is in the context of definition of food as contained in Section 2(v) of the said Act the observation to the following effect was made by the Apex Court :-

"It is commonplace knowledge that the word "food" is a very general term and applies to all that is eaten by men for nourishment and takes in subsidiaries. As supari eaten with relish by men for taste and nourishment it is food within the meaning of Section 2(v) of the Act."

33. In *State of Tamil Nadu v. Wander Limited* reported in 1990 (79) S.T.C 421Mad, the Madras High Court was interpreting an entry in the first schedule to the Tamil Nadu General Sales Tax Act where the item was milk food (excluding milk but including milk powder), it was in that context Horlicks was considered to be a milk food. A stray observation made in the said judgment without referring to the context thereof would not be proper.

34. We may also take note of some other decisions where a word has been construed liberally.

35. In the *State of Tamil Nadu Vs. R. Krishnamurthy*, construing the provision of aforementioned Food Adulteration Act, it has been held that in order to be food for the purpose of the Act, an article need not be "Fit" for human consumption. Thus, the definition of food under the said Act is not at all relevant.

36. In *Ichchapur Industrial Cooperative Society Ltd. Vs. Competent Authority, Oil and Natural Gas Commission and Another*, even water has been held to come within the purview of mineral. It was held :-

"In Civil Appeal No. 10538 of 1983, decided by us on 17-12-1996, we have already indicated the Rule to interpret a "definition" and have stressed that the definition has to be read in the context in which it is used and the purpose for which the Act was made. We observed that where the definition clause is preceded by the words "unless the context otherwise requires" the definition has to be interpreted in the light of the context in which it is used. We observed:

"This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature."

37. In *Jaya Sen Vs. Sujit Kr. Sarkar*, a division bench of this Court (of which one

of us was a member) held :-

"It is now well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is also well known that even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. See *Quinn v. Leathain* (1900-1903) AER (Rep) 1, *Krishena Kumar and Others Vs. Union of India and others*, , *Commissioner of Income Tax v. Sun Engineering Co. Ltd.* reported in AIR 1993 SC 43 : 1993 Tax. L.R. 58, *The Regional Manager and Another Vs. Pawan Kumar Dubey*, , and *Municipal Corporation of Delhi Vs. Gurnam Kaur*,

It is also a settled law that a decision is not an authority on a point which was not argued. See *Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise, Meerut*,

38. It has been pointed out hereinbefore that even meaning of "food" has been defined differently in different dictionaries and, thus, no absolute reliance can be placed thereupon. The meaning of food which ordinary human being would ascribe should be accepted. The question as to whether Beer is a food or not should be construed in the context as to how the majority of the people of India would consider the same. Alcoholic Beverages are not available even in all the Restaurants. For dealing in Alcoholic Beverage, a licence under a special Act is necessary. If "Beer" is considered to be "food" other alcoholic beverage has also to be ascribed the same meaning, which would lead to an absurd situation.

39. Furthermore, had beverages been considered within the word "food", the same was not required to be defined separately and classified into Alcoholic Beverages and Non-Alcoholic Beverages.

40. In *Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd.*, , *Sabyasachi Mukherji, J.* (as the learned Chief Justice of India then was) has held :-

"The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them."

(Emphasis supplied)

41. The people who deal with the provision of Customs Tariff Act did not consider that the Beer would come within the purview of definition of food. Even the writ petitioner, as indicated hereinbefore, at one point of time stated that they would not seek for any exemption.

42. Is there any real difficulty in ascertaining the meaning of the word "food" vis-a-vis Beer? The answer to the said question must be rendered in negative. If

Beer is considered to be food in common parlance the same would result in absurdity. It is on those principles in Park Exports (supra), it was observed :-

"Bearing the aforesaid principles in mind, in our opinion, the revenue is right that the non-alcoholic beverage bases in India cannot be treated or understood as new "nutritive material absorbed or taken into the body of an organism which serves for the purpose of growth, work or repair and for the maintenance of the vital process" and an average Indian will not treat nonalcoholic beverage bases as food products or food preparations in that light."

43. If a base of beverage is not food, how the beverage itself can be food?

44. The said decision, therefore, applies in all fours in the present case.

45. For the reasons aforementioned, we are of the opinion that "Beer" does not answer the description of "Food" for the purpose of the aforementioned Notification dated 17-2-1986 and in that view of the matter the judgment under appeal cannot be sustained. It is set aside accordingly and the writ petition filed by the petitioner is dismissed. However, in the facts and circumstances of this case there will be no order as to costs.