Collector of Central Excise, Bombay-I and Another

Vs

M/S. Parle Exports (P) Ltd.

Civil Appeals No. 379 of 1988 with Civil Appeals Nos. 3680-82 of 1987

(S. Ranganathan, Sabyasachi Mukharji JJ)

22.11.1988

JUDGMENT

SABYASACHI MUKHARJI J. –

These appeals are under section 35L(b) of the Central Excises and salt Act, 1944 (hereinafter referred to as "the Act"), against the decision of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi ('Tribunal' for short), dated October 26, 1987.

The respondent-company has its factory at Chakala Andheri, Bombay and is engaged in the manufacture of non-alcoholic beverage bases falling under tariff item No. 68 of the Central excise tariff. During the course of an enquiry, it was found that the company had, during the period from March 1, 1975, to April 18, 1979, manufactured non-alcoholic beverage bases without holding a proper Central excise licence and had cleared the said goods without payment of the duty due thereon and had thereby evaded the duty amounting to Rs. 3,50,963.22. According to the Revenue, prima facie it appeared that the respondent had contravened the provisions of rules 9(1), 53, 173 PP(1), 173 PP(3), 173 PP(6) and 174 of the Central Excise Rules, 1944 ('the Rules' for short). inasmuch as, during the period from March 1, 1975, to April 18, 1979, the respondent-company had manufactured without valid licenses required under section 6 of the Act read with rule 174 of the Rules, goods not elsewhere specified and falling under tariff item No. 68 of the First Schedule to the Act, viz. non-alcoholic beverage bases. The respondent-company had further cleared the said goods without filing a list of goods manufactured as required by rule 173 PP(3) of the Rules. The respondent had cleared the said goods without preparing gate passes as required under rule 173 PP(6) of the Rules and had further cleared the said goods without maintaining accounts as required under rule 53 of the Rules. In the circumstances, notices were issued by the relevant officer asking the respondent-company to show cause for recovery of the dues and also for imposition of penalty. When the matter came up for consideration before the Collector, Central Excise, he found that non-alcoholic beverage bases were not themselves food or food products and according did not qualify for exemption under Notification No. 55/75 as amended. He, accordingly confirmed the demand of Central Excise duty of Rs. 3,50,963.22 under rule 9(2) read with rule 10 of the Rules. He also imposed a penalty of Rs. 25,000 under rule 173-Q of the Rules. Aggrieved thereby the respondent-company filed an appeal before the Tribunal and contended that the question of the dutiability of non-alcoholic beverage bases manufactured by the respondent had been settled by the Tribunal in its decision in the case off the respondent itself i.e. Parle Exports (P) Ltd. v. a Collector of Central Excise, Board ((1987) 27 ELT 349), which are the subject-matter of the connected appeals, i.e. C.A. Nos. 3680-82 of 1987. The Tribunal following its earlier order, allowed the appeal and hence the present appeal by the Revenue.

3.The First Schedule to the Act which provides for the dutiability and the rates of duty applicable to various goods mentioned therein contains the expressions "food and beverages". It provides therein a description of various types of goods and the rates of duties applicable thereto. In the said description "food and beverages", many items are included viz, sugar produced in a factory ordinarily using power in the course of production of sugar, (1-A) confectionery, cocoa powder and chocolates., in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, namely, boiled sweets, toffees, caramels, candies, nuts (including almonds) and fruit kernels coated with sweeting agent, and chewing gums, cocoa powder, drinking chocolates, etc. It also includes item (1-B) prepared or preserved foods put up in unit containers and ordinarily intended for sale, including preparations of vegetables, fruit, milk, cereals, etc, and as item (1-C) food products, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, namely, biscuits, pasteruised butter, pasteruised or processed cheese, aerated waters, whether or not flavored or sweetened and whether or not containing vegetable or fruit juice or fruit pulp etc.

4.Tariff item No. 68 of the First Schedule to the Act provides for duty on "All other goods not elsewhere specified and manufactured in a factory", but excluding inter alia, alcohol, all sorts, including alcoholic liquor for human consumption and other items not necessary for our present purposes. The exemption Notification No. 55/75 C.E. dated March 1, 1975, reads as follows :

> In exercise of the powers conferred by sub-rule (10) of rule 8 of the Central Excise Rules, 1944 the Central Government hereby exempts goods of the description specified in the Schedule annexed hereto and falling under item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon.

THE SCHEDULE

> 1. All kinds of food products and food preparations, including -
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> (i) meat and meat products;
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> (ii) dairy products;
>
> (iii) fruit and vegetable products;
>
> (iv) fish and sea foods;
>
> (v) bakery products, and
>
> (vi) grain mill products.
>
> 2. Electric light and power ".

5.The question is whether, by the notification of exemption, non-alcoholic beverage bases have been exempted from payment of duty. The only question, therefore, in other words, is whether non-alcoholic beverage bases are 'food products' or "food preparations" covered by the exemption Notification No. 55/75-CE dated March 1, 1975. We are not concerned with the question whether, in a broad general sense, non-alcoholic beverage base is food or not. In Brooke Bond (India) Ltd. v. Union of India ((1980) 6 ELT 65 (AP HC)) the question arose before a learned single judge of the

High Court of Andhra Pradesh whether coffee-chicory blend was a food product and is an item which fell under tariff 68 of the Tariff. The identical notification involved herein came up for consideration in that case. The question was whether it was a food product or a food preparation and as such exempt from excise duty. It was held by the learned single judge that what was exempt under the said notification was not food but products and food preparation and it was further held that coffee-chicory blend was neither food nor food preparation. Therefore, it was not exempt from payment of exercise duty under the said notification. The word "food" has no definition of universal; application and it varied from statute to statute. In some cases the dividing line between the two might be thin and in some cases it might be varied but so far as coffee-chicory blend was concerned there was little doubt that it was beverage and not food. The learned judge referred to paragraph 1093 of volume 18 of Halsbury's Laws of England (4th edition). In that paragraph coffee-chicory products are mentioned under the general heading 'food dairies and slaughter houses" and sub-heading "food generally". Coffee chicory blend is also mentioned in that paragraph. But coffee and coffee products under the herding" Food generally" were in the context of the Law of food Adulteration and the Coffee and Coffee-Produce Regulations, 1967 in force in England Reference was also made by the learned judge to Corpus Juns secundum, volume 36, at page 1041. The learned judge in our opinion, rightly observed that the aforesaid passage from the Halsbury's Laws of England and Corpus Jurist Secundum could not be mechanically imported into the present case more particularly when we are concerned with the situation under the Tariff Schedule. 'Food', as has been noted has no fixed definition of universal application and its meaning varies from statute to statute. The dividing line, the learned judge observed, between beverage and food might be thin and, in some cases, it might overlap. The learned judge, however, observed that it was a beverage rather than food He, accordingly held that the notification exempted not food but food products and food preparations and as such coffee chicory blend did not come within the purview of the exemption. The said decision was affirmed by the Division Bench of that court in Brooke Bond (India) Limited v. Union of India ((1984) 15 ELT 32 (AP HC)). The Division Bench, after exhaustiovely discussing the points in controversy and after referring to several authorities, referred to the decision of Justice Vivian Bose of this court in State of Bombay, v. Virkumar Gulabchand Shah ((1952) SCR 877 : AIR 1952 SC 335 : 1952 Cri LJ 1406) wherein he had observed in his own inimitable language at page 880-883 of the report as under :

> "Much learned judicial though has been expended upon this problem - What is and what is not food and what is and what is not a foodstuff; and the only conclusion I can draw from a careful consideration of all the available material is that the term "foodstuff" is ambiguous. In one sense, it has a narrow meaning and is limited to articles which are eaten as food for purposes of nutrition and nourishment and so would exclude condiments and spices such as yeast, salt, pepper, baking powder and turmeric. In a wider sense, it includes everything that goes into the preparation of food proper (as understood in the narrow sense) to make it more palatable and digestible. In my opinion, the problem posed cannot be answered in the abstract and must be viewed in relation to its background and context, But before I dilate on this, I will examine the dictionary meaning of the words.

The Oxford English, Dictionary defines 'foodstuff' as follows :

> That which is taken into he system to maintain life and growth and to supply waste of tissue.

In Webster's International Dictionary 'food' is defined as : nutritive material absorbed or taken into

the body of an organism which serves for purposes of growth, work or repair and for the maintenance of the vital processes.

Then follows this Explanation :

> Animals differ greatly from plants in their nutritive processes and required in addition to certain organic substances (water, salts, etc.,) and organic substances of unknown composition (vitamins) not ordinarily classed as foods (though absolutely indispensable to life and contained in greater or less quantities in the substances eaten) complex organic sub-stances which fall into three principal groups, proteins, carbohydrates and fats.

Next is given a special definition for legal purposes, namely -

As used in laws prohibiting adulteration, etc, 'food' is generally held to mean any article used as food or drink by man, whether simple, mixed or compound, including adjust such as condiments, etc, and often excluding drugs and natural water.

The definition given of 'foodstuff' is -

> 1. Anything used as food,
>
> 2. Any substance of food value as protein, fat, etc, centering into the composition of a food.

It will be seen from these definitions that "foodstuff" has no special meaning of its own. It merely carries us back to the definition of "food" because "foodstuff" is anything which used as 'food'.

So far as 'food' is concerned, it can be used in a wide as well as a narrow sense and, in my opinion much must depend upon the context and background. Even in a popular sense. When one asks another, Have you had your food ?", One means the composite preparations which normally go to constitute a meal - curry and rice, sweetmeats, pudding, cooked vegetables and so forth. One does not usually think separately of the different preparations which enter into their making, of the various condiments and spices and vitamins, any more than one would think of separating in his mind the purely narrative elements of what is eaten from their non-nutritive adjuncts.

So also, looked at from another point of view, the various adjuncts of what I may term food proper which enter into its preparation for human consumption in order to make it palatable and nutritive can hardly be separated from the purely nutritive elements if the effect of their absence would be to render the particular commodity in its finished stated unsavoury and indigestible to a whole class of persons whose stomachs are accustomed to a more spicely prepared product. The proof of the pudding is, as it were, in the eating, and effect of eating what would otherwise be palatable and digestible and, therefore, nutritive is to bring on indigestible to a stomach unaccustomed to such unspiced fare, the answer must, I think, be that however nutritive a product may be in one form, it can scarcely be classed as nutritive if the only result of eating it is to produce the opposite effect; and if the essence of the definition is the untritive element, then the commodity in question must cease to be food, within the strict, meaning of the definition to that particular class of persons, without the addition of the speices which make a nutritive. Put more colloquially, "one man's food is another man's poison". I refer to this not for the sake of splitting hairs but to show the undesirability of such a mode of approach. The problem must I think, be solved an a commonsense way.

6.Justice Bose noted that a comparison of war time measures in English and Indian statutes might not be safe. But food is one which nourishes and sustains human body for the purposes of growth, work or repair and for the maintenance of the vital process. In the Brook Bond (India) Ltd. case ((1984) 15 ELT 32 (AP HC), the Division Bench considered the meaning of the expression "coffee-chicory blend" and upheld the decision of the learned single judge as mentioned hereinbefore.

7. Mr. Sorabjee, learned counsel appearing for the respondent, drew our attention to several items including item No. 68 and the Central Excise Trade Notice dated June 18, 1975, which deals with exemption. The said trade notice, inter alia, reads as follows :

> "A number of doubts have been raised about the general scope of the terms 'food products/preparations' vide entry No. 1 in the Schedule to Notification No. 55/75 dated March 1, 1975, Specific queries have also been raised as to whether items like oil cakes, rice bran, scented chunam, katha, starch, guargum, gur, flour, ice-cream and ice candy, ice, supari, groundnut kernels, and cashew kernels could be regarded as covered under the above entry as claimed by the manufacturers of these goods.
>
> 2. The matter has been examined and the following clarifications are issued for the information of the trade :
>
> The word 'food' is a general term and applies to all that is eaten by men for nourishment and takes in subsidiaries further :
>
> (i) preparations a for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.) for human consumption; and
>
> (ii) preparations used because of their nutritional or flavoring properties in the making of beverages or foodstuffs for human consumption, are classifiable as food preparations. But such preparations which, because of their ingredients and small proportion in which they are normally used, are clearly added for other purposes, are not classifiable as food preparations."

8. Mr. Sorabjee also drew our attention to the explanatory note in heading No. 21.07 of CCCN which states, inter alia, as follows :

> "21.07 - Food preparations not elsewhere specified or included.
>
> Provided that they are not covered by any other heading or the nomenclature, the present heading covers :
>
> (A) Preparations consisting wholly or partly of foodstuffs used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organelle acids, calcium salts, lecithin etc.) with foodstuffs (flour, sugar milk, milk powder etc.) for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance keeping qualities, etc)."

9. Clause (2) of the said explanatory notes in heading No. 21.07 of CCCN contains the following :

> "(2) Flavoring powders for making beverages, whether or not sweetened with a basis

of bicarbonate of soda and glycyrrhizin or liquorice extract (sold on the continent as 'cocoa powder')."

10. Our attention was also drawn to item No. (12) of the same which runs as follows :

"(12) Non-alcoholic compound preparations (often known as "concentrated extracts") used for making beverages (liqueurs, etc) unless they are included elsewhere in the nomenclature. These preparations are obtained by compounding vegetable extracts of heading 13.03 with lactic acid, tartaric acid, citric acid, phosphoric acid, preserving agents, foaming agents, fruit juices etc. and sometimes with essential oils. Alcoholic preparations of this type are excluded (heading 22.09)."

11. Mr. Sorabjee further drew our attention to Appendix 17 of Import Policy of 1981-82 which was a relied upon by the Tribunal in the second decision, i.e. Parle Exports (P.) Ltd. case ((1987) 27 ELT 349), which is the subject-matter of the connected appeals, i.e. C.A. Nos. 3680-82 of 1987. It was pleaded that it was always understood and treated as a part of the food product. Reliance was also placed on the reports of the Chief Chemist of the Central Excise Regional Laboratory, Baroda, to which Mr. Sorabjee drew our attention. The reports dealing, inter alia, with some items stated as follows :

"Gold Spot base :

S.R. No. 1 Base A (Lab. NO. 10)

The sample is in the form of orange coloured liquid containing flavoring agents free from alcohol. (Please see note attached).

S.R. No. 2 Base B (Lab. No. 11)

The sample is in the form of white powder. It is sodium benzoate - a chemical known to be used as a preservative.

S.R. No. 3. Base C (Lab. No. 12)

The sample is in the form of white powder. It is vitamin 'C' (ascorbic acid) an organic chemical.

Limca Base :

S.R. No. 4 Base A (Lab. No. 13)

The sample is in the form of white liquid containing flavoring agents. It is free from alcohol. (Please see note attached.)

S.R. No. 5 Base B (Lab. No. 14)

The sample is in the form of white powder. It is sodium benvonate (sic benzoate) - a chemical known to be used as a preservative".

12. The note appended to these reports stated, inter alia, the following :

Note

The term "food" as defined in the Prevention of Food Adulteration Act, 1954, meant any article used as food or drink for human consumption other than drugs and water and includes :

> (a) Any article which ordinarily enters into, or is used in the composition or preparation of human foods, and
>
> (b) any flavoring matter or condiments.

Food products which are excluded from item (c) would fall under item 68 of the Central Excise Tariff read with the Notification No. 62/78 dated March 1, 1978, excluded as amended. The term "food preparations" on the other had would cover :

> (a) Preparation for use either directly or after processing (such as cooking, dissolving or boiling in water, milk etc.) for human consumption.
>
> (b) Preparation consisting wholly or partly of foodstuffs used in making of beverages or food preparation for human consumption.

This would also include concentrated extract for making non-alcoholic beverages

(Ref. B.T.N. heading 21.07)

In this connection, attention is also invited to Bangalore Collectorate Trade Notice No. 103/75 dated 18, 1975.

In view of what has been stated above, samples at Sl. Nos. 1, 4, 8, 9, 13, and 15 may be deemed to fall in the category of food preparations. However, before finalising the assessment, it may be worth while ascertaining whether the above products are also known as food preparations in common parlance and trade. The views of the Director, Drugs and Food Laboratory, Baroda, may also sought, if necessary.

13. Mr. Sorabjee submitted that the Tribunal has relied on the Bangalore Collectorate Trade Notice as referred hereinbefore, order of the Appellate Collector in the case of Bush Boake Allan (India) Limited and heading No. 21.07 of CCCN, Import Policy of the Government of India for 1981-82 as well as the observations in the Encyclopaedia Britannica, volume 13, at pages 420-421. It was submitted that the said orders of the Tribunal had considered and taken into consideration all the relevant factors. The Tribunal has acted on varied materials, and, therefore, such decision of Tribunal should not be altered or deviated from. Reliance was placed on the observations of this court in Collector of Customs, Bombay v. Swastic Woollen (P) Ltd. ((1988) Supp SCC 796 : (1988) 37 ELT 474 : (1988) 18 Com Cas 352) at paragraph 9. The expression "food products" is not defined in the Act. The exemption includes 'food and food preparations' and provides an inclusive definition of ' food products' and 'food preparations'. But the correct and the appropriate meaning of the expressions covered in the said notification has to be found out.

14. The question is whether non-alcoholic beverage base is either 'food product' or 'food preparation' in terms of the notification in question. Mr. Sorabjee tried to suggest that the fruit and vegetable juice might become fruit or vegetable products to come under item No. 1 (iii) of the Schedule to the exemption notification.

15. Learned Additional Solicitor-General, Mr. Kuldeep Singh, on the other hand, submitted that

non-alcoholic beverage base though having some food value, is not a food product or a food preparation, at any rate, in the context of the Act and notification as such. He drew our attention to the first heading in the First Schedule to the Act dealing with "food and beverages" and pointed out that items Nos. 1 to 1-C deal with food and food products while item No. 1-D deals with never separately. He submitted before us that this indicates that the expression "food products and preparations" are used in contrast to "beverages" so far as the present Act and notifications thereunder are concerned. There is force in the submissions of the learned Additional Solicitor-General.

16. Our attention was drawn to a decision of the Government of India in In Re Asian Chemical Works ((1982) 10 ELT 609(2)) Where the Government of India opined that 'food flavors' and 'food preparations' might improve the taste or appearance of food products and/or food preparations, but by themselves could not be legitimately consumed directly or after processing such as cooking, dissolving or boiling in water for human consumption independently. Mr. Singh submitted that, in ordinary common and commercial parlance also, the goods in question are not known as food products and/or food preparations; as such, therefore, these are not to be treated as exempt under the notification. Mr. Singh submitted that when a person says "I have consumed food" he does not mean to say that he has consumed non-alcoholic beverage bases. Therefore, those goods cannot be understood as covered by the notification of exemption. It was submitted that how the Government understood a matter at the time of the notifications, is a relevant factor and that is a factor which one should bear in mind inview of the principles enunciated by this court in K. P. Varghese v. ITO ((1981) 4 SCC 173 : 1981 SCC (Tax) 293 : (1982) 1 SCR 629). It is a well-settled principle of interpretation that courts, in construing a statute or notification will give much weight to the interpretation put upon it at the time of enactment or issue and since, by those who have to construe, execute and apply the said enactments.

17. How then should the courts proceed ? 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 under stood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It is, however, necessary to hear in mind certain principles. The notification in this case was issued under rule 8 of the Central Excise Rules and should be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with the power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is, as if it were contained in the Act itself. See in this connection, the observations of this court in Orient Weaving Mills (P.) Ltd. v. Union of India ((1962) Supp 3 SCR 481 : AIR 1963 SC 98). See also Kailash Nath v. State of U. P. (AIR 1957 SC 790 : (1975) 8 STC 358). The principle is well-settled that when two views of a notification are possible, it should be construed in favour off the subject as notification is part of a fiscal enactment. But, in this connection, it is well to remember the observations of the Judicial Committee in Carillon M. Armyate v. Frederick Wailkinson ((1878) 3 AC 355 at 370) that it is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial committee reiterated in the said decision at page 369 of the report that, in a taxing Act, provisions establishing (sic enacting) an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit. While interpreting an exemption clause, liberal interpretation should be imported to the language thereof, provided no violence is done to the language employed. It must however, be borne in mind that absurd results of construction should be avoided.

18. In Hindustan Aluminium Corporation Ltd. v. State of Utter Pradesh ((1981) 3 SCC 578 : 1981 SCC (Tax) 280 : (1982) 1 SCR 129) this court emphasised that the notification should not only be confined to its grammatical or ordinary parlance but it should also be construed in the light of the context. This court reiterated that the expression should be construed in a manner in which similar expressions have been employed by those who framed the relevant notification. The court emphasised the need to derive the intent from a contextual scheme. In this case, therefore, it is necessary to endeavour to find out the true intent of the expressions "food products and food preparations" having regard to the object and the purpose for which the exemption is granted bearing in mind the context and also taking note of the literal or common parlance meaning by those who deal with those goods, of course bearing in mind that, in case of doubt only, it should be resolved in favour of the assessee or the dealer, avoiding, however, an absurd meaning, 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 non-alcoholic beverage bases as of products or food preparations in that light.

19. We have also noted how these goods were treated by the Government as mentioned hereinbefore. There is no direct evidence as such as to how in commercial parlance, unlike in ordinary parlance, non-alcoholic beverage bases are treated or whether they are treated as food products or food preparations. The purposes of exemption is to encourage food production and also give a boost to the production of goods in common use and need. After all, the purpose of exemption is to help production of food and food preparations at a cheaper price and also help production of items which are in common use and need like electric light and power.

20. The question of interpretation involves determining the meaning of a text contained in one or more documents. Judges are often criticised for being tied too closely to statutory words and for failing to give effect to the intention of Parliament or the law-maker. Such language, it has been said, in Cross's Statutory Interpretation (second edition) at page 21, appears to suggest that there are two units of enquiry in statutory interpretation - the statutory text and the intention of Parliament - and the judge must seek to harmonise the two. This, however, is not correct, According to the tradition of our law primacy is to be given to the text in which the intention of the law giver has been expressed. Cross refers to Blackstone's observations that the fairest and most rational method to interpret the will of the law-maker is by exploring his intentions at the time when the law was made, by signs the most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequences, or the spirit and reason of the law. We have no doubt, in our opinion that, having regard to the language used, it would not be in consonance with the spirit and the reason of law to give exemption for non-alcoholic beverage bases under the notification in question. Bearing the aforesaid purpose, in our opinion, it cannot be contended that expensive items like Gold Spot base Limca base or Thums Up base were intended to be given exemption at the cost of the public exchequer.

21.For the aforesaid reasons, the appeals have to be allowed and the decisions of the Tribunal reversed. We, however, need not go into the question of penalty as well as the question of limitation which have been left open by the Tribunal in its order. It will be open for the parties to urge these points fresh before the Tribunal. We express no opinion on these aspects. The appeals to the extent indicated above are allowed. There will, however be no order as to costs.

Appeals allowed.

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