AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.4893 of 2010

Order reserved on : 4-7-2018

Order delivered on : 11-9-2018

1. Parle Agro Private Limited a company incorporated under the provision of the Companies Act 1956, having its registered offices at Western Express Highway Andheri (E) Mumbai, through Mr. Praveen Shrivastava S/o Shri N.S. Shrivastava aged about 30 years, resident No.H.No.83 Sector 9-B Saket Nagar, Bhopal (M.P.), Senior Executive Legal and Taxation Department, Parle Agro Pvt. Ltd.
2. Mr. Praveen Shrivastava, S/o Shri N.S. Shrivastava S/o Shri N.S. Shrivastava aged about 30 years, resident No.H.No.83 Sector 9-B Saket Nagar, Bhopal (M.P.), Senior Executive Legal and Taxation Department, Parle Agro Pvivate Limited

---- Petitioners

Versus

1. Commercial Tax Officer, Circle V, Raipur (6)
2. Deputy Commissioner (Revision) Vanijyik Kar Bhavan, Civil Lines, Raipur
3. Commissioner, Commercial Tax Vanijyik Kar Bhavan, Civil Lines, Raipur (CG)
4. State of Chhattisgarh through Secretary Department of Commercial Taxes, D.K.S. Bhavan, Mantralaya, Raipur (CG)

---- Respondents

For Petitioners: Mr. P. M. Choudhary, Senior Advocate with Mr. Anand Prabhawalkar and Mr. Neelabh Dubey, Advocate.

For Respondents / State: -
Mr. Anand Dadariya, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The taxability of drink called as “frooti” under Entry 14 of Schedule II of the Chhattisgarh Entry Tax Act, 1976 (hereinafter called as 'the Act of 1976') being non-alcoholic beverage at the rate of 2% held

concurrently by the assessing authority and the revisional authority has been questioned by the writ petitioners in this writ petition stating that “frooti” being a product of fruit falls in residual entry of Schedule II of the Act of 1976 and liable to be taxed at the rate of 1%, therefore, the orders passed by the authorities levying and recovering tax at the rate of 2% are liable to be set aside.

2. Mr.P.M. Choudhari, learned Senior Counsel appearing for the petitioners, would submit that the order passed by the assessing authority and affirmed by the revisional authority following and complying the determination order dated 30.9.2005 passed by the Commissioner of Commercial Tax under Section 68 of the Commercial Tax Act, 1994 (hereinafter called as 'the Act of 1994') read with the provisions of the Act of 1976 is unsustainable and bad in law. He would further submit that “frooti” being a fruit juice based ready to serve drink, the same in view of the treatment under the laws regulating manufacture and sale of fruit products as also treatment given to such products by the legislature, cannot be classified in the category of 'non-alcoholic beverages and drinks'. He would also submit that there is no specific entry for classification of fruit products/fruit juice based ready to serve drinks, the commodity frooti is outside Schedule II of the Entry Tax Act and would fall in Schedule III of the Act of 1976 and accordingly, it is not liable to tax in view of the scheme of charging section under the Act of 1976, as such, he would strongly rely upon the decisions of the Supreme Court in the matter of **Parle Agro Private Limited v. Commissioner of Commercial Taxes,**

Trivandrum[1].

3. On the other hand, Mr.Anand Dadariya, learned Deputy Government Advocate for the respondents/State, would support the impugned order and submit that "frooti" is nothing but a kind of beverage and is taxable under Entry 14 of Schedule II at the rate of 2% and the assessing authority as well as the revisional authority were absolutely justified in rejecting the plea raised by the petitioners in this regard.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

5. The Commissioner of Commercial Tax has passed the order under Section 68 of the Act of 1994 holding that "frooti" is a kind of beverage and is covered under Entry 14 of Schedule II being non-alcoholic drink and beverage, ice-cream, kulphi and candy and tax liable would be 2% and following the order of determination, the assessing authority has assessed the tax to the petitioners and that order has been affirmed by the revisional authority.

6. At this stage, it would be appropriate to pause here and to notice the principles of law relating to interpretation of tariff entry. Justice G.P. Singh in his celebrated book "**Principles of Statutory Interpretation**" (14th Edition) at page 874 has held that the taxing entries have to be construed with clarity and precision so as to maintain this exclusivity.

7. In the matter of **M/s Bharat Forge and Press Industries (P) Ltd.**

1 (2017) 7 SCC 540

v. Collector of Central Excise, Baroda, Gujarat[2], the Supreme Court has held in no uncertain terms that only such goods which cannot be brought under the various specific entries in the tariff schedule should be attempted to be brought under the residuary entry. In other words, unless the Department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort can be had to the residuary item.

8. Likewise, in the matter of Commissioner of Central Excise, Calcutta v. Sharma Chemical Works[3], the Supreme Court has held authoritatively that it is the primary and paramount responsibility of the State to first convincingly prove and establish that the item under no circumstances can be brought under any of the tariff items under the schedule of the Act. It has been further held that classification of goods and the onus of proof lies on the Revenue. Their Lordships of the Supreme Court succinctly held as under: -

> "12. We have heard the parties and considered the submissions made by them. We have also read the opinion of the majority Bench and the minority opinion of the Technical Member. It is a settled law that the onus or burden to show that a product fall within a particular Tariff Item is always on the revenue. Mere fact that a product is sold across the counters and not under a Doctors prescription does not by itself lead to the conclusion that it is not a medicament. We are also in agreement with the submission of Mr. Lakshmikumaran that merely because the percentage of medicament in a product is less does not ipso facto mean that the product is not a medicament. Generally the percentage or dosage of the medicament will be such as can be absorbed by the human body. The medicament would

2 (1990) 1 SCC 532
3 (2003) 5 SCC 60

> necessarily be covered by fillers/ vehicles in order to make the product usable. It could not be denied that all the ingredients used in Banphool Oil are those which are set out in the Ayurveda text Books. Of course the formula may not be as per the text books but a medicament can also be under a patented or proprietary formula. The main criteria for determining classification is normally the use it is put to by the customers who use it. The burden of proving that Banphool Oil is understood by the customers as an hair oil was on the revenue. This burden is not discharged as no such proof is adduced. On the contrary we find that the oil can be used for treatment of headache, eye problem, night blindness reeling head weak memory, hysteria amnesia blood pressure, insomnia etc. The dosages required are also set out on the label. The product is registered with Drug Controller and is being manufactured under a drug licence."

9. Similar proposition has been held in the matter of **Puma Ayurvedic Herbal (P) Ltd. v. Commissioner, Central Excise, Nagpur**[4] by observing as under: -

> "It is settled law that the burden of showing correct classification lies on the revenue."

10. In **Mauri Yeast India Private Limited v. State of Uttar Pradesh and another**[5] (supra), Their Lordships of the Supreme Court have held in so many words laying down the law relating to interpreting different entries, as under: -

> "34. It is now a well-settled principle of law that in interpreting different entries, attempts shall be made to find out as to whether the same answers the description of the contents of the basic entry and only in the event it is not possible to do so, recourse to the residuary entry should be taken by way of last resort."

11. Recently, in **Commissioner of Commercial Tax, Uttar Pradesh v. A.R. Thermosets Private Limited**[6], Their Lordships of the Supreme Court have held that residuary entry is made to cover

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4 (2006) 3 SCC 266
5 (2008) 5 SCC 680
6 (2016) 16 SCC 122

only those category of goods which clearly fall outside the ambit of the main entry. It has been further held as under: -

> "20. … In State of Maharashtra v. Bradma of India L*td.*[7], the Court had observed that the general principle is that specific entry would override a general entry. Referring to the decision in *CCE v. Wood Craft Products Ltd.*[8], it has been ruled that resort can be made to a residuary heading only when by liberal construction the specific entry cannot cover the goods in question. ..."
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> 21. A similar opinion has been expressed in *Hindustan Poles Corpn. v. CCE*[9] stating that residuary entry is made to cover only those category of goods which clearly fall outside the ambit of the main entry. The opinion proceeds further to state that unless the Revenue can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be made to the residuary entry."

12. It is not in dispute and very well-settled principle of law that when two views are possible, one which favours the assessee should be adopted. (See **Bihar SEB v. Usha Martin Industries**[10] and **Mauri Yeast India Private Limited** (supra).)

13. In **Mauri Yeast India Private Limited** (supra), the Supreme Court has finally concluded that if there is a conflict between two entries, the course adopted to be followed would be as follows: -

> "56. We, therefore, are of the opinion that if there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred."

14. Having noticed the principle of law relating to interpretation of tariff entry and when the residuary entry has to be resorted into, reverting to the dispute brought before the Court, the question

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7 (2005) 2 SCC 669
8 (1995) 3 SCC 454
9 (2006) 4 SCC 85
10 (1997) 5 SCC 289

involved is, whether the assessing authority and the revisional authority are justified in holding that “frooti” would fall within Entry 14 of Schedule II of the Act of 1976 and would not fall within residuary entry and entry tax liability would at the rate of 2%.

15. Entry 14 of Schedule II of the Act of 1976 reads as under:-

> “All kinds of non--alcoholic drinks and beverages, ice-cream, kulfi and ice candy.”

16. The question would be whether “frooti” is beverage. The word 'beverage' can be defined as under:-

> “Beverage” has been defined in “The Random House Dictionary of the English Language: as:
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> “A drink of any kind, other than water such as tea, coffee, beer, milk, etc.'”
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> In “Encyclopaedia Britanmica (Mycropedia)”, page 1095, it has been described thus:
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> “Liquid prepared for human consumption including types made by an infusion such as tea and coffee, fruit juices and other juices extracted from plants, such carbonated drinks as ginger ale and root beer, and alcoholic beverages, including wine, made by a fermentation process, and distilled liquor, requiring both fermentation and distillation.”
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> In “Words and Phrases”, Vol. 5, “beverage” has been defined:
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> “Beverage in its common meaning signified liquid designed for drinking by human beings.”
>
> The dictionary meaning of the word is very wide. It extends to drink of any kind except water.”

17. Vide notification dated 24.9.2003, the Government of India, Ministry of Food Processing Industries has clarified that “Frooti”, “Maaza” and “Slice” are “Ready to serve Fruit Beverage” and that company has been allotted a FPO licence No. 11419 and further, the above products do not fall under the classification of either

Aerated Waters or Carbonated Waters.

18. Following the principles of law laid down by the Supreme Court in **A.R.Thermosets Private Limited's** case (supra) noticed hereinabove in which it has been held by Their Lordships that residuary entry is made to cover only those category of goods which clearly fall outside the ambit of the main entry, in the instant case, the determination order as well as two authorities have clearly held that "frooti" is beverage, which is apparent from dictionary meaning of beverage and is clearly covered within Entry 14 of Schedule II of the Act of 1976 being beverage and the authorities are justified in holding so.

19. Learned counsel for the petitioners placing reliance in **Parle Agro Private Limited** (supra) would submit that "frooti" would be outside of the said entry and would fall within residuary entry of schedule as common parlance meaning would be applied rather technical meaning would apply.

20. In the said judgment (supra) Their Lordships however laid-down the principles in that regard by holding as under:-

> "37. The principle of statutory with regard to a word of taxing statutes are well established. This Court in Porritts & Spencer (Asia) Ltd v. State of Haryana[11] has laid down following in para 6:
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> > "6.....Where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature."

11 (1979) 1 SCC 82

Their Lordships further held that entries which contain scientific and technical word are also to be looked into in technical and scientific meaning. It was observed as under:-

> "40. In the present case, Entry 2 under Section 6(1)(a) uses the word "aerated". This is scientific term and has been repeatedly used in different statues including the Central Excise Tariff and different HSN Codes also uses the term "aerated". The word "aerated" is scientific and technical word used under different statutes and the scientific and technical meaning of the word "aerated" can be looked into for finding out the real import of the Entry.
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> 41. In view of the above, we are of the opinion that common parlance and commercial parlance test was not the only test which could have been applied for interpreting the entries in items mentioned in Section 6(1)(a) and the entries which contain scientific and technical word were also to be looked into in technical and scientific meaning. Both the High Court and the Committee of Joint Commissioners discarded the evidence of technical and scientific meaning of word. The appellant has rightly relied on the technical evidence brought on the record which indicate that use of carbon dioxide to the extent of 0.6 per cent was only for the purpose of preservative in packaging the commodities and the product was thermally processed and carbon dioxide was added to it as the preservative."

21. Same is not the case here. In the present case, "frooti" is beverage within Entry 14 of Schedule II of the Act of 1976 in the name being non-alcoholic drink and beverage, ice-cream and candy is of vide import and common parlance test would apply and the product "frooti" will be covered under Entry 14 of Schedule II of the Act of 1976 and would be charged at the rate of 2%.

22. The petitioners cannot be allowed to make separate entry when "frooti" is covered within the specific entry and residuary entry cannot be resorted into. In the considered opinion of this Court,

both the authorities are absolutely justified in holding that “frooti” is a product covered by Entry 14 of Schedule II of the Act of 1976. I do not find any merit in the submission made on behalf of the petitioners in this writ petition.

23. Accordingly, the writ petition deserves to be and is hereby dismissed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (T) No.4893 of 2010

Petitioners	Parle Agro Private Limited and another
	Versus
Respondents	Commercial Tax Officer and others

(Head-note)

(English)

"Frooti" is a beverage within Entry 14 of Schedule-II of the Chhattisgarh Entry Tax Act, 1976 and would be charged at the rate of 2%.

(हिन्दी)

"फ्रूटी" छत्तीसगढ़ प्रविष्टि कर अधिनियम, 1976 की अनुसूची–II की प्रविष्टि 14 के अन्तर्गत एक पेय पदार्थ (बेवरेज) है तथा 2% की दर से अधिरोपित किया जाएगा।