

The Commissioner, Trade Tax, U.P. Vs S/S Gujrat Cooperative Milk Marketing Federation Ltd.

Court: ALLAHABAD HIGH COURT

Date of Decision: Feb. 22, 2016

Citation: (2016) 92 UPTC 263

Hon'ble Judges: Bharati Sapru, J.

Bench: Single Bench

Advocate: C.S.C, for the Applicant; B. Agarwal, Senior Advocate assisted by Sri Piyush Agarwal, Advocate, for the Opposite Party

Final Decision: Allowed

Judgement

Bharati Sapru, J.â€"Order on the Review Application No.52415 of 2014.

2. Heard Sri Bharat Ji Agrawal, learned Senior Counsel assisted by Sri Piyush Agrawal, learned Counsel for the assessee and Sri B.K. Pandey,

learned Standing Counsel for the State.

3. This matter has come on remand from Hon"ble Apex Court by way of an order dated 30.01.2014. The order of Hon"ble Apex Court is quoted

here-under:-

1 After arguing the matter for quite some time, Shri S. Ganesh, learned Senior Counsel appearing for the appellant, on instructions, seeks

permission of this Court to withdraw the appeal, which liberty to file an appropriate Review Petition before the High Court.

2. Permission sought for is granted and the Civil Appeal is disposed of as withdrawn.

3. We grant one week time to the appellant to file appropriate Review Petition before the High Court. If such a Review Petition is filed, we request

the High Court to decide the same on merits without reference to the period of limitation.

Ordered accordingly.

4. The issue in this matter was with regard to the taxability of flavoured milk. At the time when the revision petition was filed the circular dated

27.11.2002 had not been placed before this Court by the department or even by the assessee. The circular reads as here-under:-

Letter No.-Legal-1(1)-M-9(2002-2003)

169/Trade Tax

From,

Commissioner, Trade Tax,

Uttar Pradesh

To,

The Additional Commissioner Grade-1, Trade Tax,

Ghaziabad Region, Ghaziabad.

Date: Lucknow: November 27, 2002

Dear Sir,

Please refer to your letter no. Vidhi-P32440/Dated 16.10.2002 which relates to the application clarifying position of tax liability in respect of

flavoured milk by Sarvashri District Tax Bar Association, Ghaziabad. In the application submission has been made clarifying the position whether

there is Trade Tax liability or not on the flavoured milk as also some decided judgements have been referred to. It also has mention of the case of

Sarvashri Indodon Milk Products v. Commissioner, Trade Tax, which relates to the period when in the definition of milk in Section 4 terms

subsequently separated from other forms of milks were not included. Case reported in 1999 STI 439 Commissioner, Trade Tax v. Sarvashri

Neera Drinks is also referred wherein it has been held that ""Badam Milk"" under Section 4 is covered by tax exempted milk in as much as by such

mixture/ mixing milk shall remain only milk. In the case of Commissioner, Trade Tax v. Nainital Milk Produce Cooperative Federation Ltd.

-2001 NTN 471 the Hon"ble Allahabad High Court has laid down that in order to improve quality of the milk by mixing powder in it the nature of

goods shall not change and milk shall remain only milk. It has also been mentioned in the application that in the cases covered by the aforesaid

judgments the Trade Assessing Officers at other places are not imposing tax but in regard to flavoured milk, officers of Ghaziabad have their

doubts.

You have mentioned in your aforesaid letter that in district Aligarh, Kanpur, Agra and Lucknow etc. the officers are allowing tax exemption on

flavoured milk and have recommended that it will be appropriate to take a decision in the light of judgments rendered in the cases of Sarvashri

Nainital Milk Produce Cooperative Federation and Sarvashri Neera Drinks.

In this regard it is relevant to mention that Shri J.P. Sharma, IAS, Secretary, Dairy Development Department, Government of Uttar Pradesh,

Lucknow vide his letter dated 26.2.1999 has sent here some documents which also contains a circular issued by the Government of India, Ministry

of Agriculture and Animal Husbandry in which milk has been defined as under:

Milk means cow buffalo, sheep or goat milk or mixture of such milk either in original raw form or is processed as follows or by any other method

½ Pasteurized, Sterilized, Recombined, Flavoured., Acidified, Skimmed, Toned, Double Toned, Standardized or Full Cream Milk.

From above flavoured milk appears to be covered by the Entry of milk. It is relevant to mention that some persons like less or more quantity of

sugar in milk and others like its special flavour. Thus only because of flavour milk shall not become a commodity different from milk.

Earlier some Tax Assessment Officers had passed orders imposing tax on toned and other kinds of improved milk, after the said orders were set

aside by the Hon"ble Tribunal the matter was referred to the Secretary Committee on which vide Government letter no.K.N.-2-R-01/11-2002-

15-(553) dated 17.01.2002 it has been informed that:

In the impugned case it has been decided to comply with the judgment of the Hon"ble Tribunal dated 3.4.2001. Kindly ensure taking action

accordingly.

Kindly inform the Tax Assessing Officers accordingly.

Yours faithfully,

Sd/-illegible.

(Soti Ravendra Chandra)

Additional Commissioner (Law) Trade Tax,

Uttar Pradesh

5. The department does not dispute the existence of this circular. It is well settled law that the circulars issued by the department are binding on it.

According to the circular flavoured milk reaches best quality of being milk and does not cease to be milk and is to be taxed as such.

6. It is the contention of the learned Counsel for the assessee that the benefit of this circular has been given in other districts to various dealers.

7. The matter, therefore, requires reconsideration by the Tribunal. The Tribunal may re-decide the matter after hearing both parties and after taking

into consideration the circular dated 27.11.2002 and whether it applies to the dealer too or not. The Tribunal may allow both sides to produce

such materials as may be necessary to establish their individual cases.

8. With the above observations the review stands allowed.