

50. PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL
TAXES THIRUVANANTHAPURAM

Present:- Paul Antony.IAS

Sub:- KVAT Act 03- section 94 - Rate of tax on Ujala Supreme and Ujala Stiff and Shine – Application filed by M/s M P Agencies, Thrissur- clarified - Orders issued- Reg:

Read:- 1. This office order No.C7.34151/06/CT Dt. 25.10.06

2. Judgment in OTA 13/06 Dt. 08.06.07 of Hon'ble HC of Kerala

3. This office hearing notice of even No. Dt. 03.07.07

ORDER No. C7. 02/07/CT Dt. 15..10..07

As per order read as 1st paper above the rate of tax on 'Ujala Supreme and Ujala Stiff and Shine' were clarified under section 94 of the Act as coming under entry 27 of SRO 82/06 and attracting tax at 12.5%. Subsequently the Hon'ble High Court of Kerala as per its judgment read as 2nd paper above had set aside the order and remanded the case back to the undersigned to redo the matter in accordance with law after adverting to the evidence adduced by the applicant.

Accordingly the authorized representative of the applicant was heard. The contentions raised by the applicant has been examined with reference the statutory provisions and settled legal positions.

According to the applicant the scheme of VAT is materially different from that of KGST principally with respect to classification of goods for the purpose of levy of sales tax based on HSN, rate of tax applicable to different goods etc. Resort to common parlance/commercial parlance test can be made only in respect of those goods, which have no reference to HSN.The authorities administering the Act are bound by the rules of interpretation. As such once a commodity is listed in 3rd schedule along with its HSN under

List A, it has to be included in that entry only without regard to the purpose for which such goods have been purchased. Therefore the crucial question that needs to be examined to determine classification of a particular commodity would be whether the same is listed in the 3rd schedule with reference to HSN or not and if so listed there would be no scope to interpret the commodity differently relying on common parlance or commercial parlance.

The applicant purchases the product in question from Jyothy Laboratory who are charging tax at 4% on the products.

The applicant contends that "Ujala Supreme" is diluted Acid Violet Paste (AVP) classified under HSN code 3204.12.94 covered under entry 155(8) of List A. According to him the products purchased and sold contain only water and AVP and no other ingredients are added and so that there is no change in the composition. Ujala Supreme contains about 0.98% of AVP the rest being water. It is contended that the process of diluting does not change the character or use and no new commodity having a different use and character emerges. It is also contended that use of different commercial name for the same product would not alter the character of the product.

So also it is contended that "Ujala Stiff & Shine" is 'Poly Vinyl Acetate'(PVA) classified under HSN 3905 12 90 covered under entry 118(5) of List A. According to them the products purchased are packed in pouches and bottles and sold under brand name "Ujala Stiff & Shine" without addition by them of any other ingredients but admits that test reports confirms the presence of Rose fragrance which is claimed to be inherent in the PVA purchased by the applicant.

In support of their claim the applicant also produced Test Certificates from Shriram Institute of Industrial Research, Bangalore, The Bombay Textile Research Association, Mumbai and an opinion from Institute of Chemical Technology, Mumbai.

Reliance was also placed in the decision of the Central Excise, Customs and (Gold) Control Appellate Tribunal reported as Jyoti

Laboratories Vs CCE, Cochin, 1994 (72) ELT 669, 2006(78) RLT 276 Deputy Commr B/R (Taxes) Vs Pio Food packers reported in 1980(6) ELT 343(sc), and Sterling Foods case (1986) 63 STC 239(SC). These cases are distinguishable from the issue under consideration since the first two cases are those examined in the context of CET Act and in 3rd one relates mainly where the term 'manufacture' has been analyzed.

The short question to be considered in disposing this case is whether for the purpose of KVAT Act, the product in question are one and the same or not.

According to the applicant the raw materials used in the manufacture of 'Ujala Whitener' and 'Ujala Stiff and Shine' are Acid Violet Paste classified under HSN code 3204.12.94 covered under entry 155(8) and Poly Vinyl Acetate classified under HSN 3905 12 90 covered under entry 118(5) respectively of List A to 3rd schedule.

Entry 155 (8) under HSN 3204.12.94 of List A of 3rd schedule reads as "(d) Acid Violets" and 118(5) as "polymers of vinyl acetate or of other vinyl esters in primary forms other vinyl polymers in primary form under HSN 3905. The applicant claims that the specific product Poly Vinyl Acetate (PVA) comes under the specific HSN 3905 12 90 (others).

KVAT Act has been enacted for levy and collection of VAT, which interalia includes four schedules and a notification issued under section 6(1)(d) of the Act. Schedule 3 enumerates goods taxable at 4 % and the notification published as SRO 82/2006 lists 102 specific entries and a residual entry as 103 relating to 12.5% taxable goods. Entry 65 of 3rd schedule is for industrial inputs specified in List A to the schedule, which attract tax at 4%.

According to the rules of interpretation the commodities have to be classified based on the HSN codes allotted to them. The 4 digit HSN shall include all those commodities under the main head, 6 digits will cover all commodities under the sub head while the 8 digits represents the specific commodities mentioned there under.

Clause 43 of the rules of interpretation says that goods given in the List A as industrial input and packing materials would attract 4% tax regardless of the purpose for which such goods have been purchased which means that even if the goods coming under List A are purchased for purposes other than "industrial purposes" the 4% rate would apply.

In the instant case Acid Violet Paste (AVP), a commodity coming under the List A, is being purchased by the M/s Jyothy Laboratories, Thrissur for production of the commodities in question. M/s Jyothy Laboratories is an SSI unit and as per certificate of registration issued by the Industries Department, the unit is engaged in the manufacture of "Fabric whiteners". As such there would be no dispute that said goods are purchased for 'industrial purpose' only.

The applicant had filed test reports in respect of their products of 'Sriram Institute of Industrial Research, Mumbai, The Bombay Textile Research Association, Mumbai wherein the product 'Ujala Stiff and Shine" is identified as Poly Vinyl Acetate emulsion. Opinion dated 30/8/2006 of Institute of Chemical Technology, University of Mumbai states that 'chemical composition of "AVP" and "Ujala" are same except for dilution and that "ujala is nothing but a diluted form of "Acid Violet Dye". The report also specifies, " *As such ujala cannot be used as a dye or a colouring matter as it is*". This means that the original product is not retrievable. Admittedly AVP is a synthetic organic dye used in textile mills and since the so called 'diluted form AVP' ie the 'ujala whitener' as such cannot be used as a 'dye or a colouring matter' as revealed in the test report filed by the applicant, shows that the commodity underwent some change by virtue of the activities done by the manufacturer during its process.

Admittedly the product in question are manufactured and supplied by Ms Jyothy Laboratories, an industrial unit. There is no dispute on the status of the unit as a 'manufacturing unit'. The unit for the production of the products in question purchases the AVP and

PVA. There is no dispute on the fact that 'the unit is not merely repacking' the materials purchased by them and marketing it under their brand name. Admittedly some process, as per the SSI certificate of the unit "a manufacturing process", is carried out before marketing their product, which brings an obvious change in the content and character and use of the products. AVP is basically an organic dye used in textile industry. By virtue of the process undertaken in the unit on the material it undergoes a basic change both in its content and character as well as in its application and use. In the new product evolved out of the process, admittedly there is only about 0.98 % of AVP. According to the opinion furnished by the Institute of Chemical Technology, University of Mumbai, the new product cannot any longer be used for any purpose for which AVP could have been used. These positions make it clear that the emergence of a new character for the AVP is obviously due to change in content. Thus the content character and use of the commodity has been changed and as far as the market is concerned this is a commodity holding distinct identity as a 'fabric whitener'.

It may be true that on account of the term 'manufacture' as defined in the CET Act for the purpose of levying 'excise duty' the activities leading to the emergence of the product may not amount to manufacture on microanalysis of the term for the purpose of levying 'excise duty'. But the basic fact remains that the product marketed by the unit is not AVP in its original form as classified in the CET Act. The AVP with the changed character has not been assigned any separate HSN for the purpose of CET Act. Under no stretch of interpretation can it be said that for the mere reason that a product has not been assigned any separate HSN it should be treated as a commodity holding HSN by virtue of its mere presence. In this case Ujala whitener admittedly contains only a negligible portion (about 0.98%) of AVP. As stated above definitions and classifications in CET Act are exclusively for the purpose of levying excise duty. If a commodity comes outside

the ambit of a classification made under CET Act, then the interpretation that could be given under KVAT Act would be based on the preamble and definitions under the statute.

Chemically "water (H₂O) holds a distinct character as a 'compound', which is treated as a universal 'solvent' which contains distinct elements in definite proportion. So by mixing this compound with AVP, which also is a compound, a new compound emerges holding distinct character, which cannot be treated as either water or AVP. Because of its changed character as rightly opined by the Institute of Chemical Technology, University of Mumbai it cannot be used for the original purpose for which AVP was made.

The commodity covered under HSN 3204.12.94 is specifically for Acid violets. In view of the above findings 'Ujala Whitener' can no longer be treated as an AVP in the original form for which the HSN has been assigned and so the specific entry 155(8) for Acid violets holding HSN 3204.12.94 will not encompass the product "Ujala Whitner". In the result the test to be applied is the 'common parlance' or 'commercial parlance' theory. If a consumer asks for AVP no dealer would give "Ujala Whitner", so also when "Ujala Whitner" is asked for no dealer would give the commodity 'AVP'. Instead, when a laundry brightener is asked for obviously the dealer would give "Ujala Whitner" as a similar product. So in common parlance and commercial parlance "Ujala Whitner" is known and treated as a 'laundry brightner'. In the third schedule there is no other entry for such products and so it cannot be classifiable under the 3rd Schedule.

In the case of 'Ujala Stiff & Shine' the raw material used is Poly Vinyl Acetate (PVA) coming under the specific HSN 3905 12 90 and admittedly the product marketed as 'Ujala Stiff & Shine' fabric stiffener is in other form and the formulation arrived at in pre paras in the case of 'Ujala Whitener' is squarely applicable in this case also.

The State Legislature has the exclusive power to legislate upon the lists entrusted thereto by Constitution. States have been enjoying an exclusive right to prescribe any specific rate for taxing any goods as well as a different rate with reference to a dealer or its utilization as an identified element. Accordingly KVAT Act has been enacted for levy and collection of VAT, which inter alia includes four schedules and a notification issued under section 6(1)(d) of the Act.

Different statutes are enacted for different purposes. In order to analyze the purpose we have to go by the preamble. Central Excise Tariff Act is a Central Legislation to provide for levy and collection of 'excise duty' for which 'micro interpretation' of the term 'manufacture' matters, whereas for the purpose of KVAT Act, no such micro interpretation appears to be necessary for the purpose of fixing the status of a commodity.

Statute is required to be interpreted strictly and the definition clause must be examined in a correct perspective giving the meaning of each word contained therein. Under KVAT Act the term manufacture has been defined which is an inclusive definition. The purpose of the definition is to include certain processes and activities within the ambit of the said definition, which may not otherwise amount to manufacture, as ordinarily understood or as per other statutes. Decisions construing the meaning of a word as used in other statutes do not apply unless the definition of that word in the particular statute under consideration is similar to that construed in the decisions.

So the processes undertaken for producing the product in question has to be viewed from the said angle. It is a settled position that so long as the trade recognizes it as different commodity and its uses are different, the item has to be recognized as different goods. Here the products in question produced are by itself a commercial commodity capable of being sold or supplied with distinct identities when compared to the raw materials used. In the instant case these

requirements are satisfied and so the products in question can no longer be treated as the same product as 'imputed' by virtue of its mere presence in a negligible proportion.

As per Section 6(1)(d) goods not covered under clause (a) or (c) are taxable at 12.5% and Government is empowered to notify list of such goods. Accordingly Government had notified the list of such goods as per SRO 82/2006. Vide entry 27 interalia 'laundry brighteners' have been specifically picked out and placed in the 12.5 % category making the intention clear.

The next question to be considered is in what sub entry the product in question is to be placed. The applicant had pointed out that in entry 27 of SRO 82/2006, the product 'laundry whitener' is mentioned only in the heading and not mentioned in the sub entries. By picking out the product 'laundry whitener' and including it specifically in the heading of the said entry, the intention is made specially clear. But since no specific HSN has been assigned to the products in question and the products are not specifically mentioned else where, it has necessarily to go under entry 103 ie; the residual entry of SRO 82/2007 taxable at 12.5%.

In view of the above findings the products "Ujala Supreme " and "Ujala Stiff and Shine" are classifiable under entry 103 of SRO 82/2006 and would attract tax at 12.5%.

The points raised stands clarified accordingly.

Commissioner