

M/S. PIOMA INDUSTRIES ETC. ETC.

v.

STATE OF KERALA

(Civil Appeal No. 4639 of 2008)

JULY 25, 2008

[DR. ARIJIT PASYAT AND P. SATHASIVAM, JJ.]

Kerala General Sales Tax Act, 1963 – Schedule I, Entries 56 and 57 (for year 1997-98) Entries 124 A (for the year 1999-2000) – ‘Rasna’ – Taxability – Whether as a ‘beverage’ or ‘non-alcoholic drink’ – Plea of assessee that it is taxable as ‘vegetative food preparation’ or ‘beverage’ but not ‘non-alcoholic drink’ – Authorities/Courts below holding it as ‘non-alcoholic drink’ – Held: the assessing authority did not consider whether the article could be a ‘beverage’ – Effect of introduction of entries 124A and 141 also not considered – Hence matter remitted to Tribunal.

The question for consideration was whether ‘Rasna’ is taxable as ‘beverage’ or ‘non-alcoholic drink’. The authorities and courts below had held that the same was a ‘non-alcoholic drink’. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: The assessee had taken the stand that the article in question was ‘vegetative food preparation’ and in the alternative it was a ‘beverage’. The stand taken by the appellants about the article being ‘beverage’ has not been specifically considered by the assessing authority, the first appellate authority, the Tribunal and the High Court. Whether a particular article can be called as a ‘beverage’ has to be factually decided. Similarly, the effect of the introduction of the Entries 124A and 141 in the Assessment year 1999-2000 has not been considered. Therefore, the effect of the change from 1.1.2000 has also not

- A been considered and has not been analysed. In the circumstances, the matter is remitted to the Tribunal to examine whether 'Rasna' can be treated as 'beverage' for the assessment year 1997-98; and what is the effect of the Entries 124A and 141 vis-a-vis Entry 97 for the Assessment year 1999-2000. [Paras 7 and 8] [359-H; 360-A-C]
- B

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- C From the final Judgment and Order dated 3.8.2005 of the High Court of Kerala at Ernakulam in ST. Rev. Nos. 271 and 353 of 2003 and 320 of 2005

Mathai M. Paikeday, Shishir Pinaki, Amit Singh and Sanjay Jain for the Appellant.

- D T.L.V. Iyer, P.V. Dinesh and T.P. Sindhu for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

- E 2. Challenge in this appeal is to the judgment of a Division

Bench of the Kerala High Court dismissing two revision petitions filed by the appellants i.e. M/s. Pioma Industries, and M/s. Rasna Pvt. Ltd. The assessment years involved are 1997-98 and 1999-2000. The dispute lies within a very narrow compass.

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- G 3. The question is whether "Rasna" is taxable as a 'beverage' or 'non-alcoholic drink'. For the two assessment years the relevant entries were Entry 56 and Entry 87 respectively for the year 1997-98 and for the year 1999-2000 Entry 124A, 141 and 97 respectively. The assessing officer, the first Appellate Authority, the Tribunal and the High Court held that "Rasna" is to be taxed as 'non-Alcoholic drink'.

- H 4. According to the learned counsel for the appellants, 'Rasna' is a powder which is nothing but a soft drink concen-

trate and cannot be taken to be as 'non-alcoholic drink'. It is nothing but a fruit in a powder form and a vegetative food preparation. It is pointed out that the legislature in its wisdom has taken out some of the items which were earlier in Entry 87 and have grouped them together under different Entries.

5. Learned counsel for the respondent-State on the other hand submitted that by no stretch of imagination 'Rasna' has been treated as 'food or vegetative' and has therefore been rightly assessed as 'non alcoholic drink'.

6. Entries for the two relevant assessment years read as follows:

In the year 1997-98

Entry No.	Details of goods	Point of levy	Rate of tax
56.	Food including vegetative or animal preparations sold in airtight containers and food colours, essences of all kinds and powders or tablets used for making food preparations or beverages	At the point of first sale in the State by a dealer who is liable to tax under Section 5	12.5%
87.	Non-alcoholic drinks, squashes, sauces Aerated waters, mineral water, beverages Horlicks, Boost, Bournvita, Complan, Glucose- D, Glucovita and similar items whether bottled or canned or packed Explanation : Powders, tablets and concentrates used for the preparation of non alcoholic drinks, shall whether or not they are bottled or canned be liable to tax under this entry.	Do	20%

A *During 1998 - 99*

B	56. Food including vegetative or animal preparations sold in airtight containers and food colours, essences of all kinds and powders or tablets used for making food preparations or beverages	At the point of first sale in the State by a dealer who is liable to tax under Section 5	12.5%
C D E	87. Non-alcoholic drinks, squashes, sauces Aerated waters, mineral water, beverages Horlicks, Boost, Bournvita, Complan, Glucose-D, Glucovita and similar items whether bottled or canned or packed Explanation : Powders, tablets and concentrates used for the preparation of non alcoholic drinks, shall whether or not they are bottled or canned be liable to tax under this entry.	Do	20%

During 1999-2000 till 31.12.1999

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G	87. Food including vegetative or animal preparations sold in airtight containers and food colours, essences of all kinds and powders or tablets used for making food preparations or beverages	Do	25%
H	124A Squashes, sauces soda, mineral water Horlicks, Boost Bournvita, Complain,	Do	20%

	Glucose-D, Glucovita and similar items whether or not bottled canned or packed Explanation: powders, tablets, granules and concentrates used for the preparation of beverages shall, whether or not they are bottled or canned, be liable to tax under this entry.		
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From 1-1-2000

97.	Non alcoholic drinks whether or not bottled or canned or packed Explanation _ Powders, tablets, granules and concentrates used for the preparation of non-alcoholic drinks, shall whether or not they are bottled or canned be liable to tax under this entry.	Do	25%
141	Squashes, sauces, fruit juice, fruit pulp, soda, mineral water, Horlicks, Boost, Bournvita Complan, Glucose-D, Glucovita and similar items whether or not bottled canned or packed. Explanation-Powders, tablets Granules and concentrates used for the preparation of beverages shall, whether or not they are bottled or canned, be liable to tax under this entry.	Do	20%

7. It appears that assessee had taken the stand that the

- A article in question was vegetative food preparation and in the alternative it was a beverage.

8. It was also highlighting the fact that in 1999-2000 the Entry 87 as it stood in the year 1997-98 was split into two parts i.e. Entries 87 and 124A. The explanation to the Entries 87 and

- B 124A has also relevance. Undisputedly, Entries 87 and 97 relate to non-alcoholic drinks. It appears that the stand taken by the appellants about the article being "beverage" has not been specifically considered by the Assessing Authority, the First appellate Authority, the Tribunal and the High Court. Whether a
- C particular article can be called as a "beverage" has to be factually decided. That analysis has not been done. Similarly, the effect of the introduction of the Entries 124A and 141 with the Assessment year 1999-2000 has not been considered. Therefore, the effect of the change from 1.1.2000 has also not been
- D considered and has not been analysed. In the circumstances, we remit the matter to the Tribunal to examine the following:

1. Whether 'Rasna' can be treated as beverage for the assessment year 1997-98.

- E 2. To examine the effect of the Entries 124A and 141 vis-a-vis Entry 97 for the Assessment year 1999-2000.

9. The appeal is allowed to the aforesaid extent.

K.K.T.

Appeal partly allowed.