NAGAR MAHAPALIKA, MEERUT

v.

M/S. PREM NATH MONGA BOTTLERS PVT. LTD. AND ANR.

MARCH 18, 1996

[B.P. JEEVAN REDDY AND S. SAGHIR AHMED, JJ.]

Uttar Pradesh Municipalities Act, 1916.

S.128—Entry Tax—Municipal Corporation of Meerut—Notification dated 4.1.1975—Entries 13,40,138—Entry Tax on empty bottles of "Double Seven"—Held, empty bottles brought into the municipal area for purpose of being refilled with the drink are exempted from entry tax.

The respondent-Company, situated within the municipal limit of Meerut, carried on the business of bottling a drink known as 'Double Seven'. The drink was sent out of the Meerut Local area in bottles to various dealers for sale, with the condition that after the drink was consumed the bottles would be returned to the company; and accordingly, the bottles were returned. The Municipal Corporation of Meerut proposed to levy entry tax on the entry of the empty bottles on the ground that the bottles were being dropped into the municipal area for the purpose of use, i.e. for being filled with the drink "double seven" and the empty bottles being " articles made of glass" within the meaning of Entry 138 of Notification dated 4.1.1975, were subject of entry tax. The company resisted the levy inter alia on the ground that the empty bottles were covered by Entry 13 of the exemption clause contained in the Notification. The Corporation rejected the claim; but, the appellate authority in the appeal filed by the Company, as also the High Court in the writ petition filed by the Corporation, taking note of the item "mineral water bottles", mentioned in the list of exemptions drawn up at Item 15 in the year 1956, an entry corresponding to Entry 13 of the Notification dated 4.1.1975, accepted the case of the company that "mineral water bottles" in Entry 13 of the Exempted Articles would include empty bottles of "aerated water (and) could drinks of all kinds" mentioned in Entry 40 of the Taxable Articles and held that the empty bottles of Double Seven being bottled by mineral water were exempted from octroi. Aggrieved, the Corporation filed the present appeal.

Dismissing the appeal, this Court

A **HELD : In view of the fact that the decision of the High Court was rendered in 1983, and the statement made before this Court that the point would not be at issue after 1987, it would not be proper and advisable, at this distance of time, to interfere with the opinion of the appellate authority and the High Court. It is presumed that they were aware of the**
B **factual situation obtaining in the State both in 1956 and in 1975. They have pointed out that the notification of 1975 was preceded by a notification of 1956 and that in 1956 mineral water as is known today was not in Commercial circle and, therefore, when the notification used the expression 'mineral water', it meant are aerated water of the cold drinks. [519-C-D]**

C CIVIL APPELLATE JURISDICTION ; Civil Appeal No. 4151 of 1983.

From the Judgment and Order dated 13.1.83 of the Allahabad High Court in C.M.W.P. No. 925 of 1982.

D V.J. Francis for the Appellant.

R.K. Jain, P.K. Rao and Mrs. Meera Aggarwal for the Respondent.

The Judgment of the Court was delivered :

E **B.P. JEEVAN REDDY, J.** This appeal is preferred by the Nagar Mahapalika, Meerut against the judgment of a learned Single Judge of the Allahabad High Court dismissing the writ petition filed by it. The matter arises under the Uttar Pradesh Municipalities Act, 1960 (the Act) and pertains to levy of octroi.

F The respondent is a company which runs a bottling plant in Meerut. Inter alia, it bottles a drink known as "Double Seven" under a franchise agreement with M/s. Modern Bakeries Limited, New Delhi, a Government of India Undertaking. The bottles are sent out of the Meerut local area to various dealers for sale. According to the respondent, the sale is subject to
G the condition that after the drink is consumed, the bottle is to be returned to it. Accordingly, bottles were being returned to it from time to time. The appellant proposed to levy octroi on the entry of such bottles on the ground that the said bottles were being brought into the Meerut local area for the purpose of "use", i.e., for being filled with the drink "Double Seven". According to the appellant-corporation, the empty bottles being "articles
H made of glass" within the meaning of Entry 138 of the Notification dated

January 4, 1975 were subject to the levy of entry tax. The respondent resisted the levy on two grounds, viz., (1) that the entry of empty bottles into the local area for the purpose of being filled with the said drink and meant for being taken out for sale outside the local area does not amount to entry of goods for "use" within the meaning of the expression "consumption, use or sale therein" which alone attracts the levy within the meaning of Section 128(1)(viii) of the Act and (2) that in any event, the said empty bottles are covered by the exemption clause contained in the said notification and in particular by Entry 13 thereof. Both the contentions were rejected by appellant whereupon the respondent filed an appeal before the learned District judge under Section 472 of the Act. The learned District Judge upheld the contention of the appellant, which led the appellant-corporation to approach the High Court by way of a writ petition. The High Court did not go into first of the two contentions mentioned above. It dismissed the writ petition upholding the second contention urged by the respondent.

The Notification dated January 4, 1975 appears to be in two parts. The first part mentions the articles subject to entry tax. They are as many as 190 entries (according to the copy placed before us.) The second part contains a list of articles which are exempt from octroi and this part contains 37 entries. Entry 40 of the taxable items (first part) mentions "aerated water, cold drinks of all kinds" among other goods. The entry reads :

> "Lime juice and lime cordid gas of all kinds and aerated water, cold drinks of all kinds and sweetened milk."

Entry 13 of the second part (exempted articles) reads :

> "Empty milk cans, mineral water bottles, kerosene oil tins and drums, gas cylinders, wine bottles and drums and gunny bags if imported for being refilled with the commodities for which they are in ordinary use."

The contention of the respondent which has been accepted by the High Court is that the words "mineral water bottles" in Entry 13 of the Exempted Articles are the empty bottles of "aerated water (and) cold drinks of all kinds" mentioned in Entry 40 of the Taxable Articles. It is pointed out that "mineral water" is not found in any of the taxable entries

A and that the said expression was contemplated as referring to aerated waters and cold drinks. It is submitted that in the year 1975, when the said notification was issued, mineral water as is now understood was not in use at all. On the other hand, the contention of the appellant-corporation was that "mineral water" and "aerated water (and) cold drinks of all kinds" are two distinct articles as understood in common parlance and in the commercial world by people who deal in them. The submission is that the mineral water can never be understood as comprising either aerated water or cold drinks and, therefore, the bottles in question are not exempted under Entry 13 of the Exempted Articles. It is also brought to our notice by learned counsel for both the parties that since 1987, the relevant entries have undergone a change and that this question would not arise after the year 1987.

While we agree with the learned counsel for the appellant- corporation that "mineral water" and "aerated water/cold drinks" are different and distinct articles, whether in common parlance or in the commercial parlance, we are not inclined to interfere in the matter in view of the following findings recorded by the learned Single Judge :

> "In the list of exemptions drawn up in the year 1956 at item No. 15 there was an entry corresponding to entry 13 which runs as follows:
>
> > 'Empty milk cans, mineral water bottles, kerosine oil tins and drums, gas cylinder, wine bottles and drums and gunny bags if imported for being refilled with the commodities for which they are in ordinary use.'
>
> Judicial notice can be taken of the fact that there are no natural waters found within the Meerut Corporation limits. When the entry of mineral water was made mineral water was not prepared artificially *in the year 1956*. Thus the above entry in 1956 also could not have contemplated mineral water as the learned counsel for the corporation would have the court understand the term. In the circumstances, the meaning suggested by the counsel for the Company that mineral water be held to include efforscent (effervescent?) drinks, should be accepted.

The Corporation admits that Double Seven prepared by the

Company is an aerated drink which means that it is an effort scent drinks and it would be a mineral water. A

Thus the mineral water bottled by the Company would be taxable under Item 138 of the VII Schedule and it can only escape octroi if it is shown that it is to be found in the list of exempted articles, I hold that the empty Double Seven bottles being bottled by mineral water are exempted under entry 15 of the list of exemption from octroi." B

The decision of the High Court was rendered on January 13, 1983. It may be noted that the learned District Judge was also of the same opinion. We are inclined to presume that the High Court and the learned District Judge were aware of the factual situation obtaining in that State both in 1956 and in 1975 and that at this distance of time, it would not be proper and advisable to interfere with their opinion. They have pointed out that the said notification of 1975 was preceded by a notification of 1956 and that in 1956 mineral water as we know today was not known in commercial circles and, therefore, when the notification used the expression "mineral water", it meant aerated water or the cold drinks. This course we are adopting also because it is stated that after 1987 this question would not arise. C D

In view of the above, it is not necessary for us to go into the question whether the entry of empty bottles for the purpose of being filled with cold drinks/aerated water constitutes "use" within the meaning of the expression "consumption, use or sale therein" occurring in Section 128(1)(viii) of the Act or for that matter in Entry 52 of List-II of the Seventh Schedule to the Constitution of India. E F

The appeal is accordingly dismissed but in the circumstances with no order as to costs.

R.P. Appeal dismissed.