

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 4025 OF 2004

KAMADHENU MILK PRODUCTS & ORS.

Appellant (s)

VERSUS

STATE OF KERALA & ANR.

Respondent(s)

(With office report)

WITH Civil Appeal NO. 4026 of 2004

(With Alln. For raising additional grounds and with office report)

Civil Appeal NO. 4027 of 2004

(With office report)

Civil Appeal NO. 4028 of 2004

(With office report)

Civil Appeal NO. 4029 of 2004

(With Appln. for permission to file additional documents and raising additional grounds and with office report)

Civil Appeal NO. 7800 of 2004

(With prayer for interim relief and office report)

Date: 09/09/2010 These Appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA

HON'BLE MR. JUSTICE ANIL R. DAVE

For Appellant(s)
In C.A. 4025/2004Mr. Subramonium Prasad, Adv.
Ms. Jasneet Kaur, Adv.
Mr. Rajit Khathary, Adv,
Mr. Shayam Nandan, Adv.In C.A. 4026
& 4029/2004Mr. Subramonium Prasad
Ms. Indu Malhotra, Sr. Adv.
Mrs. Nisha Bagchi, Adv.
Ms. Durga Devi, Adv.
Ms. Prerna Priyadarshini, Adv.
Mr. Kush Chaturvedi, Adv.
Mr. Abhinav Agnihotri, Adv.
Mr. Vivek Jain, Adv.
Mr. Vikas Mehta, Adv.For Respondent(s)
In C.A. 4025/2004Mr. V. Sekhar, Sr. Adv.
Mr. Prasanth B. Adv.
Mr. P.V. Dinesh, Adv.Mr. M.P. Vinod, Adv.
Mr. Ajay K. Jain, Adv.
Mr. Vikas Arora, Adv.

UPON hearing counsel the Court made the following
O R D E R

In Civil Appeal NO. 7800 of 2004

The matter be listed on 30th September, 2010.

In rest of the Appeals

Appeals are disposed of in terms of the Signed Order.

(NEELAM GULATI)
Sr. P.A.

(RENU DIWAN)
COURT MASTER

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 4025 of 2004

KAMADHENU MILK PRODUCTS & ORS.

Appellant (s)

VERSUS

STATE OF KERALA & ANR.

Respondent(s)

with Civil Appeal NO. 4026 of 2004, Civil Appeal NO. 4027 of 2004,
Civil Appeal NO. 4028 of 2004, Civil Appeal NO. 4029 of 2004 and
Civil Appeal NO. 7800 of 2004

O R D E R

By this order, we propose to dispose of all the
appeals of the parties herein except for the appeal
for the assessment year, 1991-92 being Civil Appeal
No. 7800 of 2004 titled as Thiruvananthapuram Regional
Co-Op. Milk Producers Union Ltd. v. The Deputy
Commissioner (Law) Board of Revenue Ernakulam
(Kerala), which we shall deal with after two weeks.

2

All the remaining appeals deal with a common question
as to whether the pasteurized milk, the toned milk,
full cream milk, skimmed milk could be included in the
term 'fresh milk'. There is no dispute with regard to

the fact that an exemption has been granted from payment of sales tax by the Kerala Government when it concerns fresh milk. The Kerala General Sales Tax Act was enacted in the year, 1963 and Section 9 thereof provides for exemption from payment of sales tax in respect of certain commodities which are described and specified in the Third Schedule of the Act. Entry 23

of the Third Schedule describes the commodities and the goods exempted from payment of sales tax under Section 9. Fresh milk is included in the said list in Serial No. 23. A clarification was issued by the Government of Kerala by their circular dated 10.12.1998 which deals with the sales tax. It gives a clarification regarding sales tax exemption on pasteurized milk. The Clarification reads as follows:

"The process of pasteurization does not amount to manufacturing activity so as to

3

convert fresh milk into a commodity commercially different from fresh milk.

Pasteurized milk has always been included in the term "Fresh milk" and that pasteurized milk and fresh milk amount to the same commodity exempted from sales tax."

Subsequent thereto another Notification being Notification No. G.O.(P)No.23/2005/TD dated 16th February, 2005 was issued by the Government of Kerala. The said Notification was issued in exercise of the powers issued by the Government of Kerala in exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act. By issuing the aforesaid Notification, the Government of Kerala granted an exemption in respect of Sales Tax payable under the Kerala General Sales Tax Act on the sale of pasteurized milk, homogenized milk, the toned milk,

standardized milk, skimmed milk, full cream milk and recombined or reconstituted milk sold by milk producers within the State. The said Notification was

made effective from the 1st day of January, 1994 till 4

31st December, 1999. In view of the issuance of the aforesaid Notification for sale taking place of the commodities mentioned therein between the period 1st January, 1994 till 31st December, 1999, payment of sales tax is exempted. In all these assessment years,

which are being dealt with under these appeals and are being disposed of by this common judgment and order, the relevant assessment year is between the aforesaid dates and therefore all the said cases would be governed by the said Notification dated 16th February,

2005. Any type of milk which would come under the aforesaid specification as described in the Notification dated 16th February, 2005 would also be exempted from payment of sales tax when it is sold within the State. In that view of the matter the

impugned orders passed by the High court are set aside in all these appeals, except for assessment year, 1991-92. It is held that the assesseees will get the benefit of exemption of paying sales tax in terms of this order.

5

All the appeals are disposed of in terms of the aforesaid order except Civil Appeal No. 7800 of 2004.

It is, however, made clear that if any tax has already been collected by the assessee for the said relevant years of assessment the same shall be paid over to the Government and tax already paid in respect of the aforesaid assessment years would not be refunded by applying the principle of unjust enrichment.

Civil Appeal No. 7800 of 2004 relating to
assessment year of 1991-92 be listed for consideration
on 30th September, 2010.

A copy of this order be given dasti to the counsel
appearing for the parties.

.....J
(Dr. MUKUNDAKAM SHARMA)

.....J
(ANIL R. DAVE)

NEW DELHI,
September 9, 2010