



GOVERNMENT OF KARNATAKA
(Department of Commercial Taxes)

No.KTEG.CR.13/2015-16

Office of the Commissioner of Commercial Taxes,
(Karnataka), Vanijya Therige Karyalaya,
Gandhi Nagar, Kalidasa Road,
Bengaluru-560009. Dated: 10.02.2016.

COMMISSIONER OF COMMERCIAL TAXES CIRCULAR NO: 23 /2015-16

Sub: Judgment in the case of State of Karnataka Vs M/s United Breweries Limited
[CRP.Nos. 204 & 230 of 2011(Tax) C/W CRP.No.103 of 2011(TAX) Judgment
Dated 14th September 2015.

Division Bench of the Hon'ble High Court of Karnataka in the case of State of Karnataka Vs M/s United Breweries Limited [CRP.Nos. 204 & 230 of 20(Tax) C/W CRP.No.103 of 2011(TAX) has delivered Judgment on 14th September 2015 and has upheld levy of Entry Tax under the provisions of Karnataka Tax on Entry of Goods Act, 1979(hereinafter referred to as 'Act' for brevity) in respect of entry of Malted Barley/Barley Malt, Hops pellets and Maize flakes brought into the local area for the manufacture of Beer.

2. Interpretation of the Karnataka Appellate Tribunal that, 'Barley Malt/Malted Barley, Hops pellets and Maize flakes are agricultural produce falling under entry 2 of the II Schedule of the Act read with the definition of 'Agricultural or Horticultural Produce' as defined under section 2(A)(1) of the Act are exempted from tax is rejected. Relevant Sections and entry in the Act are as under:

Section 2(A) (1):

" 'agricultural produce or horticultural produce' shall not include tea, coffee, rubber, cashew, cardamom, pepper and cotton; and such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or drying."

Sub-section (6) of section 3:

"6. No tax shall be levied under this Act on any goods specified in the Second Schedule on its entry into a local area for consumption, use or sale therein."

Sl. No. 2 of Second Schedule:

"2. Agriculture produce including tea, coffee and cotton (whether ginned or unginned)."

3. The Hon'ble High Court of Karnataka answered the substantial questions of law raised in these petitions in favour of the State and held that Malted Barley/Barley Malt, Hops pellets and Maize flakes are not agricultural/horticultural produce falling under entry 2 of II Schedule to the Act and are not exempted from levy of tax under the Act. It is held that, the produce in question is subjected to a process in order to make it fit for consumption, when brought into the local area and hence these goods fall outside the purview of the definition of Agricultural Produce. Interpretation with regard to 'Agricultural Produce' in entry 2 of the II Schedule to the Act and the definition of 'Agricultural or Horticultural Produce' as defined under section 2(A) (1) of the Act and entry 80 of the Schedule I of the Act is put to test and has held that what is excluded under the definition of 'agricultural produce or horticultural produce' which is made fit for consumption is liable to tax. Tea, Coffee and Cotton are the commodities excluded from the definition of the "agricultural produce" from levy of entry tax and other agricultural produce subjected to certain process to be made fit for consumption ceases to be agricultural produce would be subjected to entry tax. Thus, as per section 2(A) (1) of KTEG Act 1979, all agricultural and horticultural produce which has been subjected to any physical, chemical or other process for being made fit for consumption there is no exemption, even if the commodities brought into the local area are Agricultural and Horticultural Produce.

4. At para 23 of the Judgment, Hon'ble High Court of Karnataka has referred to the judgment of the Hon'ble Supreme Court of India. While considering the definition of "Agricultural Produce" in the context of sub-section (6) of Section 3 of the Act, the Hon'ble Supreme Court of India in the case of **Falcon Tyres Ltd. Vs. State of Karnataka and others [2006] 147 STC 0466** has opined that Entry-2 of II Schedule creates exceptions regarding a few of the excluded items of the definition clause from payment of tax, but not all excluded items. The Hon'ble Supreme Court of India has held that

In the Karnataka Tax on Entry of Goods Act, 1979, the term "agricultural produce" as defined by the Legislature specifically excludes rubber from agricultural produce. Section 2(A) (1) of the Act is in two parts: it excludes two types of food from agricultural produce. The definition of agricultural and horticultural produce does not say as to what would be included therein; in substance it includes all agricultural or horticultural


produce but excludes (1) tea, coffee, rubber, cashew, cardamom, pepper and cotton from the definition of agricultural or horticultural produce though all these products as per the dictionary meaning or in common parlance would be understood as agricultural produce, and (2) "such produce as has been subject to any physical, chemical or other process for being made fit for consumption", meaning thereby that the agricultural produce other than what has been excluded, which has been subjected to any physical, chemical or other process for making it fit for consumption would also be excluded from the definition of agricultural or horticultural produce except where such agricultural produce is merely cleaned, graded, sorted or dried. The words "such produce" in the second part does not refer to produce which has already been excluded from agricultural or horticultural produce but refers to such other agricultural produce which has been subjected to any physical, chemical or other process for being made fit for human consumption.

5. Sl.No. (11) of the Notification No. FD 11 CET 2002(I), dated 30th March, 2002 and explanations thereunder provides for levy of entry tax in respect of raw materials and inputs, which are used in the manufacture of Tobacco Products and Liquor. Thus all the raw materials which are brought into the local area for the manufacture of liquor and tobacco products including 'agricultural produce' as discussed above is liable for entry tax. Arecanut, Tobacco and any other agricultural produce brought into the local area for the manufacture of liquor and tobacco products such as beer, cigerrates, cigar, gutka, churuts, zarda and quimam Pan Masala or any other products which can be classified as liquor or tobacco products are liable for entry tax. This liability of entry tax at 1% as per Sl.No.11 of the Notification No. FD 11 CET 2002(I), dated 30th March, 2002 and explanations thereunder is independent of liability of entry tax as such on finished goods as per Notification No.FD 208 CSL 2013(III) dated 1.10.2013.

6. In view of the Judgement of the Hon'ble High Court of Karnataka with regard to liability of entry tax on the agricultural or horticultural produce brought into the local area following instructions are issued.

- a) Sl.No. (11) of the Notification No. FD 11 CET 2002(I), dated 30th March, 2002 and explanations thereunder provides for levy of entry tax in respect of raw materials and inputs, which are used in the manufacture of Tobacco Products and Liquor and hence Arecanut, Tobacco and any other agricultural produce brought into the local area for the manufacture of liquor and tobacco products such as beer, cigerrates, cigar, gutka, churuts, zarda and quimam Pan Masala or any other products which can be classified as liquor or tobacco products are liable for entry tax.

- b) Liability of entry tax at 1% as per Sl.No.11 of the Notification No. FD 11 CET 2002(I), dated 30th March, 2002 and explanations thereunder is independent of liability of entry tax as such on finished goods as per Notification No.FD 208 CSL 2013(III) dated 1.10.2013.
- c) All the assessments/re-assessments concluded by the assessing authorities allowing exemptions as agricultural or horticultural produce are to be re-opened and re-assessed in the light of the decision referred above and taxability or otherwise is to be examined and shall be re-assessed under the provisions of the Act.
- d) All the cases of the respondents for the previous years wherever exemptions are allowed shall be taken up for re-assessments and shall be concluded on priority as per the provisions of the Act and penalty and interest shall be levied as per the levies as existed at that point of time for the relevant years of assessment/re-assessment.
- e) If there is any stay of assessment/re-assessment/recovery proceedings, action shall be initiated to get the stay vacated and to proceed to assess/re-assess the cases and recover the dues.
- f) Any revisional proceedings are required to be initiated on account of conclusion of proceedings by the assessing authorities/revisional authorities/appellate authorities based on the judgement of the Karnataka Appellate Tribunal, concerned authorities shall refer the cases to the appropriate authorities for revision or if required shall take appropriate action as per law in the background of the judgments referred in this circular.
- g) Enforcement authorities shall take immediate action to cull out information and take up inspection and to conclude the proceedings as early as possible and send the reports to the concerned DVOs to take up assessment/reassessment proceedings as the case may be.
- h) Instructions issued in this circular shall be followed to implement the judgment and any violation or deviation will be viewed seriously.


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