

Rudisa Beverages & Juices N V and Caribbean International Distributors Inc and The State of Guyana

Citation: [\[2014\] CCJ 1 \(OJ\)](#)
Date of Judgment: 8 May 2014
Nature of Judgment: Judgment on the merits
Composition of the Court: President: D Byron
Judges: R Nelson, A Saunders, J Wit, D Hayton

CCJ Application No	Parties	
OA 003 of 2013	Claimants	Rudisa Beverages & Juices NV Caribbean International Distributors Incorporated
	Defendant	The State of Guyana

Counsel

- Claimants:
Mr Hans Lim A Po, Attorney-at-law
- Defendant:
Mr Mohabir Anil Nandlall, MP and Ms Annette Singh, Attorneys-at-law
- The State of Trinidad and Tobago:
Ms Donna Prowell and Ms Christie A M Modeste, Attorneys-at-law

Nature of Dispute

The dispute concerned a claim by the Claimants that the State of the Co-operative Republic of Guyana (Guyana) imposed an environmental levy or tax on non-returnable beverage containers contrary to Article 87 of the Revised Treaty of Chaguaramas (the ‘RTC’).

Summary of Legal Conclusions and Orders

- The Court found that Guyana had breached Article 87(1) of the RTC by imposing an environmental tax on imported non-returnable beverage containers which qualify for preferential Community treatment.
- The second Claimant, Caribbean International Distributors Inc (CIDI), was entitled to the return of environmental tax paid.

- The Court ordered the immediate cessation of the environmental tax and made an Order for the implementation of legislation or measures to ensure that taxes are not collected on goods qualifying for Community treatment.

Legal Provisions at Issue

- Articles 9, 65, 78, 79, 85, 87, 90, 211, 218, 222 of the RTC

Other Relevant Community Law / Material Relied on

- Articles XIX, IV and XXVI of the Agreement Establishing the Caribbean Court of Justice (the CCJ Agreement)
- Rules 29.3(3) and 29.3(4) of the CCJ Original Jurisdiction Rules 2006

Past CCJ Case Law

- *Trinidad Cement Limited and TCL Guyana Incorporated v The State of the Co-operative Republic of Guyana* [2009] CCJ 1 (OJ)
- *Trinidad Cement Limited v The Caribbean Community* [2009] CCJ 4 (OJ)
- *Hummingbird Rice Mills v Suriname and The Caribbean Community* [2012] CCJ 1 (OJ)
- *Trinidad Cement Limited v The Competition Commission* [2012] CCJ 4 (OJ)
- *Shanique Myrie v the State of Barbados* [2013] CCJ 3 (OJ)
- *Trinidad Cement Limited and TCL Guyana Incorporated v The State of the Co-operative Republic of Guyana* [2009] CCJ 6 (OJ)
- *Trinidad Cement Limited and TCL Guyana Incorporated v The State of the Co-operative Republic of Guyana* [2010] CCJ 1 (OJ)

Other Sources of International Law

- Article 26 and 27 of the Vienna Convention on the Law of Treaties 1969
- *Sociaal Fonds voor de Diamantarbeiders v S.A. Ch. Brachfeld & Sons and Chougol Diamond Co Joined Cases 2/69 and 3/69* [1969] ECR 211
- *Société Comateb v Directeur Général de Douanes et Droits Indirects* C192-218/95 [1997] ECR I-165
- *San Giorgio Case* C-199/82
- *Dilexport Case* C-343/96
- *Metallgesellschaft and Hoechst Case* C-410/98
- *Michailidis v IKA Joint Cases* C-441/98 and C-442/98
- *Mark & Spencer Case* C-62/00
- *Retail and others v Revenue and Customs Commissioners* C-591/10 [2012] All ER (D) 267
- *Lady & Kid A/S and others v Skatteministeriet* C-398/09 [2012] All ER (EC) 410
- *Littlewoods Retail Ltd and Others v HM's Commissioners for Revenue and Customs Case* C-591/10
- *Test Claimants in the Franked Investment Income Group Litigation v Commissioners of Inland Revenue and Commissioners for HM's Revenue and Customs Case* C 362/12

Facts

The Claimants produce, sell, and distribute beverages in non-returnable containers. The first Claimant, Rudisa Beverages of Suriname, exports beverages to the second Claimant, CIDI, a Guyanese Company, which imports, sells, and distributes them in Guyana. Guyana imposed an environmental levy on all non-returnable beverage containers. The Claimants alleged that this action violated the RTC as non-returnable beverage containers of Community origin were not liable for the payment of import duties.

Findings

The Claimants sought a declaration that the environmental tax breached Article 87(1) of the RTC, which proscribes the imposition of import duties on goods of community origin. In the alternative, they sought a declaration that the 'environmental tax' violated Article 90 of the RTC, which prohibits discriminatory internal taxes. Moreover, they requested an order mandating the revocation and removal of the offending legislation or its discriminatory elements and damages for loss caused by the environmental tax. Also, they sought an order restraining the imposition and collection of the environmental levy.

The Court found, and Guyana conceded, that the environmental levy on non-returnable containers of Community origin was inconsistent with Article 87(1), which prohibits the imposition of import duties on goods of community origin. The Court emphasised in this regard that, 'save as provided by the RTC', there is an absolute prohibition under Article 87(1) on the imposition of import duties on goods of Community origin.

In light of this finding, the Court ordered the immediate cessation of the collection of the environmental levy on goods of Community origin. The Court also ordered the implementation of legislation or measures to ensure that taxes are not collected on goods of Community origin. The Court further found that the Claimants substantiated their claim for damages and ordered that CIDI be reimbursed \$6, 047, 244.47, together with further payments of the environmental levy made by the Claimants from 25th October to the date of the judgment. Further, the Court found that the Claimants were in principle entitled to interest on the amounts that they had paid in environmental levies.

Guyana was ordered to pay the cost of the proceedings.

This summary should not be used as a substitute for the decision of the Caribbean Court of Justice.