



**TC02512**

**Appeal number: TC/2012/03034**

*VAT – zero rating - food – coconut water – is it a beverage? – yes – supplies held to be standard rated – Group 1, Schedule 8, VAT Act 1994*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**CHI DRINKS LIMITED**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S    Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL:    JUDGE NICHOLAS ALEKSANDER  
                  ELIZABETH BRIDGE**

**Sitting in public at Bedford Square, London on 11 January 2013**

**Jonathan Newman, director for the Appellant**

**Rita Pavely, an officer of HM Revenue and Customs, for the Respondents**

## DECISION

5 1. This is an appeal by Chi Drinks Limited ("Chi") against a decision by HMRC that the sale of coconut water is a standard rated supply.

2. Chi's business is the sale of coconut water. Following a request by Chi for a ruling, by a letter dated 19 July 2011 HMRC ruled that the supply of coconut water was zero rated. However HMRC reconsidered this ruling following a VAT repayment claim made by Chi. By a letter dated 20 December 2011, HMRC  
10 withdrew their ruling, and ruled that the sale of coconut water was standard rated. On a review, that new ruling was upheld, and Chi now appeal against the new ruling.

3. Before this Tribunal, Chi were represented by their director Mr Newman, and HMRC were represented by Ms Pavely. Very limited evidence was before us. We were shown print-outs of some pages from Chi's website, and were given print outs  
15 from two online dictionaries, from an online catalogue of a trade exhibition (at which Chi exhibited), and from Wicpepedia. In particular we would note that we did not see or taste Chi's coconut water product, nor was its packaging produced to the Tribunal (although an indistinct picture of the package was included in the trade exhibition catalogue), nor did we have any evidence about how coconut water was consumed in  
20 practice (other than from the description on Chi's web site and in Wikepedia).

### Law

4. All supplies are standard rated, unless they fall into one of the categories of zero rated or exempt supplies.

5. Group 8, VAT Act 1994 lists supplies that are zero rated. Relevant to this case  
25 is the "Food" category in Group 1. The relevant provisions of Group 1 are as follows:

#### **Group 1 — Food**

The supply of anything comprised in the general items set out below, except—

- (a) a supply in the course of catering; and  
30 (b) a supply of anything comprised in any of the excepted items set out below, unless it is also comprised in any of the items overriding the exceptions set out below which relates to that excepted item.

#### **General items**

Item No

35 1 Food of a kind used for human consumption.

[...]

#### **Excepted items**

Item No

[...]

3 Beverages chargeable with any duty of excise specifically charged on spirits, beer, wine or made-wine and preparations thereof.

5 4 Other beverages (including fruit juices and bottled waters) and syrups, concentrates, essences, powders, crystals or other products for the preparation of beverages.

10 4A Sports drinks that are advertised or marketed as products designed to enhance physical performance, accelerate recovery after exercise or build bulk, and other similar drinks, including (in either case) syrups, concentrates, essences, powders, crystals or other products for the preparation of such drinks.

[...]

#### **Items overriding the exceptions**

Item No

15 [...]

4 Tea, maté, herbal teas and similar products, and preparations and extracts thereof.

5 Cocoa, coffee and chicory and other roasted coffee substitutes, and preparations and extracts thereof.

20 6 Milk and preparations and extracts thereof.

[...]

#### **NOTES:**

(1) "Food" includes drink.

[...]

25 (6) Items 4 to 6 of the items overriding the exceptions relate to item 4 of the excepted items.

[...]

30 6. Thus the scheme of the legislation is that food (including drinks) is zero rated, unless the food falls within one of the listed excepted items. If the food falls within an excepted item, it is not zero rated, and falls back to being standard rated. However, if the food falls within the list of items overriding the exceptions, then it is excluded from the excepted items, and therefore will be zero rated.

35 7. The terms "beverage" and "milk" are not defined further in the legislation. However the meaning of "beverage" has been considered in a number of cases. In particular, the decision of the VAT and Duties Tribunal in *Bioconcepts* (1993) Decision No 11287 sets out the well known fivefold test of what constitutes a beverage. The test has been criticised in other decision (for example in *Kalron* [2007] STC 1100 and *Innocent* [2010] UKFTT 516), but it provides a useful starting point for any analysis.

40 8. The tribunal in *Bioconcepts* said the following:

5 It seems to us that notwithstanding the Oxford English Dictionary[’s  
definition] of “beverage” meaning drink, it is not used in the sense of  
meaning all drinkable liquids. Its meaning in ordinary usage covers  
drinks of “liquors” that are commonly consumed. This is the primary  
10 meaning in the Oxford English Dictionary. Liquids that are commonly  
consumed are those that are characteristically taken to increase body  
liquid levels, to slake the thirst, to fortify, or to give pleasure. That  
meaning covers the liquids recognised [by counsel] as beverages (eg  
alcoholic liquids, tea, coffee, cocoa, chocolate and soft drinks and  
meat-based preparations.

9. Therefore the issues for this Tribunal to consider are:
- (1) Is coconut water "food" (including drink) of a kind used for human consumption?
  - (2) If it is, does it fall within one of the excepted items? Of the excepted  
15 items, the only relevant one is item 4 – other beverages.

**If coconut water is a beverage within excepted item 4, does it fall within the list of overriding exclusions, in which case it would be zero rated? The only relevant overriding exclusion is item 6, milk.**

**Facts**

- 20 10. On the basis of the evidence before us, we find the background facts to be as follows.
11. The product sold by Chi is coconut water. Coconuts are the fruit of the coconut palm. Coconut water is the fluid found in immature green coconuts. The fluid is extracted from the coconut and packaged into tetrapak cartons for sale. The coconut  
25 water undergoes no processing other than pasteurisation..
12. Coconut water can be distinguished from coconut milk. As the coconut matures, the fluid is absorbed by the rind of the coconut meat. Coconut milk is prepared by squeezing grated coconut meat through a cheesecloth.
13. We find Chi’s coconut water product to be a beverage for VAT purposes.  
30 Indeed it was no part of Chi’s case that coconut water was not a beverage. Chi’s coconut water is sold as a product to be drunk by humans. Chi’s web site refers to the coconut water product as a “coconut juice drink”. The web site also makes reference to the coconut water being a “healthy electrolyte drink”, and to its hydration qualities. Coconut water meets all five elements of the *Bioconcepts* test. Standing back and  
35 adopting a “common sense” approach we consider that there can be no real doubt that coconut water is a “beverage”, and not some other kind of liquid food.
14. Mr Newman sought to persuade us that the common meaning of “coconut milk” includes the liquid that is drained from a coconut when it is cut open, and that Chi’s coconut water was therefore a form of coconut milk. As coconut milk was zero rated,  
40 so therefore should be Chi’s coconut water. He referred us to section 3.7 of HMRC’s

public notice 701/14 (“Food”) which addresses the taxation of drinks. Paragraph 3.7.3 lists a number of drinks (including coconut milk), supplies of which it states should be zero rated.

15 15. However Mr Newman could produce no evidence to support his submission that  
5 the liquid drained from a coconut is commonly called coconut milk. Indeed all of the  
sources to which we were referred (including Wikipedia and Webster’s Online  
Dictionary) distinguish between coconut milk and coconut water and stress the  
importance of not confusing the two. We find that coconut milk and coconut water  
are distinct and separate products, and the VAT treatment of coconut milk has no  
10 bearing on the VAT treatment of coconut water.

16. Even if Mr Newman was correct that the term "coconut milk" was also used to  
describe coconut water, that would not persuade us that Chi's coconut water was zero  
rated. This is because paragraph 3.7.3 of the public notice makes it clear that  
HMRC’s VAT treatment of coconut milk is on the basis that it is a food that is not a  
15 beverage. As we had no evidence before us as to why HMRC take this view, we can  
only speculate, but we assume that it is because coconut milk is marketed and used  
primarily as a food ingredient rather than as a beverage that meets the tests in  
*Bioconcepts*. In contrast Chi's coconut water is both marketed and apparently used as  
a beverage that meets the *Bioconcepts* tests.

20 17. For completeness, we also find that Chi's coconut water does not fall within any  
of the overriding exclusions, in particular it is not milk. We have already found that  
coconut water is not coconut milk, and therefore the term "milk" is not apt to describe  
coconut water. Even if it was, the reason coconut milk is treated by HMRC as zero  
rated is because it is not a beverage – not because it is a beverage, but falls within the  
25 overriding exclusion for "milk". And we have found that coconut water (in contrast  
to coconut milk) is a beverage.

18. We heard no argument, and had no evidence, as to the meaning of "milk". But  
we are aware of the *Alpro* case before the VAT Tribunal {(2006) Decision Number  
19911 (not cited to us in this case)}. In the *Alpro* case, the Tribunal (which had the  
30 benefit of expert evidence) held that soya milk was not "milk" for the purposes of  
Group 1, but neither was it a beverage - and for that reason it was zero rated. By  
analogy, coconut milk would therefore not be capable of falling within the overriding  
exclusion for "milk" in any event.

### Conclusions

35 19. For the reasons we have given above, we find that Chi's coconut water is a  
beverage for VAT purposes, and its supply is therefore standard rated. Chi's appeal is  
dismissed.

20. We note that Chi originally obtained a formal ruling from HMRC as to the VAT  
status of its coconut water. HMRC acknowledged during the course of the hearing  
40 that the ruling was obtained on the basis of full disclosure to them of all relevant  
factors. We therefore note that Chi would have had a legitimate expectation that

HMRC would abide by that ruling until Chi was given notice that the ruling was withdrawn.

21. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**NICHOLAS ALEKSANDER  
TRIBUNAL JUDGE**

**RELEASE DATE: 1 February 2013**