CARIBBEAN COURT OF JUSTICE
134 HENRY STREET
PORT OF SPAIN
REPUBLIC OF TRINIDAD AND TOBAGO
Telephone: (868) 623-2CCJ Fax: (868) 624-4710
Website: www.caribbeancourtofjustice.org

MEDIA RELEASE
(For immediate release)

No. 15:2017
10 May 2017

CCJ ORDERS GUYANA TO REPAY TAXES TO BEVERAGE COMPANIES

The Caribbean Court of Justice (CCJ) yesterday ordered that SM Jaleel & Co Ltd (SMJ) and Guyana Beverages Inc. (GBI) be repaid monies collected in unlawful environmental taxes imposed by the Republic of Guyana. The Court however limited their claim to taxes collected within 5 years of the claim, from 2011 to 2015. The companies' claim was filed in the Court's original jurisdiction which deals exclusively with cases concerning the Revised Treaty of Chaguaramas (RTC) which governs the Caribbean Community (CARICOM).

SM Jaleel & Co ("SMJ"), a Trinidad and Tobago-based company which manufactures and sells beverages, is the sole owner of Guyana Beverages Inc., a Guyanese company which sells and distributes SMJ's beverages imported into Guyana. The companies approached the Court for a declaration that Guyana's environmental tax of G$10 per beverage container violated the provisions of the RTC as Guyanese companies were not eligible to pay this tax. The companies applied for an order for reimbursement of US$11 million in taxes paid from January 1, 2006 to August 7, 2015. Guyana, in its defence, argued that the companies had incorporated the tax into the price of their beverages and passed on the tax to their customers. On that basis, Guyana further argued that reimbursement of the tax collected would result in the unjust enrichment of the companies. Guyana also argued that the companies should receive no reimbursement as they had deyayed too long before making their claim.

The CCJ noted that this case was similar in circumstances to the previous case of *Rudisa Beverages & Juices N.V. and Caribbean International Distributors Inc. v The State of Guyana* successfully claimed reimbursement of the unlawful environmental tax and Guyana made amendments to the Customs Act to cease the collection of the tax. Given the similarity of the circumstances, the companies would have been entitled to reimbursement of the unlawfully imposed environmental tax.

…/2

Public Education and Communications Unit
(868) 623-2225 extns. 2296, 2226
pecu@ccj.org

The CCJ also held that the companies were not unjustly enriched at the expense of its customers as customer were to free to determine whether they would purchase the product, taking account of its quality and other competing products in the market place.

In the present case the Court reiterated that the tax did not promote cross-border investment provided for by the Treaty but, "tended to frustrate free movement of goods, distorted competition and discriminated against the Claimants who should have been protected as belonging to the Community." Therefore, Guyana had no basis for retaining the unlawfully collected tax and was unjustly enriched at the companies' expense.

In examining whether the companies' claim was barred by the passage of time, the CCJ agreed that a cut-off period was needed in keeping with the overarching principle of good faith recognized by the RTC. The Court looked at the various limitation periods across the region which ranged from 3 to 6 years and held that a period of 5 years was appropriate.

The CCJ gave judgment for SM Jaleel & Co Ltd (SMJ) and Guyana Beverages Inc. and the government of Guyana was ordered to reimburse the tax it collected between the period March 7, 2011 to August 7, 2015. The judgment would carry interest at 4% per annum from the date of delivery. Guyana was also ordered to pay 70% of the legal costs incurred by the companies.

The judgment of the Court and an Executive Summary are available on the CCJ's website at www.ccj.org.

-end-

Public Education and Communications Unit
(868) 623-2225 extns. 2296, 2226
pecu@ccj.org