

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NOS. 6525-6526 of 2001.

Commissioner of Central Excise, Pune.

Appellant(s)

Versus

M/s. Coca-Cola India Pvt. Ltd.

Respondent(s)

(With office report)

With C.A. No.1691/2003 (with office report)

Date: 25/04/2007 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s)

Mr. Mathai M.Paikeday, Sr.Adv.

Mr. Shishir Pinaki, Adv.

Mr. T.V. Ratnam, Adv. for

Mr. B. Krishna Prasad, Adv.

For Respondent(s)

Mr. Ravinder Narain, Adv.

Ms. Sonu Bhatnagar, Adv.

Ms. Nupur Singh, Adv.

Mr. Rajan Narain, Adv.

In CA 1691/03

Mr. D.N. Ray, Adv. for

Mrs. Sumita Ray, Adv.

UPON hearing counsel the Court made the following

O R D E R

Appeals are dismissed leaving the question of law open, interms of the signed orders. No costs.

(J.S. Rawat)

(Kanwal Singh)

A.R.-cum-P.S.

Court Master

[Two Signed orders are placed on the file].

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6525-6526 of 2001.

Commissioner of Central Excise, Pune.

Appellant(s)

Versus

M/s. Coca-Cola India Pvt. Ltd.

Respondent(s)

O R D E R

1. The Revenue has filed the present appeals against Order No.

C-1/3873-74/00WZB dated 13th October, 2000 in Appeal Nos.

E/3926R/98-Bom & E/1042R/99-Bom. passed by the Customs,

Excise and Gold (Control) Appellate Tribunal, West Zonal Bench,

Mumbai [for short "the Tribunal"].

2. The Tribunal by the impugned order has set aside the order passed by the Commissioner (Appeals) and held that the "non-alcoholic beverage bases or concentrates" manufactured by the respondents are classifiable under sub-heading 10 of Chapter Heading 33.02, as has been claimed by the respondent-assessee.

3. M/s. Britoo Food Company Limited was a wholly owned subsidiary of Coca Cola Company which has changed its name to Coca Cola India Limited. The assessee filed an application for such change in its name, which was allowed.

4. Assessee is the manufacturers of, inter alia, their products, namely, 'Non-alcoholic beverages bases / concentrates', which the Assessee or their bottlers required for making beverages and aerated waters, and which, in turn, were sold by the bottlers under the name of Coca-Cola, Thumps Up, Gold Spot, Limca, Citra, etc.

5. The assessee in paragraph No. 3 of its counter-affidavit has stated, as under:

"3. The present appeal has no Revenue implication. The dispute relates to classification of beverage bases/concentrates manufactured by the Respondent, which are supplied to bottlers, who in turn use the same as raw material in the manufacture of beverages. The duty payable in respect of beverage basis/concentrates is modvatable. Since the duty payable by the Respondent is modvatable, there is no revenue implication. The issue of classification is therefore, academic. No purpose would be served by entertaining the present appeal."

(page 86 of the Paper book]

6. It is stated by the learned counsel for the assessee that the excise duty paid and the Modvat credit availed under Notification No. 5/94-C.E.(N.T.), dt. 1-3-1994 were identical and therefore consequences of payment of excise duty after availing Modvat credit was revenue neutral.

7. In view of the stand taken by the assessee in the counter-affidavit and the statement made by the learned counsel for the assessee, the appeals are dismissed leaving the question of law open. However, there shall be no order as to costs.

8. If upon verification, the submission of the counsel for the assessee is found to be incorrect, liberty is granted to the appellant-

Revenue to mention the matter before this Court.

.....J.

(ASHOK BHAN)

New Delhi;

.....J.

April 25, 2007.

(DALVEER BHANDARI)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1691 of 2003

Commissioner of Central Excise, Jamshedpur.

Appellant(s)

Versus

M/s. Jamshedpur Beverages Adityapur

Respondent(s)

O R D E R

1. The Revenue has filed the present appeal against Final Order

No. A-838/KOL/2002 dated 12th August, 2002 in Appeal No. E-

138/2002 passed by the Customs, Excise and Gold (Control)

Appellate Tribunal, Eastern Bench, Kolkata [for short "the

Tribunal"].

2. The grievance of the Revenue in the present case is that the

assessee had wrongly availed the Modvat credit and was liable to pay

the amount to the extent of Rs.26,77,320/-.

3. It is stated by the counsel appearing for the assessee that the excise duty paid and the Modvat credit availed were identical and therefore consequences of payment of excise duty after availing Modvat credit was revenue neutral.

4. In view of this, the appeal is dismissed leaving the question of law open. However, there shall be no order as to costs.

5. If upon verification, the submission of the counsel for the assessee is found to be incorrect, liberty is granted to the appellant-

Revenue to mention the matter before this Court.

.....J.
(ASHOK BHAN)

New Delhi;J.
April 25, 2007. (DALVEER BHANDARI)