

B
C.A.No. 2639 OF 1999

ITEM No.104

Court No. 1

SECTION XIA

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

Civil Appeal No. 2639 of 1999

Modern Pharmaceuticals Pvt. Ltd.

...Appellant(s)

vs.

State of Kerala & Ors.

...Respondent(s)

(with prayer for interim relief)

Date: 11/03/2004 This/These matter(s) was/were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)Ms. Malini Poduval, Adv.
Ms. Lansinglu Rongmei, Adv.

For Respondent (s)Mr. Ramesh Bau M R, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard counsel for the parties for 25 minutes.

The appeal is allowed in terms of the signed order.
There shall be no order as to costs.

(D.P. WALIA) (JANKI BHATIA)
COURT MASTER COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2639 OF 1999

Modern Pharmaceuticals Pvt. Ltd. ... Appellant

vs.

State of Kerala & Ors. ... Respondents

O R D E R

The appellant herein is engaged in the business of manufacture of medicines and toilet preparations and for that purpose it requires rectified spirit. In the transit as well as while manufacturing medicines and toilet goods, there appears to be some wastage of rectified spirit. The respondent-State purporting to act under Rule 13 of the Kerala Rectified Spirit Rules framed under the Kerala Abkari Act imposed duty on such wastage of rectified spirit. Aggrieved, the appellant filed a petition under Article 226 of the Constitution before the High Court of Kerala but the same was dismissed. A writ appeal filed by the appellant was also dismissed. It is against the said judgment of the Division Bench of the High Court, the appellant is in appeal before us by special leave.

Ms. Malini Poduval, learned counsel appearing for the appellant urged that the State of Kerala has no power to levy duty on wastage of rectified spirit and relied upon a decision of this Court in Deccan Sugar & Abkari Co. Ltd. vs. Commissioner of Excise, A.P., 2004 (1) SCC 243.

The decision in Deccan Sugar & Abkari Co. Ltd. (supra) is based on a Constitution Bench decision in Synthetics and Chemicals Ltd. and Others vs. State of U.P. And Others, 1990 (1) SCC 109 as also on State of U.P. and Others vs. Modi Distillery and Others, 1995 (1) SCC 753. In all these decisions, it has been held that the State has no power to levy excise duty on rectified spirit. The State has power to levy excise duty only on intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors. Admittedly, the commodity used by the appellant was not intoxicating liquor and it was rectified spirit.

In that view of the matter, the order and judgment under challenge deserves to be set aside. We order accordingly. The appeal is allowed. There shall be no order as to costs.

.....CJI (V.N.KHARE)

.....J

(S.H. KAPADIA)
New Delhi;
March 11, 2004.