

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3979 OF 2004

COMMNR. OF CENTRAL EXCISE, MUMBAI

Appellant (s)

VERSUS

M/S. PEPSICO INDIA HOLDINGS (P) LTD.

Respondent(s)

(With appln(s) for stay)

WITH

Civil Appeal NO. 1385 of 2006

Civil Appeal NO. 1605 of 2007

Civil Appeal NO. 1819-1822 of 2008 - With appln. for stay and with O/R

Civil Appeal NO. 2934-2935 of 2008 - With appln. for c/delay in filing appeal and
with office report

Civil Appeal NO. 4619-4621 of 2005

Civil Appeal NO. 664-671 of 2005 - With appln. for c/delay in filing and refiling
appeal, stay and with office report

Date: 14/01/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE H.L. DATTU

For Appellant(s) Mr. V. Shekhar, Sr.Adv.

Mr. Navin Prakash, Adv.

Ms. Shweta Garg, Adv.

Mr. Ashish Gopal Garg, Adv.

Mr. P. Parmeswaran,Adv.

Mr. B. Krishna Prasad

Mr. B.V. Balaram Das, Adv.

For Respondent(s) Mr. V. Lakshmi Kumaran, adv.

Mr. Alok Yadav, Adv.

Mr. M.P. Devanath, Adv.

Mr. S.K. Bagaria, Sr.Adv.

Ms. Meenakshi Arora, Adv.

Mr. Saurabh Bagaria, Adv.

Mr. Suvrajyoti Gupta, Adv.

Mr. Ravinder Narain, Adv.

Mr. Sonu Bhatnagar, Adv.

Mr. Ajay Aggarwal, Adv.

Mr. Rajan Narain, Adv.

Mr. Rajesh Kumar,Adv.

-2-

UPON hearing counsel the Court made the following
ORDER

Civil Appeal Nos. 3979 of 2004, 1385 of 2007 & 1605 of 2007

The Civil Appeals are dismissed with no order as to costs.

Civil Appeal No. 4619-4621 of 2005

Delinked.

Stand over to 20th January, 2009.

Civil Appeal Nos 664-671 of 2005

Stand over to 20th January, 2009.

Civil Appeal Nos. 2934-2935 and 1819-1822 of 2008

Stand over to 21st January, 2009.

(S. Thapar)
PS to Registrar

(Madhu Saxena)
Court Master

The signed order in Civil Appeal Nos. 3979 of 2004, 1385 of 2007
& 1605 of 2007 is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3979 OF 2004

COMMNR. OF CENTRAL EXCISE, MUMBAI
APPELLANT (S)

...

VERSUS

M/S PEPSICO INDIA HOLDINGS (P) LTD.
RESPONDENT(S)

...

WITH

CIVIL APPEAL NO. 1385 OF 2006
CIVIL APPEAL NO. 1605 OF 2007

ORDER

In these Civil Appeals broadly two questions arise for determination, namely, whether the assessee was entitled to deduction in respect of trade discount; secondly, whether "machine usage charges" forms part of the assessable value of the product in question?

On the first question the Tribunal has come to the conclusion that there is no flow back/return of the trade discount and consequently the assessee was entitled to claim deduction for the trade discount. We see no reason to interfere with the factual finding recorded by the Tribunal.

As regards the second question, we find from the records that the vending machine stood installed by the holding company. Nonetheless, ownership of the vending machine vested in the marketing company. The machine charges were payable to the marketing company and not to the holding company. In the circumstances, the said charges were not includable in the assessable value.

-2-

Before concluding we may mention that the Civil Appeals filed by the Department are confined only to the afore-stated items, therefore, we are not required to examine the larger issue concerning valuation.

The Civil Appeals are accordingly dismissed with no order as to costs.

.....J.

[S.H. KAPADIA]

New Delhi,
January 14, 2009

.....J
[H.L. DATTU]