

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

RECORD OF PROCEEDINGS

IA 3-4/2005 in

Petition(s) for Special Leave to Appeal (Civil) No(s).10510/2004

(From the judgement and order dated 27/04/2004 in CWP No. 3210/2003 of The
HIGH COURT OF DELHI AT N. DELHI)

HINDUSTAN LEVER LTD. & ANR.

Petitioner(s)

VERSUS

SALES TAX OFFICER & ORS.

Respondent(s)

(With appln. for directions and stay)

with IA.No.5-6 appln.for c/delay in filing counter affidavit and for permission to file rejoinder affidavit)

Date: 09/01/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE DR. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner(s)

Mr.H.N.Salve, Sr.Adv.

Mr.Ravinder Narain, Adv.

Mr.M.K.Arora, Adv.

Mr.Ajay Aggarwal, Adv.

Mr.Sanjeev Dahiya, Adv.

Mr. Rajan Narain, Adv.

For Respondent(s)

Mr.Rajeev Dutta,Sr.Adv.

Mr.Arijit Prasad,Adv.

Mr.Shailendra Sharma,Adv.

Mr.Ravi P.Mehrotra,Adv.

Mrs Anil Katiyar,Adv.

UPON hearing counsel the Court made the following

O R D E R

5 by This Court had passed an order on 25th April, 200

which we had disposed of the special leave petitions
filed by the

applicants by making it clear that the applicants would

:2:

challenge the conclusion of the respondents that tea and coffee were

not in fact kiryana or in any event, food within the meaning of

Table to Section 5 of the Delhi Sales Tax Act, 1975. The grievance

of the applicants was that a circular had been issued by the

Additional Commissioner (Policy) Sales Tax, New Delhi on

12.11.2002 in fact concluding the issue in favour of the department.

This Court noted that the circular was being withdrawn by the

department and as such gave the directions to the applicant to

avail of its remedy under the Act.

Pending the applicants' challenge to the impugned

notice of reassessment, reassessment order has in fact been passed.

The applicant had challenged the original orders of assessment

before the appellate authority but has not challenged the reassessment order dated 26.4.2004.

In the earlier order, we had also made it clear that if the circular dated 12.11.2002 was not withdrawn by the respondents, liberty was granted to the applicant to mention the matter. In fact the circular had not been withdrawn. It was, therefore, urged by the applicant that the matter should be revived and the SLP entertained

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on merits. Since we have already passed an order requiring the applicant to avail of the remedies under Act, we do not think that it will be appropriate to reconsider the issue at this stage, particularly since the Joint Commissioner (Policy) has issued a letter on 6.1.2006 with the approval of the Commissioner Trade and Taxes withdrawing the circular dated 12.11.2002 from the date of its issuance. The letter dated 6.1.2006 be filed along with an supporting affidavit in this case to be kept on record. As the applicant is relegated to the remedy available under the Act, we are of the view that the period of limitation for challenging the reassessment order in question should be condoned since the delay was by reason of the challenge to the notice of reassessment which was pending adjudication before the High Court and thereafter

before this Court. In the circumstances unless the delay is condoned the applicant would be irreparably prejudiced and our direction to it to avail of the alternative remedy under the Act would be futile. Accordingly, the time to challenge the reassessment order is extended by four weeks from today.

I.A.Nos.3-4 and 5-6 are disposed of.

(Usha Bhardwaj)

Court Master

(Madhu Saxena)

Court Master