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SLP(C)No. 20275 OF 2000

IN THE SUPREME COURT OF INDIA@@  
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CIVIL APPELLATE JURISDICTION@@  
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CIVIL APPEAL NO. 6936 OF 2002@@  
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(Arising out of S.L.P.(C) No.20275 of 2000)

Commercial Tax Officer, Udaipur, Rajasthan ...Appellant(s)

versus

Mc. Dowell & Co.Ltd., Bangalore ...Respondent(s)

WITH

CIVIL APPEAL NOS.6937 & 6935 OF 2002@@  
CCCCCCCCCCCCCCCCCCCCCCCCCC  
(Arising out of S.L.P.(C) Nos.20276/2000 & 20277/2000)

AND

CIVIL APPEAL NO. 6938 OF 2002@@  
CCCCCCCCCCCCCCCCCCCCCCCCCC  
(Arising out of S.L.P.(C)No.847/2002)

O R D E R@@  
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S.L.P.(C) Nos.20275, 20276 & 20277 of 2000:@@  
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Leave is granted.

The Revenue is in appeal against the order of the High Court of Judicature for Rajasthan at Jodhpur in Writ Petition Nos.3025, 3026 and 3027 of 1998, dated 2nd June, 2000.

These appeals relate to Assessment Years 1989-90, 1990-91 and 1991-92.

The respondent-assessee is a manufacturer/dealer in Indian Made Foreign Liquor (IMFL) and beer etc. It packs the liquor in bottles and sells to various customers.

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Relying on the first proviso to Section 2(s) of the Rajasthan Sales Tax Act, 1954 (for short, 'the S.T.Act'), the assessing authority assessed sales tax on the basis of one per cent postulated therein being the measure for working out the taxable turnover of packing material. The orders of assessment were questioned before the Deputy Commissioner (Appeals) by the respondent-assessee, but they were upheld. The assessee then preferred second appeals before the Rajasthan Tax Board. The appeals having been allowed, the Revenue filed Sales Tax Revisions before the Rajasthan Taxation Tribunal, Bench at Jodhpur. The Tribunal, by its order dated July 27, 1998, set aside the order of the Board. That order was impugned in writ petitions before the High Court of Judicature for Rajasthan

at Jodhpur. A Division Bench of the High Court took the view that reliance on Section 2(s) was misplaced and that there was nothing on record to show that there had been sale of the packing material, whether express or implied. In that view of the matter, the writ petitions, in relation to Assessment Years 1989-90, 1990-91 and 1991-92, were allowed by the common impugned judgment. That is how, three appeals came to be filed by the Revenue.

Heard Mr.Sushil Kumar Jain, learned counsel for the appellant, and Mr.Sunil Kumar Gupta, learned counsel for ..3/-

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the respondent-assessee.

Inasmuch as the basis of the orders of assessment is the proviso to Section 2(s) of the S.T.Act, it would be appropriate to read the said section insofar as it is relevant for our purposes.

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"2(s) "taxable turnover" means that part of turnover which remains after deducting therefrom the aggregate amount of the proceeds of sale of goods---

(i) on which no tax is leviable under this Act,

(ii) which have already been subjected to tax under this Act,

(iii) which have been sold to persons outside the State of consumption outside the State, and

(iv) which are taxable at a point of sale within the State subsequent to the sale by the dealer and such sale is covered by a declaration as may be required under any provision of this Act or the rules made thereunder.

Provided that where a dealer in goods which are exempted from tax unconditionally, sells any bardana, container or any other packing material received along with such goods at the time of purchase thereof by him, the taxable turnover in respect of such sales shall, at the option of such dealer to be exercised in the prescribed manner, be one per cent of the aggregate amount of the sale prices received or receivable by him in respect of the sale or supply of such goods and of such bardana, container or material.

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From a plain reading of the proviso, quoted above, ..4/-

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it is evident that it is attracted to a situation where a dealer in exempted goods sells any bardana, container or any other packing material received along with such goods@@  
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at the time of purchase thereof by him; in such a case, the@@  
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taxable turnover in respect of such sales of bardana, container or other packing material shall, at the option of



VERSUS

Mc.Dowell & Co. Ltd., Bangalore  
(With office report)

Respondent (s)

WITH

S.L.P.(C) No.20276/2000  
(With appln. for exemption from filing O.T. and with prayer  
for interim relief)

S.L.P.(C) No.20277/2000  
(With appln. for exemption from filing O.T. and with prayer  
for interim relief)

S.L.P.(C) No.847/2002  
(With appln. for c/delay in refiling S.L.P. and exemption from  
filing O.T. and with prayer for interim relief)

Date : 24/10/2002 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI  
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s) Mr. Sushil Kumar Jain, Adv.  
in SLPs.20275-77/00: Mr. A.P. Dhamija, Adv.  
Mr. L.P. Singh, Adv.  
Ms. Anjali Doshi, Adv.  
Ms. Ruchi Kohli, Adv.

in SLP 847/02: Mr. Ranji Thomas, Adv.  
Ms. Bharati Upadhyaya, Adv.  
Mrs. E.R. Sumathy, Adv.  
Mr. Javed Mahmud Rao, Adv.

For Respondent (s)  
in SLPs.210275-77/00: Mr. Sunil Gupta, Adv.  
Mrs. Anjali K. Verma, Adv.  
Mr. Niraj Gupta, Adv.  
Mr. Harish J. Jhaveri, Adv.

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For Respondent (s)  
in SLP 847/02: Mr. R. Santhanam, Adv.  
Mrs. Madhurima Tatia, Adv.  
Mr. Rajendra Singhvi, Adv.

UPON hearing counsel the Court made the following  
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S.L.P.(C) Nos.20275, 20276 & 20277 of 2000:@@  
CC  
Mr.Sushil Kumar Jain, learned counsel, appearing for  
the Revenue, made his submissions from 10.35 a.m. to 11.55

a.m. Thereafter, Mr.Sunil Gupta, learned counsel, appearing for the respondents, made his submissions till 12.50 p.m.

Leave is granted.

The appeals are dismissed with costs.

S.L.P.(C) No.847/2002:@@

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Mr.Ranji Thomas, learned counsel, appearing for the Revenue, made his submissions from 2.00 p.m. to 2.15 p.m.

Delay is condoned.

Leave is granted.

The appeal is dismissed.

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(N. Annapurna)  
Court Master

(Jasbir Singh)  
Court Master

(Signed order is placed on the file.)