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Commissioner of Central Excise Vs. Coolade Beverages Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-07-2000

Reported in : (2001)(130)ELT356TriDel

Appellant : Commissioner of Central Excise

Respondent : Coolade Beverages Ltd.

Judgement :

1. Arguing the Reference Application, Shri R.D. Negi, ld. SDR submits that a point of law reading as, "whether the value of glass bottles and plastic crates can be apportioned to the value of the aerated water on proportionate basis on their clearances, as having been included in the assessable value, when the party has claimed 100% depreciation at the cost of glass bottles and crates and recovered separately their value by way of rent". Ld. DR submits that the aerated water glass bottles are used repeatedly. More over, the repeated use of every bottle is not the same. He submits that aerated water manufacturers collect rent, if the bottles were retained beyond a certain time. He submits that the cost of the glass bottles is recovered by the manufacturers of aerated water. He submits that their claim of depreciation of 100% in respect of "glass bottles" means that they cover the entire cost in one year.

He submits that since depreciation is claimed by the aerated water manufacturer of glass bottles of the full value during the year, therefore on pro rata basis the cost of glass bottles and plastic crates should be added to the value of aerated water, if any manufacturer claims the benefit of Modvat credit on aerated water

bottles. He therefore submits that since the issue is not clear as to what should be the period and how the period should be calculated, therefore, a point of law arise and prays that the Reference Application may be allowed and the matter may be referred to the Hon'ble Allahabad High Court for consideration.

2. Shri K.L. Rekhi, ld. Consultant appearing for the Respondents herein submits that insofar as 100% depreciation is concerned, it is done in accordance with the provisions of the Income-tax Act and is meant only for the Income-tax purpose. He submits that under the Companies Act, there is a provision of depreciation being claimed at a rate of 20.87%.

He submits that the Industry by and large admits this fact that a glass bottle is repeatedly used for five years on an average. He submits that thus the depreciation permitted under the Companies Act is more or less in conformity with the practice prevalent in the field in respect of the glass bottles and plastic crates. He submits that the cost of the entire quantity of glass bottles cannot be added to the value of aerated water glass bottles. He submits insofar as charging of rent is concerned, it is held in the case of Collector v. Indian Oxygen Ltd. reported in 1988 (36) E.L.T. 730 (S.C.) that rental charges for gas cylinders are not includible in the assessable value. He submits that in view of the ruling of the Apex Court, rent has got nothing to do with the claim of Modvat credit. He submits that the question as formulated by the applicant, thus, is not clear and therefore re-formulation of the question, if any, to be referred to the Hon'ble Allahabad High Court is necessary.

3. We have heard the submissions both of the applicant as well as the assessee. We note that glass bottles and plastic crates are not sold along with the aerated water. We further note that glass bottles and plastic crates for aerated water are repeatedly used. We also note that as per the Industry practice, use of glass bottles and plastic crates normally is that for 5 years and that is the life span of these two items. Perhaps this practice is taken by them for fixing of the depreciation value of 20.87% under the Companies Act. Since the issue is not clear and is not free from doubt, we hold that a point of law arises. The question is re-formulated as under : "Whether the value of glass bottles and plastic crates can

be apportioned depending on the average life span of the bottles and crates and added to the value of the aerated water for purposes of Explanation (iii) under Rule 57A of the Central Excise Rules, 1944, as it stood at the relevant time".

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