(1996) 03 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 28 of 1996

Goa Bottling Co. Pvt. Ltd. APPELLANT

Vs

Asstt. Commissioner of C.Ex., Panaji, Goa RESPONDENT

Date of Decision : 18-03-1996

Acts Referred:

Citation : (1997) 90 ELT 48

Hon'ble Judges : R.K. Batta, J;P.S. Patankar, J

Bench : Division Bench

Judgement

P.S. Patankar, J.—Rule. The learned Advocate for the Respondents waives service. By consent heard forthwith.

2. The Commissioner (Appeals) rejected the stay application filed by the petitioner by passing the Order dated 4-1-1996. The question is the petitioner was required to pay an amount of Rs. 23,96,932.14 under Order dated 23-3-1995 passed by Asstt. Collector of Central Excise (Div.) Panaji, Goa under S. 11A of the Central Excises & Salt Act, 1944 and Rules framed thereunder. The petitioner filed an appeal challenging the same and also filed an application for stay. The application for stay came to be rejected by the learned Commissioner of Central Excise (Appeals), Bombay by passing the Order dated 4-1-1996.

3. The issue that arises is whether the ''plastic crates'' are to be treated as packaging material for availing of Modvat credit. It is the case of the Department that it is an ''equipment'' falling under Rule 57A, Explanation (b)(i) of the Central Excises & Salt Rules, 1944 and not packaging material. Therefore, according to the Department, the petitioner is not entitled or eligible for Modvat credit. It is further case that the petitioner is manufacturing aerated beverages. They are packed in bottles. They are carried to the distributors in crates. The crates would be secondary packaging material and therefore, would not be entitled for the Modvat credit. Prima facie it is not possible to agree with this, in view of the definition of ''value'' as contained in S. 4(d) of the Central Excises & Salt Act, 1944. In addition Rule 57A has been amended by issuing Notification on

17-11-1995 and in Explanation to Rule 57A in clause (iv) the following is added "(iv) crates and glass bottles used for aerated waters". This prima facie gives an indication of the mind of the Central Government to exclude certain inputs for the purpose of calculation of excise duty.

4. In addition we find that the petitioner in the application has pointed out the financial difficulties faced by it and the liquidity crunch because of competition introduced by Coca Cola. They are required to spend about Rs. 6.77 crores initially fro overcoming such competition. Then they are required to spend nearly Rs. 1 crore for advertising, etc. For all this they are required to take Bank finance to the tune of Rs. 4.80 crores from Syndicate Bank. Inspite of this they have yet to discharge the liability of Rs. 1.50 crore towards the suppliers of plastic crates, glass bottles, etc. and which payment is overdue. This position is not disputed. Therefore the petitioner has made out financial hardship suffered by it. In view of this, we pass the following Order :-

5. The impugned Order dated 4th January, 1996 is set aside.

6. The petitioner is permitted to prosecute the appeal without deposit. The learned Advocate for the petitioner states that the petitioner shall give security of the assets of the Company. The petitioner to give such security to the satisfaction of the Appellate Authority. The Appellate Authority to decide the appeal on merits and without taking into consideration any of the observations made hereinabove.