(1991) 02 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 11565, 13268 of 1987, 177, 178 and 1551 of 1980

Sulochana Enterprises (P) Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:
Central Excise Rules, 1944 — Rule 57A

Citation : (1991) 56 ELT 22

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Shri P.S. Raman, for the Appellant; Shri K. Jayachandran, Addl. C.G. Standing Counsel, for the Respondent

Judgement

1. The petitioners in all the writ petitions are manufacturers of aerated water and soft drinks under brand names. The Products are liable for liable

for excise duty under the Central Excises and Salt Act, 1944 (hereinafter called ''the Act''). Prior to 1-3-1986, duty was leviable at the rates

mentioned in the First Schedule of the Act itself and the subject goods fell under Item (d) of the First Schedule of Notification No. 201 of 1979

dated 4-6-1979 as amended from time to to time, the Central Government exempted all excisable goods in so far as raw materials or component

parts which went into the manufacture of such goods which had been assessed to excise duty, were concerned. In respect of the raw materials

used for the manufacture of soft drinks, only synthetic essence fell under Item No. 68 of the First Schedule to the Act. Even this Notification No.

201/79 was rescinded on 1-3-1986.

2. To alleviate the cascading effect of the levy of excise duty the raw materials as well as the finished products, certain new measures were brought

in from time to time. They were variously called set-off procedures or Proforma Credit Schemes. Thereafter, what is known as the Value Added

Tax (VAT) system was sought to be introduced. A Modified form in vogue in the western countries was introduced at the level of the manufacture

and was called MODVAT Scheme. In December, 1985, the first respondent introduced a long term fiscal policy which for the first time included

the proposal to introduce a modified system of value added value added tax or MODVAT as is popularly called. The sum and substance of this

scheme is to alleviate the cascading effect of the excise duty on inputs by giving credit to the excise duty suffered by the inputs at the time of

computing excise duty on the end products. The Central Excise Tariff Act, 1985 contains a chapter with the heading ""Beverages, Vinegars and

Spirits"" being chapter 22. Heading Nos. 22.01 and 22.02 covers the aerated waters, soft drinks, soda etc. In the Budget speech for the year

1986, it was announced that the MODVAT schemes were extended only to goods falling under 37 Chapters of the Schedule to the Central Excise

Tariff. Chapter 22, relating to aerated waters, was not included in the notification under Rule 57-A of the MODVAT Rule. However, the

MODVAT Rules were extended to other Chapters with effect from 1-3-1987. However, textiles, tobacco and petroleum still remain out of the

MODVAT Rules. Therefore, from 1-3-1987, the petitioners availed of the MODVAT Rules. With effect form 9-9-1987, the first respondent

issued Notification No. 203/87 thereby excluding Heading 22.01 and 22.02 of the Central Excise Tariff from the benefit of MODVAT Rules. The

notification was made to take effect from 1-10-1987. The writ petitions challenge the validity of this Notification No. 203/87 dated 9-9-1987 and

for a direction to continue the benefit of MODVAT Scheme in respect of the goods manufactured by the petitioners.

3. Mr. P. S. Raman, learned Counsel for the petitioner, raises the following Grounds : (1) Having made a budget speech that the MODVAT

Scheme was being implemented to all the goods and having, in fact, extended the scheme to aerated waters with effect from 1-3-1987, the

impugned notification withdrawing the scheme are arbitrary and invalid. (2) The withdrawal of the Scheme to aerated waters is also hit by the

doctrine of promissory estoppel. (3) There is a clear discrimination in respect of the goods manufactured by the petitioners and goods manufactured by others. (4) The impugned notification is in violation of Article 19(1)(g) of the Constitution of India and (5) Article 19(6) of the

Constitution of India does not save the notification.

4. It is not necessary to go into the merits of the above contentions because all of them are covered by judgments of various courts in India. Mr. K.

Jayachandran, learned Counsel for the respondents, relies on the decision in Black Diamond Beverages Ltd. Vs. Union of India (UOI), . The

Calcutta High Court had to consider the validity of the very same notification and almost identical questions were raised by the petitioners in that

case. Rejecting every one of the contentions the court held that there was no illegality in the matter of withdrawing the concession under the

MODVAT Scheme by the impugned Notification 203/87 dated 9-9-1987. The Bombay High Court in Goa Bottling Co. Pvt. Ltd., Goa &

Another v. Union of India and Others (Writ Petition No. 245 of 1987 dated 25-4-1988), also considered the identical Notification 203/87 dated

9-9-1987 and after rejecting the plea of promissory estoppel and the contention made under Article 14 of the Constitution of India, dismissed the

writ petition and upheld the notification. I am in respectful agreement with the view expressed in those judgments. It is not, therefore, necessary to

discuss these contentions once over again. The writ petitions fail and they are accordingly dismissed. There will be no order as to costs.

