

(2005) 01 MAD CK 0042
In the Madras High Court
Case No : Writ Petition No. 464 of 1998

The Commissioner of Customs (Appeals)	APPELLANT
Vs	
Dowell Co. Ltd. and Customs Excise and Gold (Control) Appellate Tribunal	RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 123 ECR 336

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S. Udayakumar, for the Appellant; R. Sathish Parasaran and Ramasubramanian associates, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard learned counsel appearing for the parties.

2. The prayer in this writ petition is to issue a writ of Certiorari, call for the records of the Tribunal, the second respondent herein in C/2292/91-92

and to quash the order dated 29.7.1997 made thereon.

3. The writ petition is filed against the granting of exemption by the first respondent on the ground that the automatic bottle labeling machine

imported for food product and therefore, exemption was permissible.

4. Learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in Civil Appeal No. 27667 of 2000 dated

11.10.2001 wherein the Supreme Court has observed that Beer is not a food product and, therefore, no exemption can be granted in respect of

import of various goods, including the automatic bottle labeling machine. The aforesaid decision is squarely applicable to facts of the present case.

5. Learned counsel appearing for the first respondent however submitted that since alternative remedy was available for the petitioner, the petitioner should not have filed the writ petition.

6. Even though such a submission would be normally accepted, having regard to the facts and circumstances of the present case, the said

submission cannot be accepted, since the writ petition is of the year 1998 and the matter has remained pending for more than six years in this

Court and it would be inappropriate to direct the petitioner to approach the alternative forum.

7. More over, since the issues involved in this writ petition are directly covered by the decision of the Supreme Court cited supra, there is no

necessity to drive the petitioner to exhaust the alternative remedy.

8. For the aforesaid reasons and following the decision of the Supreme Court referred to above, the order passed by the second respondent is

quashed and the writ petition is allowed. There is no order as to costs.