

**(2012) 05 CAL CK 0060**  
**Calcutta High Court**  
**Case No:** CEXA No. 17 of 2001

Commissioner of Central Excise,  
Calcutta-I

APPELLANT

Vs

Black Diamond Beverajes Ltd.

RESPONDENT

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**Date of Decision:** May 15, 2012

**Acts Referred:**

- National Tax Tribunal Act, 2005 - Section 30

**Citation:** (2012) 281 ELT 482

**Hon'ble Judges:** Kalyan Jyoti Sengupta, J; Asim Kumar Mondal, J

**Bench:** Division Bench

**Advocate:** Roy, for the Appellant; Khaitan, Sr. Advocate, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

1. It appears from the Statute and also the judgment of the Hon'ble Supreme Court that National Tax Tribunal Act, 2005 cannot be made applicable, more so provision of Section 30 of the Act which intends to amend the relevant provision relating to jurisdiction of the High Court has not been given effect to by notification. Taking into consideration of the matter in totality we think the High Court still retain its jurisdiction to entertain the appeal as allowable before the National Tax Tribunal Act, 2005 came into force. Hence the matter is taken up for hearing. After hearing Mr. Roy, learned Advocate, we admit this appeal on the following substantial question of law :

Whether Modvat Credit is admissible on glass bottles and plastic crates used for packing material for erated water when the value thereof is not included (i.e. bottles/crates as such neither declared nor could be ascertained) in assessable value of the final product, i.e., erated water.

2. Having heard, we are of the view that the point, referred to above, is required to be answered by this Court. However, no step has been taken for referring the matter to decide the issue. Mr. Khaitan, learned Senior Advocate, appearing for the assessee submits that this point was really clarified by the department concerned and is not required to be decided by this Court.

3. In any view of the matter, we think that final opinion should be expressed by this Court on the point, referred to above.

4. Accordingly, we direct the Tribunal to make a statement of the case raising the aforesaid point to this Court within a period of four weeks from the date of communication of this order. Thereafter, the department will place the matter before this Court.

5. Thus, the matter is disposed of. All parties concerned are to act on a signed photocopy of this order on the usual undertakings.