IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

1. Lion Brewery (Ceylon) PLC,
   No. 61, Janadhipathi Mawatha,
   Colombo 1.
2. Hariharan Selvanathan,
   C/O No. 83, George R. De Silva Mawatha,
   Colombo 13.

SC/APPEAL/206/2014

CA/WRIT/787/2008

4. Suresh Kumar Shah,
   C/O No. 83, George R. De Silva Mawatha,
   Colombo 13.
5. Don Chandima Rajakaruna Gunawardana,
   No. 61, Janadhipathi Mawatha,
   Colombo 1.
6. Lional Cuthbert Read De Cabraal Wijetunge,
   No. 1, Charles Avenue, Colombo 3.
9. Chandrarathne Talpe Liyanage,
   No. 278/5, Borella Road,
   Depanama.
10. Chitta Prasanna Amerasinghe,
    No. 31, Mandala Place,
    Madiwela, Kotte.

11. D.R.P. Goonetilleke,
No. 11, Siripala Road,
Mount Lavinia.
1st, 2nd, 4th to 6th and 9th to 11th
Petitioners-Appellants

Vs.

Mr. S.A.C.S.W. Jayatilleke,
Director-General of Excise,
1st Respondent-Respondent

Mr. E.M.B.D. Ekanayake,
Director-Excise Duty,
Both of Excise Duty Division,
Department of Sri Lanka Customs,
Colombo 1.
2nd Respondent-Respondent

Ms. Sudharma Karunarathne,
Director-General of Excise,
Excise Duty Division,
Department of Sri Lanka Customs,
Colombo 1.
Added-Respondent-Respondent

3. Manoharan Selvanathan,
C/O No. 83, George R. De Silva
Mawatha, Colombo 13.
7. Jesper Bjorn Madsen,
8. Dato Voon Loong Chin D.S.P.N.

Both No. 61, Janadhipathi
Mawatha, Colombo 1.
3rd, 7th and 8th Petitioners-
Respondents

Before: Hon. Justice P. Padman Surasena
Hon. Justice Kumudini Wickremasinghe
Hon. Justice Mahinda Samayawardhena

Counsel: Dr. K. Kanag-Isvaran, P.C. with Avindra Rodrigo, P.C., Lakshmanan Jeyakumar and Raneesha De Alwis for the Appellants.

Nirmalan Wigneswaran, D.S.G., for the 1st and 2nd Respondents.

Argued on: 03.06.2024

Written Submissions on:

By the Appellants on 30.07.2024
By the Respondents on 03.09.2024

Decided on: 02.12.2024

Samayawardhena, J.

Introduction

Beer made from malt became an excisable article within the meaning of section 3 of the Excise (Special Provisions) Act, No. 13 of 1989, as amended, by virtue of Gazette Extraordinary No. 1052/15 dated 05.11.1998. Lion Brewery (Ceylon) PLC, the appellant, is a manufacturer of beer. This appeal relates to the unpaid excise duty on beer for the 4th quarter of 1998, the 1st to 4th quarters of 1999, the 4th quarter of 2000,

the 2nd and 3rd quarters of 2001, and the 1st quarter of 2002. The appellant was unsuccessful in the Court of Appeal, where they challenged the calculation of the relevant excise duty by the Director of Excise Duty Division of Sri Lanka Customs, the respondent. This appeal arises from the judgment of the Court of Appeal dated 07.08.2013. As crystallized during the argument before this Court, the appeal centers on three main issues:

(a) Should the excise duty for the beer sold be calculated based on the "ex-factory price" or the "wholesale price"?
(b) Has a determination under section 9(2) of the Excise (Special Provisions) Act been duly made on the facts and circumstances of this case?
(c) Should the appellant pay excise duty for complimentary beer?

Calculation of excise duty

There is no dispute that the appellant became liable to pay 10% as excise duty on the "value" of the beer produced by it, as determined in accordance with section 7 of the Excise (Special Provisions) Act read with the Gazette Extraordinary No. 1052/15 dated 05.11.1998. The issue lies in the method of determining the value of the beer for the purpose of calculating the excise duty. The answer to this question is found within section 7 of the Act itself. Section 7(1)(a), insofar as relevant to the issue at hand reads as follows:

> *Where under this Act, excise duty is levied on any excisable article, not being an excisable article imported into Sri Lanka, with reference to value, such value shall be deemed to be the normal price thereof, that is to say, the price at which such excisable articles are ordinarily sold by an assessee to a buyer in the course of wholesale trade for*

> *delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration of sale.*

The argument of learned President's Counsel for the appellant is that, in terms of section 7(1)(a), the "value" of the beer for the purpose of calculation of the excise duty is the "normal price", which is the price at which the beer is sold from the factory to the buyer (identified by the appellant as the ex-factory price), not the wholesale price at which the buyer subsequently sells the beer to the retailer. The appellant paid the excise duty for the beer in question (except for complementary beer) based on the ex-factory price.

It is common ground that the aforesaid formula set out in section 7(1)(a) for ascertaining the value of the article for the purpose of calculating excise duty applies only "*where the buyer is not a related person and the price is the sole consideration of sale*."

The counter-argument of learned Deputy Solicitor General for the respondent is that, as the buyers in this instance are "related persons", i.e. admittedly distributors of the appellant, the ex-factory price cannot be regarded as the "normal price", and instead the "normal price" should be the "wholesale price" at which distributors sell the beer to retailers.

When the price formula under section 7(1)(a) is inapplicable, proviso (ii) of section 7(1)(a) becomes applicable to determine the price for calculating excise duty:

> *[W]here such excisable articles are not sold by the assessee in the course of wholesale trade except to or through a related person, the normal price of the excisable articles sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold, in the course of wholesale trade at the time of removal to dealers, not being related persons or where such*

> *excisable articles are not sold to such dealers, to dealers being related persons who sell excisable articles in retail.*

It is noteworthy that section 7(1)(a) refers to "wholesale trade" rather than "wholesale price". However, it is the appellant who employs the term "wholesale price" in document P6, which will be addressed later. As defined in section 7(3)(e), "wholesale trade" refers to "*sales to local authorities, dealers, industrial and other buyers who or which purchase their requirements otherwise than in retail.*"

The arguments of both parties on this point revolve around whether a distributor falls within the definition of the term "related person", as the beer in question was admittedly sold by the appellant to distributors.

Section 7(3) defines the term "related person" as follows:

> *"related person" means a person who is so associated with the assessee that they have a direct interest in the business of each other and includes a holding company, a subsidiary company, a relative and distributor of the assessee or any sub-distributor of such distributor.*

According to Article 23(1) of the Constitution, "*All laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English*". The Sinhala text of the above definition reads as follows:

> ''සබැඳි තැනැත්තා'' යන්නෙන් යම් තැනැත්තකු තක්සේරු ලාභියා සමග ඇති තමාගේ සම්බන්ධතාව අනුව ඔවුන්ට එකිනෙකාගේ ව්‍යාපාර කටයුතු විෂයෙහි කෙලින්ම සම්බන්ධකමක් ඇති වන්නේ ද එවැනි තැනැත්තකු අදහස් වන අතර එයට පාලක සමාගමක්ද, පාලිත සමාගමක්ද තක්සේරුලාභියාගේ ඥාතියකු සහ භාණ්ඩ බෙදා හරින්නකු සහ එම භාණ්ඩ බෙදාහරින්නාගේ යම් උප බෙදා හරින්නකුද ඇතුළත් වේ.

Learned President's Counsel for the appellant, citing Indian judgments (*Union of India v. Bombay Tyre International Ltd and Others* AIR 1984 SC 420, *Moped India Ltd v. Assistant Collector of Central Excise* (1985) 1 SCR 954) contends that the phrase "a relative and distributor of the assessee" should be interpreted as referring to a distributor who is also a relative of the assessee, rather than as two separate categories. Accordingly, he submits that the distributors to whom the beer was sold in this case do not qualify as "related persons" for the purpose of calculating excise duty.

I regret my inability to agree with this argument. A plain reading of the Sinhala text indicates that a relative, a distributor of the assessee, and any sub-distributor of such distributor (තක්සේරුලාභියාගේ ඥාතියකු සහ භාණ්ඩ බෙදාහරින්නකු සහ එම භාණ්ඩ බෙදාහරින්නාගේ යම් උප බෙදාහරින්නකු) are distinct and must be read separately. To interpret "a relative and distributor of the assessee" as a single unit would inevitably lead to anomalous results. To interpret "a relative and distributor of the assessee" as a single unit would inevitably lead to anomalous results: For instance, if the assessee is an incorporated company, as in this case, a distributor could never be regarded as a "related person", since a distributor cannot be a relative of a company, nor could a close relative be considered a "related person" unless such relative is also a distributor.

Maxwell on The Interpretation of Statues, 12th Edition (1969), at page 201 states:

> *Where possible, a construction should be adopted which will facilitate the smooth working of the scheme of legislation established by the Act, which will avoid producing or prolonging artificiality in the law, and which will not produce anomalous results.*

The definition of the term "related person" quoted above uses both "means" and "includes". When the word "means" is used, the definition

is restrictive and exhaustive. It is a word of limitation. When the word "includes" is used, the definition is inclusive and expansive. It is a word of enlargement to cover things which do not fall within the ordinary meaning of the word defined. It imports addition to what has already been defined under "means". This inclusive definition is a legal fiction which in reality may not exist but are deemed applicable within the statute. (*Craies on Statute Law*, 7th Edition, Sweet & Maxwell (1971), pages 212-215, N.S. Bindra, *Interpretation of Statues*, 13th Edition, LexisNexis (2023), pages 268-273, D.P. Mittal, *Interpretation of Statutes*, 2nd edition, Taxmann Allied Services Pvt Ltd, New Delhi, pages 774-777)

Maxwell, in the above-mentioned book, explains this principle as follows at pages 270-271:

> *It is common for a statute to contain a provision that certain words and phrases shall, when used in the statute, bear particular meanings.*
>
> *Sometimes, it is provided that a word shall "mean" what the definition section says it shall mean: in this case, the word is restricted to the scope indicated in the definition section. Sometimes, however, the word "include" is used "in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such thing as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include." (Dilworth v. Commissioner of Stamps [1899] A.C. 99, per Lord Watson at pp. 105, 106) In other words, the word in respect of which "includes" is used bears both its extended statutory meaning and "its ordinary, popular, and natural sense whenever that would be properly applicable."*

(Robinson v. Barton-Eccles Local Board (1883) 8 App. Cas. 798, per Earl of Selborne L.C. at p. 801)

Thus, by section 10(1) of the Income Tax Ordinance of Trinidad and Tobago: "For the purpose of ascertaining the chargeable income of any person, there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income, including—…(f) annuities or other annual payments whether payable within or out of the colony." The Judicial Committee held that an annual payment might be deducted under paragraph (f) notwithstanding that it was not an expense incurred in the production of income, the effect of "including" being to comprehend in "outgoings and expenses incurred in the production of income" payments which would not fall within the natural meaning of those words. (Reynolds v. Commissioner of Income Tax for Trinidad and Tobago [1967] 1 A.C. 1)

The definition of the term "related person" has two parts: (a) related person means a person who is so associated with the assessee that they have a direct interest in the business of each other and (b) related person includes a holding company, a subsidiary company, a relative and distributor of the assessee or any sub-distributor of such distributor. The first part requires the application of a *de facto* test, whereas the second part requires the application of a *de jure* test.

The legislature by application of a *de jure* test has extended the meaning of "related person" to include a holding company, a subsidiary company, a relative and distributor of the assessee and any sub-distributor of such distributor, by operation of law. The expression "where the buyer is not a related person and the price is the sole consideration of sale" should be read conjunctively, meaning that in case where the buyer is a related

person, the price typically ceases to be the sole consideration for the sale. However, I must add that this is a presumption, which can be rebutted by the assessee by presenting evidence that, although the buyer is *prima facie* a "related person", he is in fact not, as there is no "direct interest in the business of each other", and there is no difference between him and another unrelated buyer.

The document marked P6 by the appellant is of great assistance in resolving the main issue. According to P6, there are three key price points: the ex-factory price, the wholesale price, and the retail price. The ex-factory price represents the price at which the appellant sells the beer to its distributors at the time of removal from the factory. The wholesale price refers to the price at which distributors sell beer to retailers, while the retail price is the price at which retailers sell beer to consumers.

It is important to note that at all three points, the prices are determined not by the distributors or retailers but by the appellant. This position is confirmed by P6 and is admitted by the appellant. This proves that the appellant maintains control over the sale price, including the wholesale price, even after the (purported) first sale at the factory premises. Such control exercised by the appellant casts doubt on whether the ex-factory price can truly be considered the normal price, or whether it is merely a subterfuge, with the distributor acting as an agent of the appellant. I am not fully satisfied with the explanation provided by the appellant that this pricing mechanism is implemented only to prevent distributors and retailers from profiteering. On the facts and circumstances of this case, I find that the presumption that the distributor is a related person for the purpose of calculating excise duty has not been rebutted by the assessee.

Individuals have a legitimate right to the property they have lawfully acquired through their own efforts, as such assets represent the fruit of their labour rather than something unlawfully obtained or appropriated.

Article 17 of the Universal Declaration of Human Rights affirms this right, stating that everyone has the right to own property and that no one shall be arbitrarily deprived of it. Penal statutes that restrict personal liberty and fiscal statutes that affect right to property must be strictly construed. Taxing statutes are both fiscal and penal in nature, as non-payment of taxes can result in imprisonment.

At the same time, taxation serves as a critical mechanism for government functioning, providing the primary source of revenue necessary for delivering essential public services, such as healthcare, education, social welfare, law enforcement, and national defence. These services are vital *inter alia* for maintaining public safety, law and order, and a well-functioning society. This underscores the need to strike a delicate balance between the government's fiscal requirements and the protection of individuals' rights to their lawfully acquired property.

On the interpretation of taxing statutes, Maxwell in the afore-mentioned book states at page 141:

> *The language used is not to be either stretched, in favour of the Crown or narrowed in favour of the taxpayer. So where the court has to consider a provision expressly designed to prevent tax evasion, which uses unnecessarily wide language to achieve its purpose, that language will be given effect to even though the section is thereby made to apply to cases which it was probably never intended to catch.*

The Supreme Court of India in *Calcutta Choromtype Ltd v. Collector of Central Excise, Calcutta* 1998 (99) ELT 202 emphasized that tax evasion is not a commendable exercise of ingenuity:

> *Colourable devices, however, cannot be part of tax planning. Dubious methods resorting to artifice or subterfuge to avoid payment*

> *of taxes on what really is income can today no longer be applauded and legitimised as a splendid work by a wise man but has to be condemned and punished with severest of penalties.*

Whilst acknowledging that if the language in a charging section of a tax statute is ambiguous—allowing one interpretation in favour of the tax collector and another in favour of the taxpayer—the Court should adopt the interpretation favouring the taxpayer until the legislature resolves the ambiguity through an amendment, it must be emphasized that this principle does not extend to interpreting provisions in a manner that benefits a tax evader.

The Court of Appeal did not err when it decided that the distributors are related persons for the purpose of the Act and the appellant must pay excise duty based on the wholesale price at which distributors sold beer to retailers.

Determination under section 9(2)

The appellant complains that there was no proper determination by the respondent against the appellant on the excise duty payable, which is a *sine qua non* prior to embarking upon the recovery process.

Section 9(1) of the Act (without the proviso) reads as follows:

> *Where any excise duty has not been levied or paid on any excisable article or has been levied or paid only in part on such excisable article or where it has been erroneously refunded, an excise officer may, within a period of five years from the relevant date serve notice on the person chargeable with excise duty which has not been levied or paid or which has not been levied or paid in full or to whom a refund has been erroneously made, requiring him to show cause why he should not pay the amount so specified in the notice.*

In terms of section 9(1), a formal notice marked P10 dated 16.02.2000 was issued to the appellant requiring it to show cause as to why the appellant should not pay the amount specified in the notice for the period November 1998 to December 1999. This was replied to by the appellant by P11 dated 04.04.2000, denying the liability. Thereafter several meetings were held and correspondence was exchanged between the appellant and the respondent on the question of the determination of the value for calculating the excise duty payable, as evidenced from *inter alia* P7-P37 and 1R2-1R5.

Section 9(2) of the Act reads as follows:

> *The Director-General shall, after considering the representations, if any, made by the person on whom notice is served under subsection (1), determine the amount of excise duty due from such person, not being an amount in excess of the amount specified in the notice, and notify him accordingly, and thereupon such person shall pay the amount so determined.*

The argument of learned President's Counsel for the appellant is that, following P11 and several subsequent meetings and correspondence, no "determination" was made by the respondent under section 9(2) of the Act. Therefore, the respondent could not have resorted to section 12 of the Act to initiate proceedings before the Magistrate's Court for the recovery of excise duty.

I am unable to accept this argument. It is quite evident from the several marked documents referred to earlier that the appellant repeatedly sought clarifications regarding the calculation whenever the respondent was poised to make the determination as contemplated in section 9(2). By doing so, the appellant, wittingly or unwittingly, kept on postponing the payment of default taxes since the year 2000.

There is no peremptory requirement that the letter containing section 9(2) determination be explicitly titled "Determination under section 9(2) of the Act". Let me explain. When section 9(1) notice was sent by P10, the appellant was required "to show cause" in terms of the said section. Although the appellant claims that it showed cause by P11, P11 does not explicitly state that it is the "show cause letter". However, learned Deputy Solicitor General accepts it as such, based on the principle that substance prevails over form. At least, P33 can be regarded as the determination as contemplated in section 9(2). After P33 was sent, what did the appellant do? The appellant again sent P34 requesting the respondent to provide the appellant with detailed computation for further consideration. If the respondent replied P34, the appellant would have sent another letter seeking further details. There is no end. The respondent has been attempting to recover default taxes of 1998-1999. Since then, parties have been in negotiation and litigation. P34 was written in 2008, and we are now in 2024. Ingenious methods of postponing tax liabilities cannot be condoned.

On the facts and circumstances of this case, I cannot accept the argument that there is no section 9(2) determination in this case.

Complimentary beer

The respondent alleges that excise duty for complimentary beer issued during the 4th quarter of 2000, the 2nd and 3rd quarters of 2001, and the 1st quarter of 2002 remains unpaid by the appellant. This was first communicated to the appellant in vague terms without any specific details by P24 dated 10.10.2007. It was by P29 dated 22.05.2008 that the respondent communicated to the appellant for the first time the period and the amount to be paid for the complimentary beer. Thereafter the same amount (without mentioning the period for which the amount was due) was communicated to the appellant by P31 dated 04.06.2008.

The amount of excise duty payable for the said quarters with a breakdown for each quarter was communicated to the appellant for the first time by P33 dated 21.07.2008.

The main argument of learned President's Counsel for the appellant in this regard is that this claim is time-barred as recovery is permitted only within five years after the relevant date as stipulated in section 9(1) of the Act. He further submits that the appellant did not receive a section 9(1) notice regarding the complimentary beer.

Learned Deputy Solicitor General in his post-argument written submissions submits that P33 may be treated as a notice under section 9(1):

> *The notice under section 9(1) must only provide the assessee with the amount payable by the assessee. The purpose of this is to enable the assessee to seek a determination or appeal in terms of the Act. Insofar as P33 is concerned it clearly provides the above details to the petitioners and thus satisfies the legal requirements under section 9(1) in respect of notice.*

For the time being, I will accept this submission.

Section 9(1) reads as follows:

> *Where any excise duty has not been levied or paid on any excisable article or has been levied or paid only in part on such excisable article or where it has been erroneously refunded, an excise officer may, within a period of five years from the relevant date serve notice on the person chargeable with excise duty which has not been levied or paid or which has not been levied or paid in full or to whom a refund has been erroneously made, requiring him to show cause why he should not pay the amount so specified in the notice.*

Section 32, in defining "quarter" states that, the quarter means the period of three months commencing on the first day of January, the first day of April, the first day of July, and the first day of October of each year.

Section 9(3)(ii)(b), in defining "relevant date" states that where no return is furnished, the last date on which such return is to be furnished should be regarded as the relevant date.

The fact that this claim was not made within five years after the relevant date is not disputed by learned Deputy Solicitor General for the respondent, but he relies on the proviso to section 9(1) of the Act to bring the claim within the prescribed period. The proviso to section 9(1) of the Act reads as follows:

> *Provided that where any excise duty has not been levied or paid at all or has been levied or paid only in part in contravention of any of the provisions of this Act or any regulations made thereunder or has been erroneously refunded, by reason of fraud, collusion or any wilful misstatement or suppression of facts, the period referred to in this subsection shall extend to ten years from the date on which detection thereof was made.*

The argument of learned Deputy Solicitor General as articulated in the post-argument written submission (quoted below) is that, as the respondent detected the issuance of complimentary beer without payment of the excise duty on or about 10.10.2007, and the appellant failed to provide details regarding the issuance of complimentary beer despite repeated requests made after P24 dated 10.10.2007, the claim on complimentary beer prescribes after ten years from the date of detection, and therefore the claim is not prescribed.

> *In terms of the document marked P27, the fact that the petitioner company had been issuing complimentary beer without paying*

excise duty thereon had been detected by the respondent on or about 10 October 2007. Since then, despite repeated requests by the respondents, the petitioner company has failed to disclose any particulars relating to the issue of complimentary beer.

In those circumstances, the respondents submit that the proviso to section 9(1) of the Act will apply, and therefore the applicable time period for the recovery of such excise duty is ten years from 10 October 2007.

I regret that this argument does not commend itself to me. As evidenced from P29, P31 and P33, the respondent made the calculation on the complimentary beer with the assistance of the reports prepared by the respondent's officers and the reports furnished by the appellant. Had the respondent been diligent and eager to recover the excise duty on the complimentary beer issued, the calculation could have been made in the same manner within five years from the relevant date. This was not done. As evidenced by 1R4 dated 04.03.2002 produced by the respondent himself, the respondent was aware of the non-payment of excise duty for the complimentary beer at least by that date, when the appellant's lawyer at the customs inquiry held on that date reportedly agreed to pay the excise duty for the complimentary beer. The respondent had ample time to send the notice within the time stipulated in section 9(1) of the Act, but failed to take action until the claim became prescribed. The submission that the respondent detected the issuance of complimentary beer by the appellant without payment of excise duty only on or around 10.10.2007 cannot be accepted.

On the facts and circumstances of this case, I hold that the proviso to section 9(1) is inapplicable. I accept the argument of learned President's Counsel for the appellant that the claim in relation to complimentary beer

is prescribed. The Court of Appeal did not consider this matter in its judgment.

Conclusion

The questions of law on which special leave to appeal was granted and the answers thereto are as follows:

(a) Could the Court of Appeal have come to a finding that the letter of 22nd May 2008 (P29) was a Notice under and in terms of section 9(1) of the Excise (Special Provisions) Act, as amended?

A. P29 is relevant to complimentary beer. As the claim for complimentary beer is prescribed, there is no necessity to answer this question.

(b) Could the Court of Appeal have come to the finding that the letter of 4th June 2008 (P31) was a determination under and in terms of section 9(2) of the Excise (Special Provisions) Act, as amended?

A. The answer to (a) above is applicable.

(c) Could the Court of Appeal in any event have come to a finding that a determination under section 9(2) of the Excise (Special Provisions) Act, as amended, had been duly made on the facts and circumstances of this case?

A. Yes (except for complimentary beer).

(d) Could the Court of Appeal have come to a finding that the persons who bought beer from the appellant were *"related persons*" having a *"direct interest*" in the business of each other as defined in section 7(3)(c) of the Excise (Special Provisions) Act, as amended?

A. Yes.

(e) On the facts of this case, is the ex-factory price at which the beer was sold to its distributors in the "wholesale trade" at its factory premises, the "normal price" within the meaning of the provisions of the Excise (Special Provisions) Act?
A. No.

(f) Did the Court of Appeal err in law in holding that excise duty was recoverable from the appellant on the complimentary beer when no notice under section 9(1) of the Excise (Special Provisions) Act was issued on the appellant?
A. The answer to (a) above is applicable.

(g) Did the Court of Appeal err in law in so holding without considering the time bar stipulated in section 9 of the Excise (Special Provisions) Act, as amended, where recovery was prohibited after 5 years had lapsed from the relevant date?
A. The claim for complimentary beer is prescribed.

With the exception of the excise duty payable on the complimentary beer issued during the 4th quarter of 2000, the 2nd and 3rd quarters of 2001, and the 1st quarter of 2002 (the last four items in P37/the last four items in the table filed with the certificate in the Magistrate's Court), the respondent is entitled to recover the remaining excise duty in default from the appellant.

Subject to setting aside the finding on the recovery of excise duty on the complimentary beer, the judgment of the Court of Appeal dated 07.08.2013 is affirmed.

The appeal is partly allowed. I make no order as to costs.

Judge of the Supreme Court

P. Padman Surasena, J.
I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.
I agree.

Judge of the Supreme Court